

# Chapter 1

## CEQ Review and Planning Processes

This chapter includes 11 main sections: CEQ Review of the NEPA Process; NEPA and Planning Processes – General Implementation; NEPA Analysis Requirements; NEPA Documentation; Staffing and Training; Decisionmaking Authority; Public Involvement; Relationship to Other Planning Processes; Relation to Laws, Regulations, and Policies; Environmental Considerations of Planning; and Socioeconomic Considerations of Planning.

### CEQ Review of the NEPA Process

#### Summary

This section includes the following topics: CEQ Review General, Scope of Review, Agency Coordination and Review of Reports, NEPA Task Force, Trust and Integrity of CEQ Review, Public Involvement in the CEQ Review, and Decisionmaking Authority.

**CEQ Review General** – Respondents express different viewpoints regarding CEQ’s review of NEPA. A number of people maintain that the CEQ is right to review NEPA. “We applaud the efforts of the Council of Environmental Quality to form the NEPA Task Force and improve coordination among all levels of government,” writes one elected official. Some suggest that CEQ should review NEPA on an ongoing basis as problems continue to manifest themselves. Some suggest further that the Task Force should seek new, innovative ways to meet NEPA purposes; take a stronger position on key aspects of NEPA; and pursue change more aggressively.

Others, however caution the Task Force to bear in mind the complexity of the natural environment in its review of NEPA and to review current practices in light of the original spirit and intent of NEPA—namely, to protect the environment. These individuals ask the Task Force not to use the review of NEPA as an excuse to weaken environmental protection. In the same vein, a number of people insist that the CEQ should not be reviewing NEPA at all. A typical comment is that “this law should be left alone. The current administration does not have the qualifications to review [NEPA] and is also encumbered by serious conflicts of interest with industry to be able to fairly review this law and still maintain protections for the environment.”

**Scope of Review** – A number of respondents assert that the scope of the CEQ review is too narrow. They say that NEPA processes have mushroomed so much since the act’s inception and have produced such endemic gridlock, that a thorough review of NEPA’s history is called for—including a review of Congress’s original intent in creating the act and all of its subsequent legislative history. Only on the basis of such a review, advise a number of writers, can the Task Force suggest any meaningful changes.

It is also suggested that the Task Force expand the scope of its review to include federal and federally permitted activities in the U.S. Exclusive Economic Zone and High Seas. This zone, writes one preservation/conservation organization, “extends 200 nautical miles (370 km) from shore, covers millions of square miles of rich ocean habitat and contains ocean fish, whales, dolphins, sea turtles and a plentitude of other marine life.” Given the importance of these

resources to coastal communities, the fishing industry, and beachgoers, this organization maintains, federal activities in this area ought to be subject to the same environmental review as those elsewhere.

Others urge the Task Force to keep its review within the scope outlined in the federal register notice; and insist that if the review goes beyond those parameters then the process should be open to additional public comment and review.

**Agency Coordination** – Some respondents urge the Task Force to coordinate its efforts with other agency task forces created to address much the same issues. One suggests that the Task Force coordinate its efforts with the Transportation Infrastructure Streamlining Task Force “since there may be information which could be mutually beneficial and improve the review process contemplated by both Task Forces.” Another recommends that the Task Force work closely with the Energy Projects Streamlining Task Force “to address NEPA issues associated with energy facilities, thereby benefiting from the expertise and knowledge acquired by that Task Force throughout the past year.” Still another suggests that the Task Force coordinate with the Federal Highway Administration in reviewing examples of effective streamlining of NEPA processes. Finally, a few respondents mention particular reports they feel are relevant to the Task Force review.

**NEPA Task Force** – A few respondents comment that the Task Force should include more diverse participants. Suggestions include private and non-federal parties, American Indian tribal representatives, and state government representatives. Notes one elected official, “States either implement their own environmental impact assessment processes or work closely with NEPA through cooperating agency status or otherwise. They therefore possess a wealth of knowledge and a perspective missing from the membership of the task force as it is presently constructed.”

**Trust and Integrity of CEQ Review** – Trust and integrity is a concern that arises in the context of a number of topics. Of those who specifically address the CEQ review of NEPA, some see the review as an “attempt to rubber stamp industry’s wishes” and urge the Task Force to maintain its independence in the face of political pressure.

**Public Involvement in the CEQ Review** – A number of respondents urge the Task Force to adequately involve the public in its review of NEPA. Some suggest that it would be helpful to hold meetings for the purpose of exchanging ideas by those outside of the federal government. Some add that, for an undertaking such as this, it would be useful if agencies were required to file their comments first so the public could understand agency perspectives before offering their own comment. People also state that following this review the Task Force should submit its recommendations for public comment, and respond to comments.

A few respondents advocate a longer comment period for this review; and several recommend that the Task Force create a more user-friendly website. One individual remarks, “There are no asterisks indicating that the telephone number is required, yet your system cleared my response citing a missing telephone number. This is not conducive to public comment!” Others complain that the website questions do not address the real problems with NEPA implementation. “The task force’s focus on information technology and governmental agency interrelationships,” writes one individual, “seems off the mark, since these are not the sources of NEPA process failures.” The real problem, this person adds, is the “plain and simple failure to analyze and disclose relevant environmental, economic, and social factors in project decision-making.”

## CEQ Review General

### 1. Public Concern: The CEQ is right to review NEPA.

We applaud the efforts of the Council on Environmental Quality to form the NEPA Task Force and improve coordination among all levels of government. (Robert Weiner, Councilperson, New Castle County Council, Wilmington, DE - #25.1.0.A1)

Many projects undertaken by Southern Company or its subsidiaries are affected by the NEPA process. Accordingly, Southern Company is directly interested in improving and modernizing NEPA implementation. In that light, Southern Company supports the Task Force in its efforts to make NEPA more useful and directed. (Utility Industry, Birmingham, AL - #584.1.110.XX)

The members of WUWC generally support CEQ's efforts to "modernize: NEPA analyses, and to foster improved coordination among agencies and the public. (Utility Industry, Washington, DC - #474.1.10200.XX)

#### AND SHOULD TAKE THE LEAD IN IMPROVING NEPA

While the Administration says that it wants to improve this process, its recent actions have sought to circumvent the process entirely. The result is more controversy and delay, rather than less. We urge the Administration to halt its efforts to exclude federal actions with serious environmental consequences, such as logging in the national forest and offshore oil drilling, from NEPA. Instead, we hope that the NEPA Task Force will take the lead in improving NEPA as a tool to produce better and less controversial decisions. (Preservation/Conservation Organization, Washington, DC - #469.2.500.XX)

#### AND SHOULD REVIEW NEPA ON AN ON-GOING BASIS

Continued NEPA Review - This Review now being done should become an ongoing process. This specific review will correct some of the problems but we believe that more will surface over time. (Mining Industry, Anchorage, AK - #645.15.10220.XX)

### 2. Public Concern: The CEQ Task Force should report the current status of its efforts.

I am interested in the current status of the NEPA Task Force efforts, especially related to changes resulting from the events of September 11, and to any expected timeline for issuance of guidance or direction. (Government Employee/Union, No Address - #20.1.100.XX)

### 3. Public Concern: The CEQ Task Force should keep in mind the complexity of NEPA implementation in its review.

Implementation of NEPA is often complex, but so is the natural environment in which we function. The Task Force, in seeking ways to "improve and modernize NEPA," must keep this complexity in mind when evaluating current environmental analysis procedures. The past 30 years of implementing NEPA, combined with our growing understanding of ecological processes, has taught us that rarely are important decisions about the health and well being of human, animal, and plant communities arrived at quickly and with little effort. (Preservation/Conservation Organization, Eugene, OR - #99.1.700.F1)

### 4. Public Concern: The CEQ Task Force should keep in mind the complexity of the natural environment in its review.

CATs agrees that implementation of NEPA is often complex, but so is the natural environment in which we function. The Task Force, in seeking ways to "improve and modernize NEPA," must keep this complexity in mind when evaluating current environmental analysis procedures. The past 30 years of implementing NEPA, combined with our growing understanding of ecological processes, has taught us that rarely are important decisions about the health and well being of human, animal, and plant

communities arrived at quickly and with little effort. (Placed-Based Group, Arcata, CA - #632.18.10200.XX)

**5. Public Concern: The CEQ Task Force should review current practices in light of the original spirit and intent of NEPA.**

The consideration of the fundamental underpinnings of our current practices in light of the original spirit and intent of NEPA is crucial to the efficiency of government. Over the years NEPA has been used variously, from a decision-making exercise to an exercise in obstruction avoidance. The passions and perceptions of the citizenry are echoed in the agencies where they become fine-tuned to focus on narrow interpretations of their public service. This tunnel-vision stifles innovation, limits progress, and slows vital services to the very public we are serving. (Wisconsin Department of Transportation, Madison, WI - #214.1.10110.XX)

**TO PROTECT THE ENVIRONMENT**

One of the biggest legislative/judicial frauds of our time is when the Supreme Court interpreted NEPA to be only procedural and not substantive. We need to get back to making NEPA what it was meant to be—a law that truly protects the environment. (Individual, Brookport, IL - #257.1.10100.XX)

**6. Public Concern: The CEQ Task Force should not use the review of NEPA as an excuse to weaken environmental protection.**

Here is a topic for you to consider: don't use your "review" as an excuse for weakening environmental protections. This administration has already done more than enough to roll back public safety and environmental preservation measures in the interests of profit for large corporations.

Remember, you are the Council on Environmental Quality. Do not give the Bush administration another excuse to degrade the quality of the environment. (Individual, Los Angeles, CA - #137.1.700.F1)

**7. Public Concern: The CEQ Task Force should seek new, innovative ways to meet NEPA purposes.**

It is important that the Task Force focus not only on improving the efficiency of NEPA process. While that is important, it is more important to seek new, innovative ways for the agencies to meet their responsibility to the American public. Technology and information management systems can help achieve efficiencies and reduce the cost of analysis, public involvement and documentation, but the focus should be on achieving the intent of the law. (NEPA Professional or Association - Private Sector, Washington, DC - #450.3.110.XX)

**8. Public Concern: The CEQ Task Force should take a stronger position on key aspects of NEPA.**

The NEPA Task Force needs to develop a clear administrative roadmap for satisfying NEPA requirements, enact it into regulations, and defend it in court. While a certain amount of agency flexibility is necessary to accommodate different agency situations, CEQ should take a stronger position on core elements of key aspects of the NEPA process. (Timber or Wood Products Industry, Quincy, CA - #452.7.110.XX)

**9. Public Concern: The CEQ Task Force should pursue change more aggressively.**

Our read of the scope of your charge from the CEQ provides little comfort that the essential top-to-bottom overhaul of the application of NEPA to federal decision-making is likely to happen. While we appreciate this opportunity to offer constructive input on the issues your Task Force has been asked to address, we are disappointed that the Council is not being more aggressive in pursuit of needed change. (Other, Washington, DC - #506.27.10440.XX)

## 10. Public Concern: The CEQ should not review NEPA.

A Republican should not reform environmental law. Nixon, a republican, went to China. Clinton, a Democrat, reformed welfare. No one believes Bush's intentions are good on this issue. (Individual, Tacoma, WA - #248.1.0.E3)

I would like to express my concern at the reevaluation of NEPA standards. Under President Bush's administration, anti-environmental attitudes are rather obvious (his opening of National Parks to logging interests instead of taking alternate measures is an example of this). (Individual, No Address - #283.1.0.XX)

I do not approve of George Bush hacking away yet another environmental law. It is so strange that a Republican Administration (President Nixon) enacted this law, and yet Acting President George Bush would move to strike such law. And yes, that is George Bush's plan. He promised that he would be an environmental president, yet he has not done one single thing to prove this. A step in the right direction would be to sign the Kyoto treaty. Another step would be to reverse the environmental damage that Acting President George W. Bush has signed into law. The Acting President should not support logging industry nor should he support drilling in the Artic. (Individual, No Address - #284.1.0.XX)

This law should be left alone. The current administration does not have the qualifications to review and is also encumbered by serious conflicts of interest with industry to be able to fairly review this law and still maintain protections for the environment. (Individual, Pomfret, MD - #309.1.500.F1)

Any threat to any policy/law undertaken by this administration is tainted with deregulation, which is tantamount to allowing its allies in big oil/business/logging free reign of our national lands and, in effect freedom.

I wholly oppose this type of reaction to regulatory measures that are put in place to make sure that things are done with a moderate growth. (Individual, No Address - #259.1.500.XX)

### **RATHER, IT SHOULD FOCUS RESOURCES ON INTERNAL MANAGEMENT COMPLIANCE REVIEWS**

The National Environmental Policy Act is sufficiently clear in its language and directives. Any excessive delays in project implementation related to NEPA analysis is usually the fault of slipshod work or intentional deception by resource managers, not ambiguity in NEPA statutes.

NEPA does cause delays (but not excessive delays) in project implementation, by design. All too often, before the existence of NEPA, projects were hastily implemented before effects analysis could be completed (if affects analysis was even contemplated), leading to serious damage to resources and adverse impacts on human health.

NEPA isn't broken, and does not need "fixing". The resources wasted on this review could have been much more effectively used to internal reviews of management procedures of the various Federal agencies that seem to have a problem with NEPA compliance. (Individual, No Address - #384.1.10200.XX)

## 11. Public Concern: The CEQ Task Force should address the true purpose of this review.

While we laud the purported aim of the Task Force "to seek ways to improve and modernize NEPA analyses and documentation and to foster improved coordination between all levels of government and the public," recent actions by the Bush Administration with regard to NEPA unfortunately taint our hope that this is the true purpose of the present endeavor. Just in the last month, the Administration has sought to emasculate NEPA's applicability in the U.S. offshore exclusive economic zone and the high seas and to authorize new unjustified loopholes in the national forest management process. These are not the only examples since the new Administration took office. The American people deserve better and the plain language of NEPA demands better. (Preservation/Conservation Organization, Washington, DC - #465.2.130.XX)

## **12. Public Concern: The CEQ Task Force should recognize that, in its own approach, it is foiling the purposes of NEPA.**

I am writing to urge that the CEQ NEPA Task Force take a different tack from that laid out as your plan of action, and borrow from NEPA itself for your own process, if you expect the public to accept this as a good faith effort. The proposal to exclude the EEZ from NEPA is a case in point—trying to force the facts to support a politically predetermined course only discredits the Task Force and certainly does not build toward a reasonable consensus.

The NEPA process provides for gathering information from a wide range of sources and with a comprehensive perspective, analyzing this information dispassionately to provide a basis for making informed choices and tradeoffs, and engaging the public at large in these important societal decisions through active recruitment and transparency. Unfortunately, the NEPA Task Force appears to be constrained by preconditions and a specific agenda to find ways to skip the necessary steps in all this, skewing the results from the start. This approach has indeed often weakened the NEPA process itself—you should be seeking ways to correct that, not emulate it. (Preservation/Conservation Organization, South Thomaston, ME - #550.1.200.XX)

## **Scope of Review**

### **13. Public Concern: The CEQ Task Force should expand the scope of its review.**

#### **TO INCLUDE A REVIEW OF NEPA HISTORY AND PROCESSES**

Thank you for performing this review of NEPA. We believe that such a review is long overdue. We encourage that the entire NEPA history, process and details be reviewed and that major changes be made to correct the many problems now apparent in this process. (Mining Industry, Anchorage, AK - #645.1.100.XX)

If NEPA/CEQ history is not taken into account now, the process will continue its bumpy trail for each generation of new, often times, conflicting law and resulting regulation. (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.19.10200.XX)

Should Congress not remedy the particular recurring failures of legislative action, we suggest that the Task Force begin their process with reviewing all of the historical documents to date relating to the original intent of the NEPA, specifically and initially to the phrase or facsimile of “significant federal action” relative to “insignificant and significant issues” [See IL page 10]. Compounding the entire process is the Endangered Species Act trumping everything positive about the NEPA process, because nothing can be an insignificant issue if NEPA is only construed to be applicable to the biologic environment contrary to 40 C.F.R. [sections] 1508.14 and 1508.8.

Other than removing the consideration of worse case scenario aspects of previous time, the office of CEQ has burdened the process time and again to the point of gridlock between agencies, usually based on federal or U.S. Supreme Court cases that seem to stem from the Endangered Species Act, Clean Water Act, or Clean Air Act. (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.24.10520.XX)

NEPA intent versus current situation - Since initial passage of NEPA, the process has mushroomed into a program that goes far beyond the original legislative intent. This expansion has been due in large part to the normal propensity for agencies to reach for more and more power. The expansion is also due to the fact that individual agency officials, when faced with the need to make decisions, often find it easier to ask the applicant for more and more information, analysis and study. This compounds over time and whatever is required in one NEPA review becomes the lower threshold for future reviews. A third cause of expansion has been court decisions that require certain steps or additional data and review.

Recommendations: The Legislative History of NEPA needs to be reviewed and compared with current requirements and practice and regulations then changed to clarify and specify the legislative intent. (Mining Industry, Anchorage, AK - #645.2.10520.XX)

#### **TO INCLUDE A REVIEW OF CONGRESSIONAL FINDINGS IN SECTION 101 OF NEPA**

Role of NEPA Taskforce

We are strongly critical of the limited purpose set out for the NEPA Task Force: “to seek ways to improve and modernize NEPA analyses and documentation and to foster improved coordination among all levels of government and the public”. The NEPA Task Force must also review the Congressional findings found in Sec. 101 of NEPA. (Preservation/Conservation Organization, Seattle, WA - #363.1.110.XX)

#### **TO INCLUDE A REVIEW OF PREVIOUS CONGRESSIONAL ACTS**

Almost ten years later, we are still looking into more creative ways to fix this process; only this time, it’s about how to save (because of catastrophic or near catastrophic fire) our soils, our water bearing forests and rangelands, and in the case of the USFS—hopefully to meet the intent of the Forest Service Organic Administration Act of 1897 in conjunction with later Acts of the Congress. The Task Force and CEQ should take into account that just because the framers of the various Organic Acts have died and are not available to defend their actions of yesteryear, that does not mean that CEQ can ignore those acts on congressional record. (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.27.10200.XX)

#### **TO INCLUDE A REVIEW OF FEDERAL AND FEDERALLY PERMITTED ACTIVITIES IN THE U.S. EXCLUSIVE ECONOMIC ZONE AND HIGH SEAS**

We urge the Task Force to ensure that federal and federally permitted activities in the U.S. Exclusive Economic Zone and High Seas are entitled to full NEPA review. (Preservation/Conservation Organization, No Address - #442.3.10200.XX)

We are writing to urge you to reject the position, recently proposed by some members of your Administration, that federal and federally permitted activities occurring in our oceans are exempt from the National Environmental Policy Act (NEPA). This landmark legislation was adopted more than 30 years ago to ensure that federal agencies fully consider the adverse environmental consequences of their actions. Adopting an across-the-board policy, as advocated by some, that NEPA does not apply beyond 3 nautical miles from shore—within the nation’s so-called Exclusive Economic Zone (EEZ)—would represent the single greatest rollback of environmental policy for our imperiled oceans ever.

The EEZ, which extends 200 nautical miles (370 km) from shore, covers millions of square miles of rich ocean habitat and contains ocean fish, whales, dolphins, sea turtles and a plentitude of other marine life. Coastal communities around the country depend on the health of these resources for their livelihood. Fishermen, both commercial and sport, as well seafood consumers depend on healthy oceans. Beachgoers depend on clean ocean waters free from oil spills and other pollution. (Preservation/Conservation Organization, No Address - #443.1.10200.XX)

#### **14. Public Concern: The CEQ Task Force should keep its review within the scope outlined in the federal register notice.**

We request that the task force recommendations closely comport with the scope of the review delineated in the Federal Register notice. Should the Task Force’s review or comments go beyond the scope of the July 9, 2002 Federal Register notice, we urge an open and public process, additional public comment and review. (Individual, Taylorsville, CA - #510.3.10400.XX)

#### **15. Public Concern: The CEQ Task Force should clarify what issues it is reviewing and what recommendations will follow.**

While certainly other kinds of NEPA reviews might be conducted—and we believe they are essential—we do not have objections to the task force’s review of information technology and governmental agency interrelationships in the context of NEPA. We feel the NEPA Task Force’s scope is too narrow

and that there are more significant problems with the effective implementation of NEPA than 'information technology and government agencies interrelationships.' We request that you make clear what issues the task force is and is not reviewing and what recommendations will follow from your review. (Individual, Taylorsville, CA - #510.2.900.XX)

**16. Public Concern: The CEQ Task Force should consider areas B, C, and E before A and D.**

Study areas B, C, and E appear to offer the greatest opportunity to actually improve the NEPA process; study areas A and D have potential to slow the process by 1) making it information intensive (A) and 2) adding another vague requirement (adaptive environmental management/environmental improvements, D). We recommend that the Task Force first deliver B, C, and E before pursuing A and D. (Federal Highway Administration, Wyoming Division, Cheyenne, WY - #83.1.100.E2)

## **Agency Coordination and Review of Reports**

**17. Public Concern: The CEQ Task Force should coordinate efforts with the Transportation Infrastructure Streamlining Task Force.**

On September 18, 2002, the President issued an Executive Order streamlining the environmental review process for airport and other transportation infrastructure projects. The Executive Order calls for the creation of an interagency task force within the Department of Transportation known as the "Transportation Infrastructure Streamlining Task Force." This new cabinet level task force would report to the President and help agencies expedite the review of transportation projects. The new task force would be chaired by Department of Transportation (DOT) Secretary Norm Mineta and include the heads of several other departments and agencies. The Executive Order also calls on the Secretary of Transportation to create high-priority transportation infrastructure projects that should receive expedited agency reviews. Mineta said DOT would develop the list of projects "to tackle immediately," and the Secretary has asked for project nominations from governors, local authorities such as airport directors and other transportation leaders. AAAE thinks it to be important that the Transportation Infrastructure Streamlining Task Force and the NEPA Task Force coordinate their efforts since there may be information which could be mutually beneficial and improve the review process contemplated by both Task Forces. (Business, Alexandria, VA - #477.3.400.XX)

**18. Public Concern: The CEQ Task Force should coordinate efforts with the Energy Projects Streamlining Task Force.**

We applaud the Task Force for progress achieved to date, and urge CEQ to sustain this effort to identify and remove unnecessary impediments to the expansion and enhancement of critical energy infrastructure. We strongly recommend that the NEPA Task Force work closely with the Energy Projects Streamlining Task Force to address NEPA issues associated with energy facilities, thereby benefiting from the expertise and knowledge acquired by that Task Force throughout the past year. As noted in our October 31 comments, the open-ended nature of many federal, state, and local reviews of energy permits creates a significant barrier to bringing new facilities on line in a timely manner. This is evident in the NEPA process, where there are no maximum time limits for the primary federal agency and the cooperating and consulting agencies to conduct and conclude their reviews. Federal NEPA requirements should be coordinated with the overall federal permitting or decision-making process and with similar state permitting and environmental reviews, to minimize duplication of effort and to ensure that timely decisions are made. Such coordinated, cooperative reviews and decisions could shorten by years the licensing and permitting process for generation plants and transmission lines.

The linear nature of electric transmission facilities pose unique challenges for NEPA analysis and permitting processes. In particular, transmission facilities typically cross more parcels of land than generation facilities, bringing a larger number of landowners and agencies to the table as potential stakeholders than generation facilities located on discrete parcels. This can make it more difficult to achieve consensus among the stakeholders through the public involvement process that accompanies the NEPA and permit reviews.

Moreover, because new transmission facilities are almost always improvements to an existing network, alternative routes are often limited, reducing the number of accommodations that can be made to local concerns, and increasing the influence of any one stakeholder objection. (Utility Industry, Washington, DC - #586.3-4.10500.XX)

**19. Public Concern: The CEQ Task Force should allow test pilot projects to proceed in parallel with its own efforts.**

Concepts and specific proposals for pilot projects incorporating some streamlining of NEPA procedures have also been developed in Idaho by a federal lands task force and working group for the Idaho State Board of Land Commissioners. The test of pilot projects should proceed at least in parallel with the Task Force effort, if not prior to a task force. (Idaho Office of Species Conservation, Boise, ID - #578.1.100.XX)

**20. Public Concern: The CEQ Task Force should coordinate with the Federal Highway Administration in reviewing examples of effective streamlining of NEPA processes.**

ARTBA is continuing to work with Congress and the U.S. DOT to achieve real progress in streamlining the NEPA process for federally funded transportation improvement projects. Currently, ARTBA is working with FHWA on a national scanning tour that will explore best practices the various states have adopted to streamline the process. ARTBA is also working with FHWA on a survey of state DOTs and resource agencies to identify processes that work well to move the process along, as well as to identify common pitfalls.

The NEPA Task Force should coordinate with FHWA so that the results of these activities are shared with the Task Force when these projects have been completed. (Transportation Interest, Washington, DC - #472.7-8.400.XX)

**21. Public Concern: The CEQ Task Force should review reports relevant to its review of NEPA.**

**“NEW APPROACHES FOR MANAGING FEDERALLY ADMINISTERED LANDS” AND “BREAKING THE GRIDLOCK – FEDERAL LAND PILOT PROJECTS IN IDAHO”**

Innovative pilot projects designed to accomplish NEPA purposes should be conducted immediately where the innovations fit within existing authorities. We also urge that new authority be sought, on a pilot basis, for worthy innovations. This would allow for better business practices, requiring some changes from current law or regulation, to be tested. In this regard, we encourage you to review use the recommendations regarding pilot projects and collaborative and streamlining concepts contained in reports submitted to the Idaho State Board of Land Commissioners: the July 1998 report by the Federal Lands Task Force, “New Approaches For Managing Federally Administered Lands,” and the December 2000 report by the Federal Lands Task Force Working Group, “Breaking the Gridlock—Federal Land Pilot Projects in Idaho.” A copy of each of these reports is provided with these comments and is available at <http://www2.state.id.us/lands/LandBoard/fltf.htm> (Idaho Office of Species Conservation, Boise, ID - #578.2.70500.XX)

A source of detail, however, is the report Reclaiming NEPA’s Potential published by the Center for the Rocky Mountain West ([www.crmw.org](http://www.crmw.org)). We encourage the Task Force to obtain and use a copy of this report. (Idaho Office of Species Conservation, Boise, ID - #578.4.70500.XX)

**THE MEMORANDUM FOR GENERAL COUNSELS, NEPA LIAISONS, AND PARTICIPANTS IN SCOPING**

There are such instances where agencies continue to re-invent the wheel regardless of new technology. The Task Force might find and review a Memorandum for General Counsels, NEPA Liaisons and Participants in Scoping, which was sent out April 30, 1981 and signed by Nicholas C. Yost, General Counsel; Barbara Bramble of the General Counsel’s staff led the project. Although it pertained to scoping (19 pages - typewritten), it perhaps could offer insight to some of what the Task Force is

attempting to accomplish today. The report was coupled to 40 Questions and Answers about the NEPA Regulations (46 Fed. Reg. 18026-18038 3/23/81). (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.4.10200.XX)

#### **DATA GATHERED BY THE UDALL INSTITUTE FOR ENVIRONMENTAL CONFLICT RESOLUTION**

For real-life examples, we urge you to look at the data gathered by the Udall Institute for Environmental Conflict Resolution, which engaged in a similar NEPA-review exercise just months ago at the request of a group of bipartisan U.S. Senators [Footnote 1: "See, e.g., 40 C.F.R. Part 1504; Clean Air Act, 42 U.S.C. [Section] 7609 (Policy Review)."] (Preservation/Conservation Organization, Washington, DC - #465.3.70500.XX)

## **NEPA Task Force**

### **22. Public Concern: The CEQ Task Force should include diverse participants.**

#### **PRIVATE AND NON-FEDERAL PARTICIPANTS**

We are . . . curious as to the make-up of the Task Force. It makes sense to include diverse participants as opposed to an agency-dominated group. Please consider including experienced private and non-federal participants in the Task Force. (Recreational Organization, Boise, ID - #90.1.120.XX)

#### **STATE GOVERNMENT REPRESENTATIVES**

WGA believes CEQ should consider a preliminary procedural issue. As one of the goals of the CEQ task force is to improve coordination among all levels of government, we believe the task force, now wholly made up of Federal agency representatives, should expand its membership to include state government representatives. States either implement their own environmental impact assessment processes or work closely with NEPA through cooperating agency status or otherwise. They therefore possess a wealth of knowledge and a perspective missing from the membership of the task force as it is presently constructed. The steps needed to make improvements can best be considered and decided upon with state participants at the table in direct participation with the federal agency representatives. To ensure the needed balance on the task force, WGA could facilitate the participation of a western state representative(s) who could represent the views of the WGA membership. Electronic document exchange in advance of task force meetings and telephone conferencing should be used to ensure that state views are given equal weight even if a state representative cannot physically be present at task force meetings. (Western Governors' Association, Denver, CO - #588.1.120.XX)

I commend the Council on Environmental Quality (CEQ) for forming the task force; however, I am disturbed that state and local government representatives nor professional non-government NEPA writers and educators were included on the task force. Perhaps, the major flaws in NEPA is that federal agencies fail to properly address Title I of NEPA - (1) Quoted in part- "---continuing policy of the Federal government, in cooperation with State and local government, ---." and (2) "---to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." (Charles Childers, State Representative, State of Wyoming, Cody, WY - #656.1.120.XX)

#### **AMERICAN INDIAN NATIONS**

What provisions have been made to include Tribes in the "NEPA Modernization and Improvement" process? Have any Tribes been asked/accepted to sit on the Task Force? The Cherokee Nation drafts over 700 NEPA-related documents each year and one would assume that most other Indian Nations draft a significant number of such documents. Thus, due to the level of effect any changes to NEPA would have upon the Tribes, the Cherokee Nation strongly feels that the task force should have significant representation and would volunteer to sit on said task force. (Cherokee Nation Department of Natural Resources, Tahlequah, OK - #406.1.120.F1)

**23. Public Concern: The CEQ Task Force should consider that a centralized task force is less effective than decentralized innovations.**

The State of Idaho supports the purpose of the NEPA Task Force: improving and updating NEPA studies, paperwork, and coordination. We agree that federal agencies' plans, decisions, and paperwork under NEPA can move faster with the same or better accuracy and precision in predicting effects.

However, we are not sure that a centralized task force is capable of meeting these purposes. We have more faith in the decentralized concept of innovations in the field. This idea was proposed by Senators led by Mike Crapo of Idaho and developed further by the Udall Center for Environmental Conflict Resolution. (Idaho Office of Species Conservation, Boise, ID - #578.1.100.XX)

## Trust and Integrity of CEQ Review

**24. Public Concern: The CEQ Task Force should be independent of political pressure.**

Make the CEQ independent of the political stresses that currently occur. (Preservation/Conservation Organization, Weldon, CA - #473.6.400.XX)

We need a stronger NEPA and not a weaker one. This can be done in the following way:

Make the CEQ independent of the political stresses that currently occur. For instance, during the Clinton Administration, for the first time ever, a logging project was granted an emergency EIS exemption under NEPA (Section 1506.11) with no public input. Pressure was applied to staff so that an illegal waiver of the EIS requirements was granted. This allowed the logging of about 100 million board feet of public trees on tens of thousands of acres of National Forests with little NEPA analysis, assessment, and evaluation. There was no emergency period! (Preservation/Conservation Organization, Charlottesville, VA - #555.7.70000.XX)

**25. Public Concern: The CEQ Task Force should not pander to special interests.**

Given that the most prominent recent mention many of us have of the Corps is its resistance to the Administration's decision to restrict its wasteful and environmentally destructive programs, those of the sort documented by the Washington Post last year, I would think it could do with some good publicity. Here's a chance to stand up to special interests in favor of the environment—and save money, too. (Individual, Charlottesville, VA - #297.2.70500.XX)

### INDUSTRIAL INTERESTS

This attempt to rubber stamp industry's wishes will be stopped when the American people become aware. (Individual, Ridgefield Park, NJ - #305.1.70500.F1)

If the Task Force, CEQ, and President do the bidding of business and industry and gut NEPA, you will cause great harm to the environment and the citizens of this country. Furthermore, I don't know how you would be able to face yourselves in the mirror each morning (much less your children and grandchildren). (Individual, San Jose, CA - #437.5.200.XX)

**26. Public Concern: The CEQ Task Force should address citizen frustration with government.**

Way too much 'politics', too much 'lobbying' (which again is politics), too much 'let's don't hurt anyone's attitude by the 'elected ones,' who continue to 'push' their agenda and the 'commoners' just don't know anything anyway—an attitude by our 'leaders' that will never bring this country back to the people, where it really belongs. Just a note from another WW2 [World War Two] vet that would now, never go out and risk my life, unless I hired a 'lawyer'. There's the real problem—Lawyers and

politicians—too bad we have so many. They are truly what is needed to be ‘cut down’, not the trees.  
(Individual, No Address - #234.1.70500.XX)

## Public Involvement in the CEQ Review

### *Public Involvement in the CEQ Review General*

#### **27. Public Concern: The CEQ Task Force should engage all affected parties.**

We hope that the Task Force will continue to engage all affected parties in an open dialogue that will serve as basis for a sound resolution of such important matters affecting our Nation’s transportation infrastructure. (Business, Alexandria, VA - #477.1.300.XX)

#### **28. Public Concern: The CEQ Task Force should ensure equal treatment to all people in the public involvement process.**

There are many issues surrounding NEPA and its implementation that need improvement. Often, actual use and implementation of NEPA fails to meet either the letter or the intent of the law, and instead is used to justify an agenda or pre-determined decision of an agency or an individual. Equal treatment needs to be provided to all people.

What has happened on this NEPA action is a good example of the agencies not providing equal treatment to everyone. According to the comment letter from the 16 environmental organizations which is posted on the NEPA comments site, Horst Greczmiel of CEQ provided a preliminary briefing on this NEPA process for a number of the 16 groups listed in the letter the last week of July. Was this same courtesy offered to any other individuals, organizations, state and local governments? If not, why not?

The information on the preliminary briefing is not even posted on the CEQ web site for access by everyone. (Individual, Huachuca City, AZ - #372.1.300.XX)

#### **29. Public Concern: The CEQ Task Force should notify anyone who has submitted comments to federal agencies in the last five years.**

I urge and request that the comment period be re-opened relating to the . . . task force action. As a citizen that responds with submitted comments for the USDI, USDA and USFWS, I was not given notice of this proposal! I believe that anyone who has submitted a comment for the past 5 years should receive notification of such comment periods and that a copy of the EA be sent to them. (Individual, Bonner Springs, KS - #633.2.140.XX)

#### **30. Public Concern: The CEQ Task Force should hold meetings for the purpose of exchanging ideas by those outside of the federal government.**

I’d like to strongly urge CEQ to convene one or more structured meetings or panels to have an exchange of ideas from outside the Federal government about current problems and needs for real change in the CEQ regulations. There are many people well versed in both the legal and practical application of NEPA outside the Federal government that we believe can contribute valuable information and experience. (Timber or Wood Products Industry, No Address - #422.13.300.XX)

#### **31. Public Concern: The CEQ Task Force should require agencies to file their comments before accepting comments from other parties.**

##### **SO THE PUBLIC CAN UNDERSTAND AGENCY PERSPECTIVES**

In my short history of working with government employees I am frequently confronted with situations where the public doesn’t get very much performance for their money. The NEPA Task Force web site illustrates the “performance” problem very well.

On the following web page [<http://ceq.eh.doe.gov/ntf/coments.html>] there is a link entitled, “Federal Agencies”. There are no comments from federal agencies. This is very surprising because the agencies

are the implementers of NEPA. It would have been much better if the federal agencies could have each formulated their own experiences with NEPA so the public could understand problems from their point of view—prior to taking comments from others. Then everyone could benefit from the knowledge gained from his or her situation. I describe this as a “performance” problem because they have not “performed” their duty by being openly communicative in a timely manner for this effort. I hope you gather what I mean by this. It is too easy for political-based machinery to simply take a one-sided, defensive posture.

It would be my recommendation to keep the horse in front of the cart, i.e., make the Federal Agencies file their comments first so they can be reviewed by everyone else. (Individual, Nashville, TN - #381.1.10330.XX)

### **32. Public Concern: The CEQ Task Force should submit its recommendations for public comment, and respond to comments.**

We recommend that the Task Force be required by CEQ to submit any recommendations concerning NEPA guidance or regulatory changes for review and comment. We further recommend that the Task Force be required to respond to comments on recommended guidance or regulatory changes prior to their being finalized, or otherwise formally disseminated by the Task Force or CEQ. (United States Navy, Washington, DC - #568.1.100.XX)

### **33. Public Concern: The CEQ Task Force should provide notice and comment rulemaking procedures for any changes in interpretive guidance for NEPA implementation.**

Any proposed change in Federal agencies’ implementation of NEPA would require notice and comment rulemaking before they could be adopted. Notwithstanding the possibility that the adaptive environmental management approach as well as other proposals in this Notice would likely violate NEPA, any fundamental changes in how agencies implement NEPA cannot be adopted without formal notice and comment rulemaking. The need for formal rulemaking extends not only to regulatory changes, as recognized in the Notice, but also to interpretive guidance that would alter the way NEPA is implemented. See, e.g., *Appalachian Power company v. EPA*, 208 F.3d. 1015 (D.C. Cir. 2000) (setting aside EPA’s interpretive guidance because it was not promulgated with notice and comment rulemaking procedures); *General Electric v. EPA* 290 F.3d. 377 (D.C. Cir. 2002) (same). Thus, no provision set forth in study areas A through F can be adopted by the CEQ without formal notice and comment rulemaking procedures. FCPC reserves the right to comment further on such provisions if and when the above rulemaking procedures are instituted. (Forest County Potawatomi Community, Milwaukee, WI - #479.1.300.XX)

## *Length of Comment Period*

### **34. Public Concern: The CEQ Task Force should extend the comment period.**

We are concerned that, given the breadth of the issue areas involved, and the importance of our consultation with both national and field staff working with NEPA, we will be unable to provide the most thorough and productive response to your request by the stated deadline. (Preservation/Conservation Organization, Washington, DC - #45.1.310.XX)

#### **AND NOTIFY THE PUBLIC**

I have written many NEPA comments over the years and was not notified of this proposed action.

Please extend the comment period and include many of us who were not notified. (Individual, Oshkosh, WI - #560.1.140.XX)

#### **30 DAY EXTENSION**

The Federal Aviation Administration requests a 30-day extension in the period for public comment on the proposed nature and scope of the NEPA Task Force activities—as identified in Federal Register notice 67 FR 45510; July 9, 2002 (as amended by 67 FR 53931; August 20, 2002). The FAA wishes to

provide comments but requires the additional time to complete the formulation and review of our comments. (Federal Aviation Administration, No Address - #534.1.310.XX)

#### 90 DAY COMMENT PERIOD

While we appreciate the extension of the comment period as published in the August 20, 2002, Federal Register, we recommend that a standard 90-day comment period for actions of this particular nature (Task Force) be considered. We do not construe that recommendation to be inclusive of a broad spectrum of actions such as Categorical Exclusions, or others viewed in the course of environmental analyses, or as pertains to 40 C.F.R. [section] 1506.2—Elimination of duplication with State and local procedures. (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.3.140.XX)

#### 35. Public Concern: The CEQ Task Force should reopen the comment period.

I request that you re-open the comment period relating to The White House Council on Environmental Quality (CEQ) Task Force. (Individual, Glen Rock, NJ - #561.1.140.XX)

#### *Use of Website for Public Comment*

#### 36. Public Concern: The CEQ Task Force should create a more user-friendly website.

My first response is about this Q and R layout, this is a typical example of bureaucratic overcomplication. (Individual, Moorhead, MN - #153.1.300.F1)

I can't even see the entire questions, only the part that fits into the box. Please fix this problem. (Individual, Corrales, NM - #252.1.330.A1)

This is a confusing website. The average American is not going to be able to figure it out and submit true comments. I believe, as do my coworkers, that this is an attempt by the Bush administration to exclude the real American people, and prop up industry interests. Change it. (Individual, No Address - #260.1.330.XX)

I spent an hour giving my opinion on this question. I did not include my phone number above because it was not required per the absence of an asterisk. I clicked onto the submit bar below and then got a new screen that said I did not include my phone number and I should click my back button and add. I did that and all the info was gone and this box was blank. (Individual, Stockton, IL - #138.1.330.F1)

Note regarding this comment form: There are no asterisks indicating that the telephone number is required, yet your system cleared my response citing a missing telephone number. This is not conducive to public comment! (Individual, Manitou Springs, CO - #375.2.330.F1)

#### 37. Public Concern: The CEQ Task Force should revise the website questions.

Why can't you put your questions in plain English so the average person can answer them! I find this process very confusing. I consider myself fairly intelligent, but this method is an insult to my intelligence. Don't any of you college types have common sense any more? No wonder we are in trouble in this country. (Individual, Bristol, PA - #407.1.330.A1)

#### 38. Public Concern: The CEQ Task Force should recognize that the website questions do not address the real problems with NEPA implementation.

Your July 9 Federal Register notice stated that the purpose of the NEPA Task Force is "to seek ways to improve and modernize NEPA analyses and documentation and to foster improved coordination among all levels of government and the public. "Comments on the proposed nature and scope of the NEPA Task Force were invited. The list of questions about information sources and technologies used in NEPA

analyses that is posed in the Federal Register notice, however, seems wholly unrelated to the problems with present-day implementation of NEPA by the USFS and GLM. The task force's focus on information technology and governmental agency interrelationships seems off the mark, since these are not the sources of NEPA process failures.

The "NEPA inefficiencies" we encounter are those due to lack of current and accurate resource data; not adhering to procedural requirements for planning and responding to public input; and a plain and simple failure to analyze and disclose relevant environmental, economic, and social factors in project decision-making. These in turn lead to decisions that disenchant one or more set of citizens, who then formally object and/or challenge the decisions in court. This leads to what we suppose the Task Force refers to as "inefficiencies" when their NEPA and planning records are found to be insufficient support for the decisions. (Individual, Taylorsville, CA - #510.1.10200.XX)

### **39. Public Concern: The CEQ Task Force should post comments on the website.**

In order to make our comments most relevant to the issues that the task force will consider, it would be very helpful to have comments or other information received before the end of the comment period posted on the web site for public review as received. Information provided by agencies participating in the task force would be particularly important in this regard. (Preservation/Conservation Organization, Washington, DC - #45.2.330.XX)

## **Decisionmaking Authority**

### **40. Public Concern: The CEQ Task Force should recognize that it has the authority to streamline NEPA without congressional action.**

CEQ has the authority to fix the NEPA process through streamlining it. NEPA can be and must be reformed administratively, as getting any amendment through Congress at this point will only bring more finger-pointing, accusations of "destroying the environment" and political posturing. Please reform NEPA so that we can actually get something done on-the-ground and stop this downward spiral of environmental degradation. (Individual, Joseph, OR - #424.10.10000.XX)

## **NEPA and Planning Processes – General Implementation**

### **Summary**

This section includes the following topics: NEPA and Planning Processes General, Purpose of NEPA, Changing/Streamlining NEPA, and NEPA Implementation.

**NEPA and Planning Processes General** – Many respondents advocate, in a number of contexts, that NEPA should be left just as it is. These people insist that NEPA is one of the most important laws enacted to protect the environment and that it is even more important now than when it was enacted. Others, however, argue that NEPA has evolved into one of the most onerous federal burdens and should be abolished—because it circumvents the democratic process; because there are already sufficient environmental safeguards and NEPA is fiscally wasteful; and because it is based on the false premise that the environment has value independently of human interests.

Some respondents argue that given CEQ's own previous assessment of NEPA, the Task Force should recognize that there are serious problems. "CEQ's 1997 Effectiveness Study," writes one person, "found, at iii, that 'NEPA is a success,' explaining that 'frequently NEPA takes too long and costs too much,' that 'documents are too long and technical for people to use,' that the EIS

process ‘is still frequently viewed as merely a compliance requirement,’ and that in consequence ‘millions of dollars, years of time, and tons of paper have been spent on documents that have little effect on decisionmaking.’ As Pyrrhus is reported to have said, a few more successes like this and we are undone.”

Some assert that NEPA has failed because there are not adequate mechanisms in place within federal agencies to meaningfully comply. As one person puts it, “It is more often the bureaucratic culture of the agency, not planning and public involvement requirements, that makes NEPA ineffective and produces managerial, policy, political, and legal gridlock . . . .”

Finally, some ask the Task Force to objectively examine NEPA’s usefulness. One individual suggests “considering the actual benefit of the NEPA as opposed to the actual application of that law, the adverse effects it has [had] to our economy and our nation!” A state agency adds that “it is time to assess how the NEPA of the 1960s and 70s is functioning in the 21st century and to make the necessary course corrections that will result in all agencies of all levels of government being better able to serve the public.”

**Purpose of NEPA** – A few respondents ask the Task Force to provide a clearer vision of NEPA’s purpose. Many assert in a number of contexts that NEPA’s fundamental purpose is to protect the environment, and that that fundamental purpose should be respected and endorsed throughout the course of this review. Some qualify that assertion, claiming that NEPA’s purpose is to protect the environment without at the same time denying use to humans.

Many others, however, allege that NEPA’s purpose has transformed over the years due to persistent litigation. This view is represented in the comments that NEPA was meant to be procedural, not substantive; that it was meant to foster excellence in decisions, not excellence in paperwork; and that over time the purpose has become avoidance of litigation. According to one agriculture industry representative, for example, “The NEPA process is supposed to be a procedural process and not a substantive one. It has become substantive in the sense that costly process and interminable appeals very often force cancellation of proposed actions.” A wood products industry representative asserts that “general federal agency implementation originally had a simple, clear, early message concerning the purpose of NEPA. That articulated as one of ‘fostering excellence in decisions, not excellence in paper work.’ Now the focus for the agencies is one of making sure they develop ‘bulletproof documents’ as they develop their programs and projects and the purpose, need and objectives are lost.” Others assert that “while the original purpose [of NEPA] was to integrate environmental analysis into decisions on major federal actions significantly affecting the quality of the human environment, the principal driving force for agencies now is avoidance of, or preparation for, litigation. The result is that the NEPA mandate has been expanded to include federal actions that do not significantly affect the quality of the human environment.”

**Changing/Streamlining NEPA** – Respondents are divided over the question of whether NEPA should be changed or streamlined in any way. Many advocate that NEPA be changed and streamlined so as to simplify and clarify the process and to reduce “analysis paralysis” and gridlock. Notes one respondent, “It is my hope that the CEQ NEPA Task Force finds ways to streamline the NEPA process and avoid the ‘analysis paralysis’ that prevents federal agencies from responding promptly to pressing needs.” Some suggest that the Task Force ought to motivate agencies to do their own streamlining—by requiring annual reports from agencies on

their progress in streamlining environmental review, and by providing guidance to non-land management agencies on how to streamline the NEPA process.

Many others, however, argue that there is no need to change or streamline NEPA—because it allows adequate public involvement and works well when followed correctly; because it poses little burden on federal agency actions; because constricting the environmental review process will have only a minimal effect on the time it takes to deliver a project; because NEPA merely establishes procedural requirements to ensure that the agency and the public fully consider the environmental ramifications of major actions; and because proposals pushed by critics of NEPA will lessen its environmental protection value and lead to projects opposed by the public. According to one respondent, streamlining NEPA will come “at the cost of the very things NEPA was designed to ensure: a complete study of likely and cumulative impacts, full public participation, and a full and diverse range of alternatives.”

These respondents argue likewise that the Task Force should not weaken NEPA by introducing flexibility to exempt certain actions from review. Others acknowledge that the NEPA process has become cumbersome, but insist that “these problems . . . can be identified and corrected without changing the important role that NEPA was intended to play in informing federal agencies, Congress and the public about the impacts to the human environment that result from major agency action.”

Finally, a number of people advise the Task Force to strengthen and enhance the NEPA process, and to ensure that any changes to NEPA increase informed decisionmaking and public participation.

**NEPA Implementation General** – Respondents offer a number of general comments and suggestions relative to NEPA implementation. Most generally, respondents encourage the Task Force to ensure effective implementation of NEPA. Some comment that the present complexity of NEPA implementation makes it easy for project opponents to delay or halt the process, while others contend that project proponents use NEPA merely as a process to justify predetermined decisions. One federal agency suggests that implementation would be improved through establishment of a paradigm that integrates NEPA with other political, social, and analytic frameworks. Another federal agency argues that “documenting and circulating . . . alternatives in a draft and final document for public comment fosters an assumption that the decision maker has a range of options to choose from and various interests can weigh in and comment on the alternatives they support.” According to this agency, there should be an “incentive built into the NEPA process to work toward a single solution that accommodates multiple interests.”

Many respondents who address general NEPA implementation ask the Task Force to encourage early NEPA planning. As one individual explains, “Early planning during the NEPA process is a point . . . that has not received equivalent emphasis. As has been shown time and time again, early planning not only increases the quality of NEPA compliance, but also results in increasing efficiency and effectiveness in the Environmental Document. By focusing on early planning, practitioners are reminded of its benefit and proponents are taught why it is a necessary step that works as well as it does.”

**NEPA Implementation - Guidance/implementing Regulations** – Echoing a recurring theme throughout comment on the CEQ review of NEPA, many respondents express frustration over the ongoing need to defend their projects and procedures against litigation. These people ask the Task Force to address the conflicting court rulings and inconsistent agency guidelines regarding

NEPA, and to clarify NEPA guidance—particularly by providing clearer definitions of key terms and by providing guidance on how to move through the process and defend a project against litigation. To that end, a number of elected officials, organizations, and individuals alike ask the Task Force to amend the CEQ regulations, since “any weakness in them will too often produce weaknesses in the implementation process” and since strong regulations “could help the executive branch reclaim control over the NEPA process.” Some ask specifically that the regulations be amended to reflect changes in federal environmental and resource management legislation since 1978, as well as case law and agency experience with NEPA. Some also request that “NEPA implementing regulations mirror CEQ regulations and do not reinterpret what NEPA and CEQ require.”

**NEPA Implementation - NEPA Application** – Some who comment on general NEPA implementation offer views regarding the types of activities they believe NEPA should, or should not, apply to. A number of these respondents say they are disturbed by “the increasing application of NEPA, for defensive purposes, to no- or low-impact projects never intended by Congress to be covered.” They assert that the NEPA process should only apply to “those major federal actions truly having a significant impact on the human environment”—such as petitions, licenses, and major permits which result in significant effects; forest plans; and multiple use programs. Others, however, insist that certain projects should not be exempt from NEPA review—such as fire fighting and fuel reduction, defense projects, mining, and oil/gas development.

**NEPA Implementation - Examples** – A number of respondents submit examples representing both effective NEPA implementation in general and effective implementation with early involvement. Some also offer examples of NEPA abuses and misapplication. One preservation/conservation organization suggests that the Task Force prepare case studies “that include examples of bad practices in order to caution federal agencies about improper actions.”

**NEPA Implementation - Agency Compliance With NEPA** – A number of individuals and preservation/conservation organizations contend that agencies fail to comply with NEPA requirements. These respondents ask the Task Force to foster better compliance through a number of means—e.g. by providing adequate guidance in the first place, by including more practical information on the CEQ website, and by promoting use of an environmental planning strategy. Better compliance is needed, people stress, in order to ensure consideration of reasonable, less environmentally harmful alternatives; to avoid economic and environmental costs; and to avoid bad faith proposals. Several organizations write that the delays so often complained about relative to the NEPA process are actually caused by agency failure to comply with its requirements, not by the requirements themselves. According to one respondent, “If things are done correctly the first time around, instead of agencies taking short cuts, the result will be a more efficient process that more fully educates, involves and informs the interested and affected public, thereby leading to agency actions that utilize the best science, latest technologies and mitigation measures to balance extractive uses on our public lands while preserving other resource values and the multiple use ethic.” Moreover, adds another, “the delay caused by an agency’s failure to comply with the Act is absolutely necessary. It is imperative that both the agency and the public is fully aware of the impacts of a proposed action prior to committing significant resources towards implementing an agency decision.”

**NEPA Implementation - Consistent Application of NEPA** – With respect to consistency in application, several respondents assert that inconsistency stems from vague implementing rules.

These writers assert that the Task Force should ensure consistent application of NEPA—by streamlining the NEPA process, by establishing guidelines for all agencies to follow, by establishing objective criteria, by eliminating redundancy in the interpretation of NEPA, by making the post-decisional administrative review process more consistent, and by ensuring that all agencies have the same appeal requirements.

**NEPA Implementation - Funding for NEPA Processes**—Some respondents stress the need for adequate funding for NEPA processes. Some of these remarks are directed directly to the need for greater agency funding, while others are directed to states and other entities. Suggestions include a shift in federal funding to states from cooperative agreements to block grants and stable, non-grant federal funding for environmental assistance for small businesses.

## NEPA and Planning Processes General

### 41. Public Concern: The CEQ Task Force should support the retention of NEPA.

It has come to my attention that you are studying the National Environmental Protection Act. I followed closely how the Mattoconi reservation controversy unfolded, and it is my understanding the NEPA was very helpful in protecting the area. I would favor maintaining NEPA. (Individual, Richmond, VA - #211.1.10000.XX)

While going through the NEPA process is somewhat of a daunting task for anyone proposing any changes in federal facilities, the community preservation achieved through the process makes it worth the effort. (Individual, Arlington, VA - #298.2.10000.XX)

I live in the woods of eastern NC and own land in the mtns of WY. Re my land in WY, I have been a recipient of materials involved in assessment required by the program the president wants to revise. I found the investigation, through, well thought out, and welcome. Trees take decades to grow. If we have to take a few months or years to consider the value of removing them, that's not really so much to ask, is it? (Individual, Stantonsburg, NC - #152.1.10200.A1)

#### BECAUSE NEPA IS MORE IMPORTANT NOW THAN WHEN IT WAS ENACTED

Some people still look upon NEPA and other environmental laws as obstacles to development, fiscal health, or national security in times which seem to call for rapid action by both government and the private sector. Some of the comments you have received (on CEQ's web site) suggest as much. You will doubtless get more such comments from lobbyists and their allies in government entities in this review. I would remind you and others that environmental review and the protection of our planet to which it contributes—by asking the national government and others to stop and think what they are doing—is more critical now than it was at the time NEPA was passed and signed by Americans in 1969. Our citizens, present and future, still depend on it. (Individual, Washington, DC - #503.9.10000.F1)

#### BECAUSE NEPA REQUIRES AGENCIES TO BE HONEST

We urge the Bush Administration not to destroy or wound the mother of environmental laws. NEPA truly is a remarkable document because all it requires an agency to do is tell the whole truth. It is the power of truth that keeps NEPA modern and effective. Do not change NEPA so that cynicism, falsehood, and deception are allowed to moderate, creep in, and take over the public's domain. (Preservation/Conservation Organization, Weldon, CA - #473.17.10440.XX).

#### **42. Public Concern: The CEQ Task Force should consider that NEPA is one of the most important laws enacted to protect the environment.**

I think your transparent attempts to gut this law are shameful. This is one of the most important environmental laws on the books and one that needs to be protected if not made stronger. While the world's environment is crashing you are fiddling with nature. Please stop your attacks on all environmental safeguards for the benefit of a few wealthy donors and corporations. The air is getting worse, the water is more contaminated than ever, the climate is changing. This is going to be the Bush legacy, the destruction of the planet for a buck. Please stop and think about what you are doing. (Individual, Kilauea, HI - #255.1.10000.A1)

We must emphatically state that NEPA, despite its flaws, is one of the most important laws enacted in the continuing effort to protect and restore the unique and diverse natural systems of this nation. NEPA established an open and public approach to federal actions that has led to better-informed decision making overall. As is true with any law, the ensuing years of implementation reveals that there is room for improvement, but the underlying tenants of NEPA remain as legitimate today as they were in 1972. (Preservation/Conservation Organization, Eugene, OR - #92.1.10000.F1)

I ask you to protect the integrity of the National Environmental Policy Act of 1969. Our nation would have made little progress in slowing environmental destruction over the past quarter century had NEPA not been in place to challenge the way decisions affecting the environment are made.

Having commented on as well as prepared EISs, I know how difficult it is to dislodge the entrenched mentality that spurns environmental controls, so I can imagine what harm decisions made without this tool would cause. (Individual, Arlington, VA - #209.1.10700.XX)

NEPA is one of our nation's most important and useful environmental statutes, having both significant procedural and substantive impacts. The primary function of the Act is to ensure that federal agencies carefully consider the potential environmental impacts of proposed agency actions. Such consideration includes not only an evaluation of the impacts of the agency action, but a thoughtful examination of a range of alternative actions by which the agency can accomplish its desired outcome. (Preservation/Conservation Organization, Washington, DC - #539.2.10110.XX)

#### **43. Public Concern: The CEQ Task Force should support the abolishment of NEPA.**

##### **BECAUSE IT CIRCUMVENTS THE DEMOCRATIC PROCESS**

It is my belief that the NEPA process circumvents the democratic process. For example, in the Douglas-fir bark beetle salvage case, I think it very likely that if you selected 100 people at random off the streets in Spokane to review the forest service proposal to salvage the trees and use the revenue for environmental restoration that not one person would object. I believe that a small group of people who represent far less than one percent of the population has placed the national forest system in gridlock via the NEPA process to the detriment of our nation. We need to end the NEPA process and replace it with something far more representative of the beliefs that founded our nation. (Individual, Princeton, ID - #371.2.10000.XX)

##### **BECAUSE THERE ARE ALREADY SUFFICIENT ENVIRONMENTAL SAFEGUARDS AND BECAUSE NEPA WASTES TOO MUCH IN TAX DOLLARS**

When the National Environmental Policy Act became law, we believed that the environmental awareness that began with Rachel Carson's "Silent Spring" had produced the mechanism for, finally, forcing the federal government to evaluate alternatives. We foolishly believed that the exploiters would be stopped cold in their tracks. We trusted the White House Council on Environmental Quality to "do the wise and right thing" as they wrote implementing regulations. We have been greatly disappointed!

Instead CEQ has created thousands of pages of rules and the courts have made many foolish judgments. Billions of taxpayer dollars are now being wasted on an exercise that has brought most federal agencies

to a near stand-still while bureaucrats hide behind the NEPA threat of a lawsuit. Radicals, posing as environmentalists, have found NEPA to be the best way to stop worthwhile federal projects by simply finding a like-minded federal judge and filing a frivolous lawsuit. Most of these court actions do not speak to the substance of the project but some unimportant technicality of the self-serving NEPA conspirators. All the while federal employees, by the thousands, are simply going through the slow, expensive NEPA steps. The exploiters are simply using our tax money to hire expensive consultants to “do their NEPA documents” and the exploitation continues untethered.

Here’s an example that matters to me. I love to crappie fish. Doubled-crested cormorants have increased in number until they are eating up sport fish and tons of forage fish that feed them, to say nothing of farm raised catfish. This is a major problem over most of North America. For years, the U.S. Fish and Wildlife Service has used NEPA to delay needed reduction in cormorant numbers by “writing an environmental impact statement.”

This has gotten so ridiculous that Senate Bill 909 has been introduced to grant migratory bird management authority to USDA’s Wildlife Services, since that agency is the only one that can or will help. S.909 had to contain a NEPA waiver to have any hope of actually getting any cormorants killed.

Please abolish NEPA! There are enough safeguards in place already and this action alone could balance the federal budget by the billions of dollars that would be saved. (Other, Ashdown, AR - #354.1-2.1000.XX)

#### **BECAUSE IT IS BASED ON THE FALSE PREMISE THAT THE ENVIRONMENT HAS VALUE INDEPENDENTLY OF HUMAN INTERESTS**

All of the questions posed here seem to have a common premise, which is that the NEPA Law is justifiable to begin with. It is not. Environment impact analysis is necessarily subjective since it attempts to determine man’s “harmful” impact on the environment.

Man’s tool for survival is his mind and he uses that tool to change his environment to improve his conditions, not only to simply survive, but to thrive. The truth is: man cannot survive in complex societies without changing his environment, and any alteration to the local environment will necessarily affect organisms living within it.

The “environment” has no value in, and of, itself. There is only the value of the environment to man’s requirements to serve his own needs for survival. The question should not be whether man is adversely affecting “the environment,” but rather are man’s actions in altering his surroundings causing harm to other men.

In order to serve man’s interests, a law must be objective, which means it must be based on the facts of reality—not on the whims of individuals who want to preserve pristine nature as though it had intrinsic value. The NEPA law should be abolished—not reformed. (Individual, Metairie, LA - #136.1.10100.A2)

#### **44. Public Concern: The CEQ Task Force should consider that NEPA has evolved into one of the most onerous federal burdens.**

A major portion of our members are routinely involved with federal agencies and programs. Because of this relationship, NEPA requirements have a significant and lasting affect on our operations. Unfortunately, these same NEPA requirements have evolved into being one of the most onerous federal burdens we face. They are also debilitating to the workforce of the federal agencies and contribute significantly to the problem of “paralysis by analysis” currently facing the agencies. Federal employees, charged with managing natural resources in such agencies as the BLM, Forest Service, Wildlife Services, and others, are forced to spend the majority of their time behind a desk plowing through procedure rather than actually focusing on the actual resources they are charged to manage. (Domestic Livestock Industry, Boise, ID - #576.1.10200.XX)

#### **45. Public Concern: The CEQ Task Force should reconsider CEQ’s judgment that NEPA is successful despite numerous identified problems.**

The Federal Register notice indicates that the Task Force established by the Council on Environmental Quality (CEQ) has been convened for the worthy purpose of “[enhancing] the effectiveness and efficiency of the NEPA process.” You will recall that in 1997 CEQ published a handsome document on

recycled paper entitled “NEPA: A Study of Its Effectiveness After Twenty-five Years” (hereinafter “Effectiveness Study”). As the federal agency responsible for overseeing NEPA implementation, CEQ “wanted to see whether agency implementation of NEPA could be streamlined to make it more efficient . . . .”

CEQ’s 1997 Effectiveness Study found, at iii, that “NEPA is a success,” explaining that “frequently NEPA takes too long and costs too much,” that “documents are too long and technical for people to use,” that the EIS process “is still frequently viewed as merely a compliance requirement,” and that in consequence “millions of dollars, years of time, and tons of paper have been spent on documents that have little effect on decisionmaking.”

As Pyrrhus is reported to have said, a few more successes like this and we are undone. Indeed, the conclusion of the Effectiveness Study (35) declares that “CEQ is embarking on a major effort to reinvent the NEPA process.” The Effectiveness Study then lists certain technical difficulties which CEQ proposed to overcome in the near future. (Other, Washington, DC - #506.1-2.10200.XX)

**46. Public Concern: The CEQ Task Force should consider that NEPA is not the problem.**

**THE PROBLEM IS THE BUREAUCRATIC CULTURE**

The list of questions posed in the Federal Register notice seems wholly unrelated to the problems with present-day implementation of NEPA, especially by the USFS. The interrelationships seem particularly off the mark, since these are not the sources of NEPA process failures. It is more often the bureaucratic culture of the agency, not planning and public involvement requirements, that makes NEPA ineffective and produces managerial, policy, political, and legal gridlock for the USFS. (Individual, Quincy, CA - #542.2.110.XX)

**47. Public Concern: The CEQ Task Force should compare NEPA’s benefits with its adverse effects.**

I suggest considering the actual benefit of the NEPA as opposed to the actual application of that law, the adverse effects it has been to our economy and our nation! Agencies historically apply the NEPA “on paper” but not in reality unless it serves that agency’s desires! Example: Where the environment is the excuse to push the “road-less issue”, that SAME environment is given little protection when an agency wants to build a road and destroy the environment, the culture, etc! Personally I believe NEPA is a joke and the environment is of little or no concern to these agencies when they’re after private property in this nation and the very ruination of this great country! (Individual, Hinton, WV - #123.1.10200.F1)

**48. Public Concern: The CEQ Task Force should review the current applicability of NEPA.**

It is time to assess how the NEPA of the 1960s and 70s is functioning in the 21st century and to make the necessary course corrections that will result in all agencies of all levels of government being better able to serve the public. It is imperative for government to catch up (as much as it is able) with the people. This request for comments represents an opportunity to accomplish the changes that are needed for government to improve its service. (Wisconsin Department of Transportation, Madison, WI - #214.2.10110.XX)

**49. Public Concern: The CEQ Task Force should examine irregularities in the NEPA process.**

Nowhere can there be found a more obvious and abject perversion of the NEPA procedures than in the case of the Animas-LaPlata project (A-LP). The Council’s NEPA TF would be well advised to produce a case study of the tortured (though inept) efforts resulting in the voluminous (though qualitatively deficient) Environmental Impact Statement (EIS) documentation for the Bureau of Reclamation’s (BOR) A-LP. Consider the fact that there now exists a “Final Supplemental Environmental Impact Statement”-2000, which was preceded by a “Final Supplemental to the Final Environmental Statement”-1996, itself preceded by a “Draft Supplement to the Final Environmental Statement”-1992, which was in turn

preceded by a “Final Environmental Statement”-1980. This remarkable anomaly alone should be more than enough to set off warning bells and whistles and prompt your careful examination of serious irregularities in the environmental review process for the A-LP, a process which has been self-serving and tainted by corruption and greed. (Individual, Farmington, NM - #91.2.10000.XX)

**50. Public Concern: The CEQ Task Force should consider the causes of NEPA failure.**

I believe that NEPA has failed in a number of ways, based on my experience with the Forest Service. More and more, citizens like myself are drawn into the dungeon created for us by the Forest Service and the government. This downward slide is due to four primary reasons: a) NEPA has no framework for enforcement or monitoring at the site specific level, b) the federal “world” has no genuine plan in place to help citizens with the immense task of evaluating federal proposals and whether or not they should be opposed, c) multiple failures at multi-level planning for each level ensures that poorly qualified decisionmakers make poor decisions, and d) simple citizen complaints are intentionally mishandled. (Individual, Nashville, TN - #513.2.10200.XX)

**51. Public Concern: The CEQ Task Force should recognize that NEPA’s brevity has left its interpretation to the courts.**

AF and PA recognizes that the brevity of NEPA has accorded almost unparalleled opportunities to the federal courts to shape that law. The price for providing the courts with those opportunities has been steep—holding countless Federal projects, permits, and other actions hostage to inevitably lengthy litigation processes, and continual (and occasionally contradictory) changes in NEPA implementation requirements in court orders and opinions. Those changes often remain hidden from federal officials responsible for NEPA documentation and are not developed by the CEQ, the expert agency tasked with oversight of NEPA implementation. (Timber or Wood Products Industry, Washington, DC - #507.2.10200.XX)

## **Purpose of NEPA**

**52. Public Concern: The CEQ Task Force should provide a clearer vision of NEPA’s purpose.**

We can only hope that the Task Force will provide a clearer vision of what NEPA is actually suppose to accomplish and resolve the current, and on-going, frustration of line officers, decision makers and those who actually are suppose to implement the final decision made. (Timber or Wood Products Industry, Quincy, CA - #452.8.10110.XX)

**53. Public Concern: The CEQ Task Force should reinforce a broader vision of NEPA.**

We commend the CEQ for taking on this effort. While NEPA has been an extremely effective statute for protecting the environment, there can be no doubt that improvements in its implementation are possible and needed. In particular, we believe that additional focus on the good government principles, laid out in the first section of the CEQ NEPA regulations, is needed. We hope that CEQ can use the products of this task force to reinforce among all Federal agencies the necessity of using the NEPA process as a forum for coordinating compliance and decisionmaking activities relating to the many special purpose environmental statutes and other program authorities vested in the individual agencies. This enhanced integration of decisionmaking should lead to better decisions, ones that are better for the environment and ones that meet the specific mission requirements of the various agencies, and to decisions that are made in a more timely manner. Our experience in the 25 years since CEQ issued its NEPA regulations is that too many staff in too many agencies continue to view NEPA in very narrow terms—a single action agency preparing a document to comply with a single law. We urge CEQ to take aggressive measures to reinforce the broader vision of NEPA so articulately communicated in your NEPA regulations. (Federal Highway Administration, Washington, DC - #658.2.10200.XX)

**54. Public Concern: The CEQ Task Force should consider that the purpose of NEPA is to balance protection of the environment with human welfare.**

The National Environmental Policy Act (NEPA) was intended to be a simple procedural statute encouraging the co-existence between man and his environment. The NEPA was created to ensure a balance between the protection of the environment and the welfare of man. The current role of NEPA provides no balance and leaves the welfare of man out of the equation of environmental protection.

The NEPA was intended to be used as an analysis of the significance of the proposed project to the human environment. It is to be a document of procedure to be used in concert with other analyses, permits and statutes. (Mining Industry, Helena, MT - #541.1.10110.XX)

**STEWARDSHIP AND CONSERVATION, WITHOUT THE DENIAL OF USE TO HUMANS**

As national environmental policy is currently practiced, extremists from groups such as Greenpeace and the Sierra Club have undue influence for their numbers, and set policies that are often at odds with the general welfare of the public at large, the economy, fire-safety, or common sense. These extreme environmental policies can be viewed as Marxist and socialist in nature in that they are directly detrimental to free-market capitalism, and impose onerous burdens that are often not needed, outweigh the benefits in costs to the economy or society at large; or overly restrict the use of national resources (such as parks, forests, and wilderness areas) by the general public. The principle guiding environmental policy should be stewardship and conservation, using resources wisely, but not forbidding use to humans in illogical deference to non-human factors. (Individual, Fairborn, OH - #352.1.10110.F1)

**55. Public Concern: The CEQ Task Force should consider that NEPA is meant to be procedural, not substantive.**

It is clear that NEPA is not working as intended by Congress. The intent of the NEPA process is to ensure that impacts to the environment are considered in agency decision-making. The NEPA process is supposed to be a procedural process and not a substantive one. It has become substantive in the sense that costly process and interminable appeals very often force cancellation of proposed actions. Instead of being one element to consider in the decision-making process, NEPA has become the overriding consideration in any decision. (Agriculture Industry, Bozeman, MT - #451.1.10000.XX)

It should be made clear that NEPA is procedural, not substantive. This adjustment alone would preclude litigation alleging an "inadequate" EIS, and allow scoping to focus on real impacts and feasible alternatives. (Mining Industry, Billings, MT - #440.2.10100.XX)

**56. Public Concern: The CEQ Task Force should consider that the purpose of NEPA is excellence in decisions, not excellence in paperwork.**

We strongly agree that the federal agencies' planning and decision-making processes using NEPA can obtain higher levels of efficiency. General federal agency implementation originally had a simple, clear, early message concerning the purpose of NEPA. That articulated as one of "fostering excellence in decisions, not excellence in paper work." Now the focus for the agencies is one of making sure they develop "bulletproof documents" as they develop their programs and projects and the purpose, need and objectives are lost. (Timber or Wood Products Industry, Quincy, CA - #452.3.10100.XX)

We have come a long way since the passage of the NEPA Act and Regulations. General federal agency implementation originally had a simple, clear, early message concerning the purpose of NEPA. That articulated as one of "fostering excellence in decisions, not excellence in paper work." Now the focus for the agencies is one of making sure they develop "bulletproof documents" as they develop their programs and projects. Given the complexity of CEQ rules and regulations, agency rules and regulations, and diffused authorities between agencies, there is little wonder why a federal agency such as the USDA Forest Service is tied up in process gridlock. (Other, Sacramento, CA - #509.1.10100.XX)

If your Task Force was chartered to summarize the entire CEQ regulations in two sentences, a case could be made that the following is most appropriate:

“Ultimately, of course, it is not better documents, but better decisions that count. NEPA’s purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action.” (40 CFR 1500.1.c). Your Task Force might consider adopting the above as a guiding principle, which is at once simple and effective—the quality most appealing about CEQ regulations. (Individual, Albuquerque, NM - #432.1.10110.F1)

### **57. Public Concern: The CEQ Task Force should consider that the purpose of NEPA has become avoidance of litigation.**

The difficulty with the NEPA process is that, like any system established to address a “problem,” it expands and encroaches. While the original purpose was to integrate environmental analysis into decisions on major federal actions significantly affecting the quality of the human environment, the principal driving force for agencies now is avoidance of, or preparation for, litigation. The result is that the NEPA mandate has been expanded to include federal actions that do not significantly affect the quality of the human environment. (Other, Washington, DC - #506.6.10100.XX)

Many agencies have figured out how to “comply” with NEPA and its documentation requirements. NEPA was intended to provide objective analysis and transparency so that the public may have a better understanding of the effects of federal actions. Its implementation has become far too focused on legal strategy, rather than a strategic way to plan and explain the effects of federal actions. While this approach may avoid litigation, it is doing so at a high cost to taxpayers and the environment. Many citizens are frustrated with huge documents that are impossible to lift, much less read, digest, and comment upon intelligently. (NEPA Professional or Association - Private Sector, Washington, DC - #450.2.10000.XX)

## **Changing/Streamlining NEPA**

### **58. Public Concern: The CEQ Task Force should change the NEPA process.**

Our read of the scope of your charge from the CEQ provides little comfort that the essential top-to-bottom overhaul of the application of NEPA to federal decision-making is likely to happen. While we appreciate this opportunity to offer constructive input on the issues your Task Force has been asked to address, we are disappointed that the Council is not being more aggressive in pursuit of needed change. (Wisconsin Department of Natural Resources, Madison, WI - #458.3.10110.XX)

The NEPA process is broke. There is a tremendous backlog in renewing grazing permits, weed control assessments, and resource uses. The public has become disenchanted with the process.

NEPA has become a land use statue and its intent was to assess real impacts rather than provide a forum for arbitrary decisions that stop all activities. Courts have held that NEPA does not mandate any particular outcome (*Robertson v. Methow Valley Citizens council*, 490 U.s. 332, 350) and with the inclusion of science, data collections, knowledgeable input rather than opinion and speculations (in hopes a special interest group will approve), then the NEPA process will become what the law intended. (Domestic Livestock Industry, La Grande, OR - #496.37.10200.XX)

#### **TO SIMPLY AND CLARIFY THE PROCESS**

We strongly encourage the NEPA Task Force “to improve and modernize” the now-ineffective and outdated NEPA procedures and regulations. In particular, the Forest Service and BLM efforts to conduct forest land and resource management actions are completely stifled by the existing practices and procedures. CEQ should simplify and clarify NEPA policy, so it focuses on the major environmental, financial, and social needs of managing the land. (Timber or Wood Products Industry, Salem, OR - #558.1.10000.XX)

We submit that the only way to improve and modernize this process is by simplification. A significant percentage—if not most—of the NEPA lawsuits have been based on alleged violations of CEQ's regulations. The CEQ regulations have presented abundant opportunities for lawsuits because they established numerous litigation targets—elaborate procedures (e.g., multiple public comment opportunities); requirements for additional documentation (e.g., Environmental Assessments (EAs) and Findings of No Significant Impacts (FONSIs)); and expansive but vague analytical requirements (e.g., content, land geographical and temporal scope of analyses of cumulative impacts, connected actions and indirect effects). When the CEQ has attempted to reduce complexities or ambiguities arising from case law or its own regulations, it typically has done so through guidance documents. These documents, however, lack the force and effect of law and have been virtually ignored by the courts. (Timber or Wood Products Industry, Coeur d'Alene, ID - #446.2.10200.XX)

The whole process is so convoluted and politically messy that it has been driven into a quagmire of complex regulations that end up blocking any reasonable approach to resolving the issue (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.42.10200.XX)

The objective of the Council's revision of its policies and procedures should be to simplify them, structure them so they do not promote or encourage litigation, avoid the implication that endless planning and analysis is required, and provide an exemption or exclusion for projects of little or no impact on the environment. (Timber or Wood Products Industry, Sacramento, CA - #405.1.10100.XX)

The federal environmental review process has become much too cumbersome and arduous. [American Council of Engineering Companies] has been a long-time supporter of simplifying and improving the efficiency and effectiveness of processes for conducting environmental reviews, particularly for transportation projects. [American Council of Engineering Companies] was a key advocate for Section 1309 of the Transportation Equity Act for the 21st Century, which attempted to streamline the environmental review and planning process.

To date, Section 1309 has failed to produce the kind of results that were expected, largely because the basic processes, attitudes, and behaviors have not materially changed. Achieving results in this area means changing long-standing cultures, and this is normally a slow process. (Business, Washington, DC - #470.2.10200.XX)

#### **TO MAKE IT A MORE RATIONAL AND EFFECTIVE PROCESS**

Transportation professionals by and large support NEPA and its intent. It is not NEPA, but the way in which, in the name of NEPA, the process has been carried out that is the source of the problem. Responsible transportation organizations are not seeking a weakening of NEPA or a rollback in critically important environmental protection measures. What is being sought is a more rational and effective process under which NEPA will flourish because its noble intent is matched by sensible and sensitive processes which improve rather than impede the decision making process. (Business, Washington, DC - #470.14.10200.XX)

#### **TO ALLOW RESPONSIBLE ACTIONS**

Complexity: The National Environmental Policy Act established a national policy of evaluating the environmental effects resulting from major federal actions or the use of federal funds. The policy direction of the act is laudable, however, its implementation has resulted in a system and practice that grinds responsible government action to a snail's pace, and sometimes halts responsible action altogether. (Office of the Governor, State of North Dakota, Bismarck, ND - #635.1.10000.XX)

#### **TO ENSURE PROTECTION OF THE ENVIRONMENT WITHOUT STIFLING BUSINESS**

I am excited that someone is looking into and will hopefully be making some changes to modernize the NEPA process. A complete overhaul is needed that ensures protection of the environment but does not stifle business as is happening now. It is possible to accommodate both concerns and we must strive to do so. (Gene G. Chandler, Speaker, New Hampshire House of Representatives, Concord, NH - #64.1.10200.XX)

**TO ENSURE THAT RESOURCES ARE NOT COMMITTED PRIOR TO FINAL DECISIONS**

The NEPA regulations should be revised to ensure that resources are not committed before a final decision on a NEPA-covered project is made, and to ensure that so-called “paper decisions” are accompanied by impact statements that actually disclose the full impact. For example, in several states the Bureau of Land Management uses a two-step process by which leasing decisions are made without a full disclosure of environmental impacts. Rather, only a loose, vague programmatic treatment is given. When the full impact is disclosed upon the Application for a Permit to Drill, however, the BLM no longer has the authority to issue a “no action” decision. NEPA has effectively been nullified.

To remedy this situation, a “no surface occupancy” provision should accompany any such programmatic leasing impact statements. Other kinds of “paper decisions” made by federal agencies, such as the issuance of rights of way, allocation of pollution quotas, and the like, to commit resources must either reserve a veto power for the lead agency or include a more detailed disclosure of impacts, to ensure that the spirit and letter of NEPA is met. (Individual, Logan, UT - #383.1.10200.XX)

**59. Public Concern: The CEQ Task Force should streamline the NEPA process.****TO REDUCE “ANALYSIS PARALYSIS” AND GRIDLOCK**

I commend the efforts of the Council on Environmental Quality (CEQ) to modernize the NEPA process. It is my hope that the CEQ NEPA Task Force finds ways to streamline the NEPA process and avoid the “analysis paralysis” that prevents federal agencies from responding promptly to pressing needs. (Timber or Wood Products Industry, Princeton, ID - #400.21.10200.XX)

It is an understatement to say that the national forest system and agency is “grid locked” to such a degree that absolutely no progress or decisions can be made in a timely and efficient manner, and that such “grid lock” can be directly linked to the current NEPA process. (Timber or Wood Products Industry, Coeur d’Alene, ID - #446.1.10000.XX)

We appreciate your efforts to reduce the procedural gridlock spawned by NEPA regulations—which prevents Forest Service and BLM managers from responsibly caring for federal forests. Our public forests no longer provide the benefits and commodities expected by Americans. Managers must be able to conduct projects to resolve forest health problems, protect neighboring private property from catastrophic fire-pests-diseases on federal lands, improve forest conditions for wildlife and fish, and improve recreation opportunities. Managers cannot today do this. (Timber or Wood Products Industry, Salem, OR - #558.11.10000.XX)

The National Environmental Policy Act is an important component of the planning process to protect and minimize adverse impacts on the environment upon which we all depend. However, its implementation as currently structured is cumbersome and conducive to gridlock and delay. (Mining Industry, Billings, MT - #440.5.10200.XX)

**60. Public Concern: The CEQ Task Force should require annual reports from agencies on their progress in streamlining environmental review.**

Annual Report: CEQ, along with Congress, should require annual reports on the progress that the administration agencies have achieved in streamlining environmental review and approved process changes and results. Results should be measured in two ways.

- Milestone Durations: A monitoring and reporting framework should be established to determine trends for time required in achieving key milestones, classified by type of project and type of environmental document.

- Intra-agency Cooperation: Building upon a prototype process being developed by the Gallup Organization under contract to FHWA, a peer review “report card” should be implemented to gauge the degree to which Congressionally endorsed expectations are, in fact, being fulfilled by individual transportation and environmental agencies. If done well, this approach can foster working relationships

in which environmental stewardship as well as environmental streamlining will flourish. We encourage CEQ to examine this approach.

Project Reports: Reports on a project basis should be filed by federal agencies with Congress when certain milestone criteria have not been achieved (by a wide margin) and also in connection with designated transportation projects of national significance. (Business, Washington, DC - #470.13.10220.XX)

### **61. Public Concern: The CEQ Task Force should consider the streamlining revisions of the Montana Environmental Policy Act.**

Montana adopted an identical piece of legislation in 1971, patterned after the federal version of NEPA. After 30 years of struggling to make the statute work as legislative intent indicated, the 2001 Montana Legislature revised the Montana environmental Policy Act (MEPA).

The issues addressed by statutory changes in Montana are outlined below.

- The argument over whether MEPA was procedural or substantive ended with the passage of HB 4743. An environmental analysis of a project under MEPA cannot be used to deny or condition the approval of any permit or other authority to act unless a substantive environmental law would be violated.

- HB 459 changed the provisions in MEPA to require agencies to conduct a meaningful analysis of the “no action alternative.” The analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project’s non-completion. Further, when an alternative is proposed, it must be reasonable in that the alternative must be achievable under current technology and the alternative must be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor.

- Fees were addressed in HB 477. The agencies may not include in the estimated project cost the project sponsor’s property or their interests already owned by the project sponsor at the time the application is submitted. Any fee assessed may be based only on the projected cost of acquiring all of the information data needed for the environmental impact statement.

- Another area of difficulty with MEPA has always been the length of time agencies would take to complete analysis and deliver a decision. SB 377 placed in statute time limits under which agencies must act. The limits are measured from the date the agency receives a complete application. It then has: (i) 60 days to complete a public scoping process, if any; (ii) 90 days to complete an environmental review unless a detailed statement is required; and (iii) 180 days to complete a detailed statement pursuant to another section of code. There is a provision for a one-time extension not to exceed 50 percent of the original time period listed. This bill also restricted consideration by an agency of future cumulative impacts. (Timber or Wood Products Industry, Helena, MT - #445.2.10520.XX)

### **62. Public Concern: The CEQ Task Force should provide guidance to non-land management agencies on how to streamline the NEPA process.**

CEQ informal guidance and reports concerning best practices to streamline the environmental review process, illustrating how these concepts may be applied effectively by agencies other than land use management agencies, would be useful. (Federal Aviation Administration, No Address - #534.15.40400.XX)

### **63. Public Concern: The CEQ Task Force should rectify the weaknesses in NEPA’s legal and institutional framework.**

There would seem to be two approaches CEQ could take: it could acknowledge and attempt to rectify critical weaknesses in NEPA’s legal and institutional framework or it could embark on an effort to enhance the “efficiency” of the NEPA process. We thus read the Federal Register notice of July 9, 2002, with a deep sense of malaise, for it is evident that CEQ has embarked on the second and far easier course, viz., another “efficiency” drive.

The questions outlined in the notice are interesting but uncontroversial (what American institution could possibly be criticized for promoting efficiency), while vital issues go unaddressed. Certainly no effort is

identified to address the gap. While the easier course, it is not promising, for it is likely to be no more successful than prior CEQ efforts to streamline and “reinvent” the NEPA process that have resulted in lengthier documents and more litigation. (Other, Washington, DC - #506.5.200.XX)

#### **64. Public Concern: The CEQ Task Force should not change the NEPA process.**

I oppose the proposed changes to the NEPA, as I do not believe they will improve protection of the environment. The entire intent of this change seems to be to make it easier on industry to wreak havoc on the environment while shutting citizens out of the process. I view that as unacceptable. (Individual, New Vernon, NJ - #141.1.10000.A1)

Leave NEPA alone. The public is getting fed up with your endless attacks on every environmental or consumer protection. Stop now or look for a new job in 2004! (Individual, Redstone, CO - #156.1.10000.A1)

Please do not roll back this law. Laws such as this were put in place for a reason, they were not placed there so that others could tinker with them. As you're well aware, before NEPA could even be implemented it took a long time. That is because we, the citizens of the US, made sure it was balanced and fair.

It is not time to change laws just because “you feel like it”. If you need an issue to solve during the remaining years of this presidency, why not try addressing poverty, homelessness, or any of the other social issues we face?

Please do not modify this law. (Individual, Burbank, CA - #142.1.10000.F1)

I feel that the current NEPA requirements for development are fair and equitable. The burden needs to be put on the companies wanting to exploit our country's natural resources and not on the government. Keep NEPA as it is!!! (Individual, Boerne, TX - #308.1.10000.E1)

I support [NEPA] as it currently is enacted and oppose any change. As development soars it becomes even more important to protect the wild places in this country. I don't believe the current law is making development too difficult. I point to the economies of the western states to back up that claim. They are situated quite well and development is proceeding at record levels. The facts speak for themselves. (Individual, Ligonier, PA - #154.1.10000.F1)

#### **BECAUSE IT ALLOWS ADEQUATE PUBLIC INVOLVEMENT**

The purpose of NEPA is to make a better project. The more conscientious state and federal agencies use NEPA as an affirmative opportunity to include the public in the planning process. NEPA affords a common citizen the chance to participate in decision making which affects the environment where he or she works, lives or plays. I oppose any effort to reduce or remove NEPA requirements for Federal agencies. (Individual, Toledo, OH - #516.12.10100.XX)

#### **BECAUSE IT HAS SUBSTANTIVE LEGAL REQUIREMENTS ONLY IN LIMITED INSTANCES**

As you well know, only in very limited instances does NEPA possess substantive legal requirements. The whole point of NEPA is to improve the environmental decision-making process of the federal government. As the U.S. Supreme Court has stated, “NEPA has twin aims.” First, it places upon agencies the obligation to consider every significant aspect of the environmental impact of a proposed action. Second, it ensures that agencies will inform the public that they have thoroughly considered all environmental concerns in the decision-making process. *Baltimore Gas and Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 97 (1983). Indeed, Congress has made clear that all federal agencies use “all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources” on behalf of the environment. 42 U.S.C. [Section] 4331(b). In exercising these means, the Federal Government, *inter alia*, “shall 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 decisionmaking which may have an impact on man's environment." 42 U.S.C. [Section] 4332(a). (Preservation/Conservation Organization, Washington, DC - #465.4.10200.XX)

#### **BECAUSE IT WORKS WELL WHEN DONE RIGHT**

When done right, NEPA works. NEPA provides an essential mechanism for building trust in communities affected by agency decisions. By requiring analysis of the impacts of proposed decisions, NEPA ensures better final decisions. NEPA encourages consideration of alternatives that may have less detrimental impact. When the public affected by agency decisions is involved early and often in those decisions, controversy and appeals can be avoided. Existing CEQ regulations already provide for minimizing paperwork and reducing delay. 40 C.F.R. [section] 1500.4, 1500.5. The challenge is not to revise the regulations, but use the existing ones as they were intended. (Preservation/Conservation Organization, Washington, DC - #471.6.10200.XX)

#### **BECAUSE IT IS IMPORTANT TO THE QUALITY OF LIFE**

As a matter of good public policy the concept of NEPA, which underscores the need to take into account the environmental implications of major federal actions, is important to the quality of life of all Americans. Many problems that are laid at the doorpost of NEPA have less to do with NEPA itself and more to do with problematic interpretations through regulatory actions and administrative procedures. (Business, Washington, DC - #470.1.10200.XX)

#### **SHOULD RATHER FOCUS ON NON-CONTROVERSIAL PROJECTS.**

We believe that the framework provided by NEPA is a workable framework, and that the law does not need to be changed. Instead, the Forest Service and BLM should focus on projects that do not draw the type of controversy that results in long delays in implementation or cancellation of projects. Our organizations do not appeal or litigate projects that restore the environment, thin overstocked plantations, remove roads, create in-stream habitat, and other similar activities. (Preservation/Conservation Organization, Vancouver, WA - #103.18.10200.F1)

### **65. Public Concern: The CEQ Task Force should consider that there is no need to streamline NEPA.**

#### **BECAUSE NEPA POSES LITTLE BURDEN ON FEDERAL AGENCY ACTIONS**

NEPA provides for agencies' careful consideration of environmental impacts of major federal actions. In effect, NEPA calls for federal agencies to pause, consider the environmental impacts and the public's view of a proposed federal action, and then make a determination based on full information and public input. Ideally, an agency enters the NEPA process with an open mind, so that the information and public comment are gathered and used to ensure that the best action is taken. Given widespread public support for protecting the environment—public opinion polls show 80% or more of Americans support environmental values—and the importance of public participation in government decisionmaking processes, NEPA represents an appropriate and popular method for ensuring that major federal actions do not unnecessarily damage the environment.

Some critics contend that the NEPA process should nonetheless be "streamlined" because of alleged burdensome environmental reviews for proposed new airport, highway, and energy projects. The reality is that there is not a big problem that must be fixed. Rather, there are particular private interests and particular legislators supporting particular projects who would like to avoid NEPA review or anything else that might get in their way. The facts do not support the "streamlining" argument because, in many cases, NEPA poses little burden on federal agency actions. (Preservation/Conservation Organization, Chicago, IL - #87.7.10200.XX)

#### **BECAUSE EIS'S ARE ONLY NEEDED FOR A SMALL MINORITY OF MAJOR PROJECTS LIKELY TO SIGNIFICANTLY AFFECT THE ENVIRONMENT**

NEPA poses little burden on federal agency actions, the full environmental review procedure required under NEPA applies to only a relatively small proportion of federal agency actions. An agency is required to complete an Environmental Impact Statement ("EIS"), of course, only for projects that "significantly affect the human environment." For example, this EIS requirement is triggered for only

5% of all highway projects (David Bearden, Environmental Streamlining Provisions in the Transportation Equity Act for the 21st Century, CRS Report for Congress, at 2 (March 5, 2002)). The other 95% of highway projects avoid substantial NEPA review because they are either categorically excluded or the initial assessments lead to a Finding of No Significant Impact. *Id.* Therefore, the reality is that EISs are only needed for the small minority of truly major projects that are likely to significantly impact the environment. Due to the significant impacts created by these projects, it is not unreasonable to spend a significant amount of time studying these projects and taking public input before proceeding. (Preservation/Conservation Organization, Chicago, IL - #87.8.10200.XX)

**BECAUSE CONSTRICTING OR ELIMINATING THE ENVIRONMENTAL REVIEW PROCESS WILL HAVE ONLY A MINIMAL EFFECT ON THE TIME IT TAKES TO DELIVER A PROJECT**

NEPA poses little burden on federal agency actions. Even where full NEPA review is conducted, it often does not substantially delay projects. For example, a Federal Highway Administration study of 100 highway projects from the 1970s, 1980s, and 1990s revealed that the average time for project development was 13.1 years, with only 3.6 years, or 28% of that time, being taken up preparing EISs. *Id.* at 3. This data shows, not surprisingly that major federal actions take a long time to carry out for a wide variety of reasons—including project development, funding issues, and public opposition—and that constricting or eliminating the environmental review process would have only a minimal impact on the amount of time it takes to deliver a project. (Preservation/Conservation Organization, Chicago, IL - #87.9.10200.XX)

**BECAUSE NEPA MERELY ESTABLISHES PROCEDURAL REQUIREMENTS TO ENSURE THAT THE AGENCY AND THE PUBLIC FULLY CONSIDER THE ENVIRONMENTAL RAMIFICATIONS OF MAJOR ACTIONS**

NEPA poses little burden on federal agency actions, NEPA is a procedural, not a substantive, statute. NEPA itself does not stop any project; if a project is laudable and supported by the public, it may proceed regardless of the environmental impacts. NEPA simply establishes procedural requirements for the agency to ensure that the purpose and need of the projects are explained, all reasonable alternatives are considered, the environmental impacts are fully analyzed, and the views of the public are addressed before the project commences. Rather than stopping projects, NEPA is designed to ensure that the agency and the public fully consider and understand the environmental ramifications of major actions that are to be taken. (Preservation/Conservation Organization, Chicago, IL - #87.10.10200.XX)

**BECAUSE PROPOSALS PUSHED BY CRITICS OF NEPA WILL LESSEN ITS ENVIRONMENTAL PROTECTION VALUE AND LEAD TO PROJECTS OPPOSED BY THE PUBLIC**

There are a number of NEPA “streamlining” proposals that are circulating in Congress that would actually undermine the goals of NEPA. Despite the fact that NEPA applies to only a small portion of agency actions and is effective only when thoroughly complied with, critics claim that steps are needed to reduce redundancies, inefficiencies, and delay in the NEPA process. In reality however, the proposals pushed by these critics would merely gut the environmental protection value of NEPA. Furthermore, by leading to projects that are opposed by the public, NEPA “streamlining” could actually create further delay in project delivery. (Preservation/Conservation Organization, Chicago, IL - #87.20.10200.XX)

**BECAUSE STREAMLINING NEPA WILL COME AT THE COST OF THE VERY THING NEPA IS MEANT TO ENSURE—ADEQUATE STUDY, PUBLIC INVOLVEMENT, AND ALTERNATIVE DEVELOPMENT**

As it is currently interpreted, NEPA allows for federal agencies to implement actions in a way that takes into consideration the impacts on the environment, provides for full study of the range of possible agency actions (alternatives), allows the opportunity for full and meaningful public participation before final decisions, and allows industry to receive approval without unreasonable delays. Unfortunately, there has been consistent pressure on federal agencies in Utah to “fast track,” “expedite” or “streamline” the NEPA process in order to cater to industry and state interests. All too often this happens at the cost of the very things NEPA was designed to ensure: a complete study of likely and cumulative impacts, full public participation, and a full and diverse range of alternatives. (Preservation/Conservation Organization, Salt Lake City, UT - #572.2.10000.XX)

WOC approaches these concepts from a viewpoint that NEPA—a landmark environmental protection law enacted in 1970—through its implementing regulations (40 C.F.R. Part 1500), is sufficiently

designed at the present time to allow for a proper balance when federal agencies consider implementing actions on our public lands. The present framework, if properly followed, allows approval of agency actions in a way that allows for: (1) agencies to take into consideration the impacts to the environment; (2) a full study of the range of possible agency actions (alternatives); (3) the opportunity for full and meaningful public and scientific input prior to final decisions; (4) a mechanism for studying, disclosing and fully mitigating impacts; and (5) industry to have appropriate public land operations approved in a reasonable time frame given the required public input and environmental impact reviews.

WOC has seen consistent pressure—particularly by the Department of Interior and BLM—to “fast track,” “expedite,” or “streamline” the NEPA process in an effort to cater to industry’s oil and gas interests on Wyoming’s public lands, all too often at the cost of the very things NEPA was designed to ensure: a complete and full study of likely and cumulative impacts, full and meaningful public input and debate, a thorough and diverse range of reasonable alternatives for carrying out proposals and importantly, a meaningful exploration of mitigation measures to lessen environmental impacts. (Preservation/Conservation Organization, Washington, DC - #475.2-3.10200.XX)

## **66. Public Concern: The CEQ Task Force should not weaken NEPA.**

I have been lucky to work with NEPA as it applies to the Department of Defense and the U.S. Department of Interior. NEPA is a sound law. It should not be weakened by your task force. I encourage you to not err on the side of the Bush Administration and its policies in regard to the environment. Remember, this administration’s mandate from the American people is questionable at best. Therefore, any changes you make to suit the desire of the administration will likely have the support of less than half of the voting public. (Individual, Albuquerque, NM - #151.1.10000.F1)

If there is one thing this country does not need it is a watered down version of NEPA. Our forest land is a national treasure that is being attacked regularly by the Bush administration. George’s view of environmental protection will lose the Republican’s the election regardless of what other wars he rages. It is apparent to the American public that Bush supports big business more than any other constituency. When will George Bush start acting in the best interests of the citizen’s??? Bush’s unwillingness to participate in the Earth Summit is a national disgrace. If we don’t start to play nicely on a global front, we will find ourselves even more on the outside of world relations. (Individual, No Address - #230.1.10000.XX)

There are many ways of improving the NEPA Review Process without decreasing the importance and value of sound environmental planning. The important thing for you to remember is that NEPA reviews are not limited to Federal or Federal EIS projects, NEPA affects almost every level and degree of development taking place in America and it extends all the way down to local level NEPA-delegated permits and approvals. (NEPA Professional or Association - Private Sector, Philadelphia, PA - #286.10.10000.XX)

Our environmental protections must be enforced, upheld, and strengthened, not weakened. (Individual, Springfield, VA - #295.2.10000.XX)

I would like to encourage the task force to withstand and counter the current administration’s tendency to ease environmental restrictions, forego an appeals process, etc. While it may well be appropriate to review NEPA, it is NOT appropriate to disregard its intent and dissolve the basic concept/process of environmental protection. (Individual, Jackson, WY - #150.1.10000.F1)

### **BY INTRODUCING FLEXIBILITY TO EXEMPT CERTAIN ACTIONS**

I am against any changes that would weaken the National Environmental Policy Act (NEPA), including introducing “flexibility” to exempt fire fighting and fuel reduction, defense, mining, and oil/gas projects. (Individual, San Jose, CA - #437.1.10200.XX)

**BECAUSE IT ENSURES LEGITIMATE EFFECTS ANALYSIS**

While its true that efficiency improvements can be made in the NEPA process, I simply cannot agree that an “analysis paralysis” or “process gridlock” exists. When doing NEPA for projects in the forested landscape, we are applying a detailed process, requiring teamwork and good leadership, to an incredibly complex ecosystem.

My point here is, in order to do a good job of soliciting public input and doing meaningful effects analysis, it will take effort, time, and dollars. It would be tragic if someone proposed that the solution to “analysis paralysis” is to either weaken our environmental laws, or mess with our implementing regulations to allow for “quick and dirty” effects analysis. Without a doubt, this would be more harmful to the ecosystem than doing nothing. This would assure a massive expenditure increase in appeals and litigation. (Government Employee/Union, Grangeville, ID - #44.32.10110.XX)

**67. Public Concern: The CEQ Task Force should recognize that it’s possible to fix the process without weakening NEPA’s role.**

In our view, NEPA has evolved beyond its original scope and purpose and has become more cumbersome, in some respects, than necessary. These problems, however, can be identified and corrected without changing the important role that NEPA was intended to play in informing federal agencies, Congress and the public about the impacts to the human environment that result from major agency action. (Utility Industry, Birmingham, AL - #584.2.10100.XX)

**68. Public Concern: The CEQ Task Force should strengthen NEPA.**

We are aware of the administration’s current efforts to “streamline” NEPA, and urge the Task Force not to lose sight of the need to strengthen those areas of NEPA practice that are in need of improvement. (NEPA Professional or Association - Private Sector, No Address - #530.17.110.XX)

It is very discouraging that the Bush Administration wants to weaken NEPA when it needs strengthening. (Preservation/Conservation Organization, Asheville, NC - #623.1.10000.XX)

We oppose any effort to reduce or remove NEPA requirements for Federal agencies. We urge members of the CEQ to strengthen NEPA. (Preservation/Conservation Organization, Marq1`Uette, MI - #597.10.10000.XX)

**69. Public Concern: The CEQ Task Force should enhance the NEPA process.**

NEPA works when done right. Opportunities exist to accomplish NEPA’s goals more efficiently and effectively. These improvements do not require changing the NEPA regulations or legislation. Instead, the NEPA Task Force should help agencies provide more meaningful public involvement early and often in the process, increase the focus on long-term impacts, promote administrative systems that better integrate planning of public works, growth management, and natural resources management, and dedicate more resources for monitoring and mitigation. We encourage the Administration to enhance the NEPA process, instead of circumvent it. (Preservation/Conservation Organization, Washington, DC - #469.11.10200.XX)

The NEPA Task Force has the opportunity to enhance the NEPA process to fulfill the statute’s goals. Improving implementation of NEPA can, and should, be done without changing the existing regulations. The Task Force, with the leadership of the Council on Environmental Quality (CEQ), can provide federal agencies with critical guidance on how to do NEPA efficiently, but right. In particular, the NEPA process can be improved by providing more effective public involvement, increased focus on cumulative impacts, and increased resources for monitoring and mitigating the actual impacts of decisions. (Preservation/Conservation Organization, Washington, DC - #471.3.10200.XX)

## **70. Public Concern: The CEQ Task Force should ensure that any changes to NEPA increase informed decisionmaking and public participation.**

Over the past three decades, when agencies follow the NEPA process as it is designed, better results for both the environment and society are more often achieved. Difficulties arise, however, when agencies take a top-down approach to NEPA compliance that seeks to simply justify a pre-determined result. If an agency simply goes through the motions and has little concern for whether informed decisionmaking and meaningful public participation occurs, the process does not work well—projects are proposed that may unnecessarily harm the environment, more public opposition may be encountered, and time-consuming legal challenges more often result.

ELPC and CNT encourage the Task Force to ensure that any recommended changes to NEPA implementation work to increase the likelihood that agencies will fulfill the informed decisionmaking and meaningful public participation goals of NEPA. (Preservation/Conservation Organization, Chicago, IL - #87.1.10200.XX)

## **NEPA Implementation**

### *NEPA Implementation General*

## **71. Public Concern: The CEQ Task Force should encourage effective implementation of NEPA.**

### **BY MAINTAINING ITS CURRENT FLEXIBILITY**

One of the significant strengths of the present NEPA framework is the flexibility that it offers Federal agencies in implementation. This flexibility enables agencies to respond more effectively to project-specific issues that range from determining the appropriate level of analysis and mitigation of potential adverse impacts to ensuring and fostering responsive public involvement. The Board encourages the Task Force and CEQ to maintain this flexibility in any future guidance or regulatory changes. (Surface Transportation Board, No Address - #519.1.10200.XX)

### **TO REDUCE ABUSE**

NEPA can be and is being abused. Some seek to pervert the process and to use it for tactical delays. I have found however, that adequate input by the state and other parties can be achieved in a timely manner. This relies on the leadership, dedication and competence of the federal agency seeking comment. In addition, if efforts are made to organize a schedule, to give people proper expectation of deadlines, opportunities for comment, and to manage the process for what it is meant to do, then abuse can be significantly reduced. (State of Tennessee, No Address - #543.4.10200.XX)

### **TO REDUCE DISHARMONY AND ACRIMONY**

The department is concerned that, since the passage of NEPA, a process has developed such that application of the Act results in disharmony and acrimony among people to the detriment of the general welfare and the environment. This is the result of protracted analyses, overlapping and conflicting laws, implementing regulations and legal decisions, postage stamp veto power and interest-based litigation which have created an atmosphere of confusion, mistrust and conflict. Customer service and timely decision-making often become secondary objectives in today's litigious environment.

The National Environmental Policy Act is well founded and laudable; however, the "NEPA Process" which devolved from the implementing regulations has become too complicated, too slow, too contentious, too expensive and ineffective. While it is incumbent on an agency to produce sound, fact-based findings, the delays to customers that result when an issuing office is required to expend extra time and effort, simply to prevent a spurious suit, do not meet the original intent of identifying the on-the-ground consequences of a proposed action. (Utah Department of Natural Resources, Salt Lake City, UT - #565.2.10200.XX)

**72. Public Concern: The CEQ Task Force should consider that the complexity of NEPA implementation makes it easy for project opponents to delay or halt the process.**

NEPA is the primary vehicle to stop projects: NEPA is the preferred tool of project opponents to delay or stop projects. The complexity associated with its implementation makes NEPA an easy target. Project opponents use NEPA to stop a project not out of a genuine desire to protect the environment, but simply because they will be personally affected by the proximity of a project. Opponents have delayed projects for years, costing millions of taxpayer dollars in court and other expenses associated with project delays. Projects can be delayed indefinitely simply because regulations are prescriptive and detailed, and the agencies administering them are not decisive. (Virginia Department of Transportation, No Address - #203.5.10200.XX)

**73. Public Concern: The CEQ Task Force should address the use of NEPA to justify predetermined decisions.**

The perception of NEPA as a superfluous process is also reinforced whenever agencies use the NEPA process to justify an already-determined decision. Two of the examples discussed previously also illustrate this significant downfall. The BLM's Pinedale Field Office's refusal to publish a scoping notice for seismic exploration operations coupled with their decision to permit the company to stake the project prior to approval so that the exploration began immediately the morning after the FONSI issued, strongly suggests that the decision to allow the exploration activities was made before the NEPA process was begun. It is exactly this type of situation that leaves the public feeling that their input has little or no impact on an agency's decisions and obliterates NEPA's intent. (Preservation/Conservation Organization, No Address - #498.19.10200.XX)

Many times an agency fails to meet either the letter or the intent of the law, and instead use NEPA to justify an agenda or pre-determined decision of an agency or an individual. This is the case in a proposed action recently published in the Federal Register [NOI Federal Register, Sawtooth National forest, Preparation for EIS, Allotment Management Plan Analysis]. The agenda is to reduce the stocking rate and to reduce the area of the two allotments. This has already been determined before the EIS is even started. (Individual, Huachuca City, AZ - #228.1.10200.XX)

Issue: Analysis paralysis - is a significant problem because the Forest Service agency and staff repeatedly are Paralyzed with a preconceived decision and resultantly unable to complete accurate or effective Analysis. NEPA itself is not the problem, but rather the focus on circumventing NEPA requirements. (Preservation/Conservation Organization, Twisp, WA - #208.1.10200.XX)

**74. Public Concern: The CEQ Task Force should consider that otherwise successful NEPA processes are sometimes frustrated by lack of follow-through and subsequent support.**

NEPA is a successful statute that works not by mandating a result, but by requiring a procedure that if followed can identify the best result. There are fewer problems with NEPA itself than with the way the agencies implement it. As is discussed in the examples below, NEPA often seems burdensome not because the process is inherently flawed, but because it often appears to have little or no effect on the ultimate management of federal lands due to agency apathy or a lack of financial and managerial support.

A case in point is that of the Interior Columbia Basin Ecosystem Management Project (ICBEMP). The ICBEMP was created to develop a scientifically-sound and ecosystem-based strategy for the management of forest and rangelands in the interior Columbia River basin and portions of the Klamath and Great Basins. The scientists and land managers working on the ICBEMP generated a thorough study of the Columbia Basin's ecosystem and the resulting analyses and recommendations were incorporated into a final environmental impact statement issued in December of 2000. To date, however, no Record of Decision has issued.

The land management agencies in the Columbia Basin have been unable to effectively address many of the problems identified in the ICBEMP. For instance, the ICBEMP identified invasive weeds as one of the fastest growing threats to the area's ecosystem. Despite the ICBEMP's showing that the problem requires preventative action, field offices, like the Wallowa-Whitman National Forest, have had insufficient support and funding to adequately address the problem. Although the office prepared a comprehensive weed control strategy, its actions are currently limited to herbicide applications. The ICBEMP is a good example of how an otherwise successful NEPA process was frustrated by a lack of follow-through and subsequent support. This result strengthens critic's argument that NEPA is merely a procedural hurdle and waste of resources. (Preservation/Conservation Organization, No Address - #498.18-19.10200.XX)

**75. Public Concern: The CEQ Task Force should establish a paradigm that integrates NEPA with other political, social, and analytic frameworks.**

NEPA's emergence as an overall umbrella for project planning has unintentionally created an unsound planning paradigm. The notion "that issues will be considered and worked out in the NEPA process" is incanted day after day across the land. NEPA was created to support decision-making, not to subsume it. How and when NEPA became, in effect, a de facto national planning statute, would be a very interesting question. If indeed it has now become something like that, one could suggest that it is grossly deficient in that role. "Scoping the EIS" should not be the crucial act for laying the decisional framework for actions, investments and choices in holistic pursuit of social and ecological needs, risks, and opportunities. If that be the aim, NEPA's ambit must be considerably broadened. Whether Congress would be prepared to do so is unclear. But if the aim be to achieve a comprehensive holistic planning model, then a paradigm must be established or reestablished that integrates NEPA with other political, social and analytic frameworks. (Washington State Department of Transportation, Olympia, WA - #551.4.10200.XX)

**76. Public Concern: The CEQ Task Force should create an incentive in the NEPA process to work toward a single solution that accommodates multiple interests.**

While a collaborative process builds on and incrementally shapes a proposal to meet mutual interests as the parties work toward a decision, the NEPA process requires that discrete alternatives be developed and documented to show environmental effects and tradeoffs. Documenting and circulating such alternatives in a draft and final document for public comment fosters an assumption that the decision maker has a range of options to choose from and various interests can weigh in and comment on the alternatives they support. There is no incentive built into the NEPA process to work toward a single solution that accommodates multiple interests. (United States Department of Agriculture, Washington, DC - #110.7.10200.XX)

**77. Public Concern: The CEQ Task Force should require NEPA review to occur close to the time of project implementation.**

Given the importance of active NEPA compliance, ELPC and CNT believe that the Task Force should consider ways to improve NEPA implementation that would increase the ability of agencies to fully comply with NEPA. In particular, any recommendations should work to strengthen both the informed decisionmaking and public participation goals of NEPA. With these goals in mind, ELPC and CNT encourage the Task Force to make the following recommendations.

**Do Not Game The Timing:** The Task Force should recommend that agencies carry out the NEPA process close to the time when a proposed project would be implemented, as opposed to long in advance. One frequent problem with agency implementation of NEPA is that agencies will game the timing of the review process by completing the NEPA process long before the agency has any intention of actually building the project being reviewed. For example, the Illinois State Toll Highway Authority (ISTHA) recently released a Draft EIS for its proposal to build a 25-mile extension of Route 53 into Lake County Illinois, the far northern suburban area of Chicago. ISTHA, however, acknowledges that it

does not have the money necessary to build this \$1 billion project, and that any potential construction would not begin for at least 10 years.

This approach undermines the goals of NEPA by forcing the NEPA analysis to be based on largely hypothetical information. A present-day decision on a project that ISTHA does not plan to even consider building for over a decade cannot be fully informed because the information relevant to that decision will certainly change. Such changes undermine the ability of the agency to accurately determine what the environmental impacts of the project would be, whether the need for the project will change, and the appropriateness of reasonable alternatives. In addition, ISTHA's approach serves to diminish the likelihood of active and meaningful public participation.

Citizens will be less likely to comment on a project that the agency claims will not be built until long in the future and those who do comment will be working with the same hypothetical information that the agency has.

The better approach is for the NEPA review to occur close in time to when the agency plans to implement a project. That way both the agency and the public will be able to judge the project on the basis of more accurate and timely information. Only through such a timely approach to NEPA can the informed decisionmaking and public participation goals of NEPA be achieved. (Preservation/Conservation Organization, Chicago, IL - #87.14-15.10200.XX)

#### **78. Public Concern: The CEQ Task Force should encourage agencies to follow a logical sequence in planning.**

Federal agencies should follow a process with a logical sequence. When at any step of the process, one should be able to trace back what the previous steps were, and show a logical progression to that point. (Mark A. Semlek, Chairperson, Crook County Board of Commissioners, et al, Sundance, WY - #73.2.10200.XX)

#### **79. Public Concern: The CEQ Task Force should address the role of NEPA in early planning.**

Many references to early planning are in the rules, yet more and more regulatory processes are being wrapped into the NEPA process. The regulatory processes require design level information, thus push the "planning" effort into the design effort. CEQ should consider whether this trend should be reversed, and should determine if NEPA should be used as an early planning effort, or a compliance effort. (United States Navy, Washington, DC - #568.28.10200.F1)

#### **80. Public Concern: The CEQ Task Force should encourage early NEPA planning.**

Early planning during the NEPA process is a point in the NEPA process that has not received equivalent emphasis. As has been shown time and time again, early planning not only increases the quality of NEPA compliance, but also results in increasing efficiency and effectiveness in the Environmental Document. By focusing on early planning, practitioners are reminded of its benefit and proponents are taught why it is a necessary step that works as well as it does. (Individual, Bainbridge Island, WA - #467.3.10200.XX)

When early planning is imposed as a basic step in the NEPA Process, a typical team is established. The proponent has an opportunity to explain the real purpose and need for the proposal. Likewise, environmental planners can develop a respect for the proponent's authority to make decisions once factual environmental information is considered. The proponent can see the environmental planner as a problem solver rather than hindrance. Internal controversy is minimized and real issues become the focus of resolution.

For example, an aircraft carrier EIS addressed four separate Naval Bases located in San Diego, Puget Sound, and Hawaii. Five actual vessels were to be homeported. The complexity of executing such a decision includes serious engineering, logistic and economic consideration. The supporting EIS had to address the facility's requirements at the alternative sites for various numbers of homeported vessels.

Regardless of the complexity and size of the EIS, internal Navy controversy during preparation of the EIS was relatively minimal. Debate focused on the real decision of how many vessels would go to which homeports.

Early planning in this case allowed time to identify a satisfactory compliance strategy. The working teams deliberated long and hard about the fundamental structure of the EIS in support of this important Navy decision. Environmental planners took time to understand the proponent's views. The proponent was an involved player understanding the basics of NEPA procedural compliance. By following the basic NEPA procedure, the team was able to design an effective compliance strategy without the addition of superfluous project constraints or poorly thought out mitigation measures. (Individual, Bainbridge Island, WA - #467.9.10200.XX)

When environmental analysis is not completed at an early appropriate time, conflict almost always ensues via litigation, public demonstrations or other time-burdening distractions. These delays are avoidable if the NEPA process is followed up front. In particular, we have seen many controversial issues—such as the new dolphin-safe tuna program developed by the Department of Commerce and other agencies—where “scoping” is not even utilized. (B2). This makes no sense, and seems to invite disagreement and division on complex natural resource issues. (Preservation/Conservation Organization, Washington, DC - #465.6.10200.B2)

#### **SHOULD BEGIN THE NEPA REVIEW FOR PIPELINE PROJECTS BEFORE THE FILING OF THE APPLICATION**

In particular, our report suggested by beginning the NEPA review for pipeline projects before the filing of the application at the Commission, environmental issues could be identified and resolved efficiently as the project develops. This NEPA pre-filing environmental review process offers a number of potentially significant benefits to companies choosing to implement it. Among other things, these activities, when started early, enhance the NEPA process by facilitating issue identification, study needs, and issue resolution. For companies that provide a detailed route and the related resource reports substantially before the filing of the application, a draft environmental impact statement may be released within 2 or 3 months after a complete application is filed, with a final environmental impact statement issued possibly 6 months earlier than average for a major project. Therefore, a final certificate could be issued 7 to 9 months earlier than possible for the traditional certificate application process. (United States Federal Energy Regulatory Commission, Washington, DC - #544.3.10240.XX)

#### **SO AGENCIES CAN COORDINATE RATHER THAN DUPLICATE REVIEW PROCEDURES REQUIRED BY OTHER STATUTES**

NEPA can help agency managers do their jobs. As CEQ has previously recognized, NEPA's requirements “can make it easier to discourage poor proposals, reduce the amount of documentation down the road, and support innovation.” CEQ Effectiveness Study, at 12. By integrating NEPA early in the agency planning process, agencies can coordinate rather than duplicate review procedures required by other statutes such as the Federal Land Management Policy Act (FLMPA), the National Historic Preservation Act (NHPA), and Transportation Equity Act for the 21st Century (TEA-21) The Task Force should encounter greater use of NEPA in the development of policies and programs in order to permit their impacts to be assessed before resources are spent and a specific direction is taken. (Preservation/Conservation Organization, Washington, DC - #471.13.10200.XX)

#### **81. Public Concern: The CEQ Task Force should examine a synopsis of the SR 104 highway project regarding challenges in seeking early agency involvement.**

WSDOT can provide the NEPA Task Force with more information about our experience with the “Reinvent NEPA” process, which was applied to three pilot projects. The Task Force may wish to examine a recent synopsis of the SR 104 highway project, a “Reinvent NEPA” pilot project, that illustrates the significant challenges in seeking early agency involvement for a corridor level EIS. (Washington State Department of Transportation, Olympia, WA - #551.15.10200.C1)

## Guidance/Implementing Regulations

### 82. Public Concern: The CEQ Task Force should clarify NEPA guidance.

The CEQ Memorandum dated April 10, 2002, under the “Project Products” heading states: “The Task Force will provide recommendations for either revising NEPA procedures or developing additional guidance”. The Task Force is strongly encouraged to give full consideration to “developing” and not “revising”. (Individual, Albuquerque, NM - #432.2.10110.F1)

CEQ and the action agencies must regain control over defining the scope and requirements of NEPA analyses. One of the major problems with the NEPA process is it is being run by the courts in a piecemeal and a case-by-case basis. The statutory provisions of NEPA are very broad, with plenty of room for agency interpretation. Instead of taking advantage of this opportunity, the agencies have let court decisions from different parts of the country dictate the process on a piecemeal basis. The result is an uncertain process in which agency personnel doing NEPA work are not sure what the requirements are. As a result, agencies often do much more analysis than is necessary, or spend more time trying to insulate their work from judicial attack. They become mired in the process. The Forest Service estimates that planning and assessment consumes 40 percent of direct work, at a cost of \$250 million. The agency also estimates it could redirect \$100 million to on-the-ground work with more efficient processes. The Forest Service is not alone.

Agencies would obtain greater efficiencies with NEPA if requirements were spelled out more clearly and administrative uncertainties were minimized. NEPA gives the federal agencies, in conjunction with CEQ, the authority to define and develop procedures “which will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations.” (43 U.S.C. 4332(B)). . . . NEPA processes need to be better and more clearly defined in order to withstand judicial attack. (Individual, Hot Springs National Park, AR - #505.6.10200.XX)

According to CEQ, “NEPA is about making choices, not endlessly collecting raw data.” We find this CEQ censure of federal agencies richly ironic. It must be evident that the protracted uncertainty and lack of predictability surrounding NEPA compliance has forced agencies into a mode of “endlessly collecting raw data,” as CEQ puts it so caustically. And this condition stems from the fact that CEQ has established a sealed system of universal NEPA coverage while choosing to provide the smallest degree of substantive regulatory guidance on the concepts that anchor the system. It is the system devised by CEQ that has facilitated uncertainty and litigation. (Other, Washington, DC - #506.13.10200.XX)

#### **BY DEVELOPING AN ADMINISTRATIVE ROADMAP FOR IMPLEMENTING NEPA AND DEFENDING IT**

The NEPA Task Force needs to develop a clear administrative roadmap for satisfying NEPA requirements, enact it into regulations, and defend it in court. (Agriculture Industry, Bozeman, MT - #451.10.10200.XX)

#### **BY DEFINING KEY TERMS**

Agencies would obtain greater efficiencies with NEPA if requirements were spelled out more clearly and administrative uncertainties were minimized. NEPA gives the federal agencies, in conjunction with CEQ, the authority to define and develop procedures “which will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations.” (43 U.S.C. 4332 (B)).

CEQ should better and more clearly define key NEPA terms such as “major federal action,” “no action alternative” and “significant impacts on the human environment,” so action agencies have a better idea of what their requirements are. (Agriculture Industry, Bozeman, MT - #451.10.10200.XX)

#### **TO ENHANCE PLANNING AND DECISIONMAKING PROCESSES**

The NEPA and associated regulations are important tools that when thoughtfully employed by natural resources professionals do indeed aid in safeguarding the environment from degradation. However, guidance promulgated under NEPA could be clarified to enhance the effectiveness of land and resource

management planning and decision-making processes. (Recreational/Conservation Organization, Rice Lake, WI - #105.1.10100.XX)

**83. Public Concern: The CEQ Task Force should consider the NEPA guidance provided by the Federal Highway Administration in the form of manuals and handbooks.**

Many federal agencies have developed informal NEPA guidance in the form of manuals and handbooks. One good example is the Federal Highway Administration. They have developed sound guidelines to the implementation to NEPA, which leads to clear understanding of what is required to complete the NEPA documentation. (Santa Barbara County Public Works Department, Santa Barbara, CA - #79.2.10200.XX)

**84. Public Concern: The CEQ Task Force should address the conflicting court rulings and inconsistent agency guidelines regarding NEPA.**

Misunderstandings occur regularly between federal agencies and participating public or separate governmental entities. At times, we have found the information available during the draft stage of environmental impact statements to be less than thorough even though voluminous. For example: During the simultaneous promulgation of the USFS rules beginning OCT 1999 at 36 C.F.R. [sections] 212, 217, 219, 261, 294, and 295, mapping and map overlays were and are non-existent. In this same instance, technology allowed the placement of such a great amount of conflicting information (non-credible or accredited data) that the public, federal, state and local agencies were thoroughly confused in the way the USFS developed those regulatory updates. The integrity or believability of the process suffered drastically because of this, and technologies were available at the time through GIS that were not fully applied that could have alleviated this problem to some extent.

The above instance regarding the USFS was a barrier to the States, Tribes, local governments and the majority of the public, and should be reflected as a challenge to the CEQ—a challenge that has not been satisfactorily addressed to date. In our opinion this can be accounted for through several decades of litigious action by groups or individuals earning their livings merely by suing the federal government and getting paid for it, win, lose or draw, for simple administrative mistakes not intentional, but due primarily to the morass of conflicting District Court rulings, and federal agency inconsistencies regarding CEQ guidelines in relation to the NEPA. (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.11.10230.A2)

For the most part, the courts have given appropriate deference to CEQ's interpretation of the NEPA statute as stated in CEQ regulations and CEQ guidance. However, since Federal judges have interpreted CEQ regulations inconsistently, managers attempting to comply with NEPA face significant interpretation problems in the face of the varied case law. (Other, Washington, DC - #587.24.10500.XX)

NEPA law is primarily made by courts, constantly changes, and sometimes varies among judicial circuits. Agency personnel often lack expertise and resources to remain current on NEPA requirements.

Through NEPA's history the courts have had primary authority to determine the legal requirements of the statute. In the nine years between the enactment of NEPA and the adoption of the CEQ regulations, the interpretation of NEPA was left solely to the courts. Since 1978 the courts have still played a major role in interpreting the regulations. Therefore, much of the NEPA law that agencies must follow is dispersed among hundreds of court decisions. Sometimes these decisions produce conflicting interpretations for different geographic areas. (For example, designation of critical habitat under the Endangered Species Act requires NEPA compliance if it occurs within the geographic area of the Tenth Circuit, but not if it occurs within the geographic area of the Ninth Circuit.)

The dispersion, inconstancy and conflicts among these court decisions place federal agency personnel in a difficult position of having to prepare environmental documents where some of the important rules governing preparation cannot be found in the CEQ regulations or anywhere else except through an encyclopedia review of three decades of NEPA court cases. Consequently, NEPA documents are

sometimes deficient because agency personnel are not aware of, and do not know how to comply with, the judge-made NEPA rules. (Timber or Wood Products Industry, Portland, OR - #454.36.10520.XX)

NEPA has evolved far away from its original purpose. NEPA was enacted in order to assure that environmental consequences of proposed activities should be assessed and presented to decision-makers. NEPA's promise was that adverse environmental effects would be recognized, minimized and mitigated. The original intention was also that NEPA would bring the public effectively into the assessment process and support strong and informed public engagement in ultimate governmental decision-making.

It is hard to recognize NEPA today. In large part, the NEPA process is now a forum for the technical work-ups to "permitting" processes. Some aspects of the activity in that forum are constructive; some amount merely to jousting, diversion and distraction. The rules and conventions of the forum have become enormously complicated. This not only reflects the ever-increasing sophistication of environmental assessment. It also results from the welter of federal environmental legislation and regulation and the attempt to contrive coherence within NEPA for a crazy-quilt legal context of piecemeal and inconsistent legislative and administrative direction. (Washington State Department of Transportation, Olympia, WA - #551.1.10200.XX)

## **85. Public Concern: The CEQ Task Force should amend the CEQ regulations.**

CEQ has the power to streamline the NEPA process, and to eliminate most of the current agency problems with NEPA review, through amendment of its regulations or by issuing additional non-regulatory guidance, with no action required by Congress. (Timber or Wood Products Industry, No Address - #422.12.410.XX)

The Federal Register notice requests ways to improve and modernize NEPA analyses and documentation and requests examples of current best practices and specific opportunities to enhance the NEPA process. However, the nature and scope of the task force assignment should be expanded to clearly include amendment of the CEQ regulations. Otherwise, identifying "case studies" and "best practices" and implementing NEPA under the current regulations will be an exercise in futility. (B. Boswell Hayward, et al, Commissioners, Wallowa County Board of Commissioners, Enterprise, OR - #480.1.100.XX)

At the risk of getting ahead of ourselves and presupposing an outcome before the analyses and Task Force documentation are complete (always a risk where NEPA is concerned), AF and PA would like to go on record as stating that CEQ has properly identified itself as the best recipient of the Task Force recommendations and appropriately suggested that a second critical step will be to concert the recommendations to CEQ regulations and guidance. Indeed, the success of the Task Force and this CEQ initiative will be measured by the degree to which that second step is accomplished. (Timber or Wood Products Industry, Washington, DC - #507.1.100.XX)

The CEQ Regulations are the basis for NEPA implementation. Any weakness in them will too often produce weaknesses in the implementation process. The Task Force's major responsibility is to improve NEPA implementation. One of the main problems is the basis for NEPA implementation—the weaknesses in the CEQ Regulations. (NEPA Professional or Association - Private Sector, Farmington, UT - #431.4.10110.F1)

### **TO REFLECT CHANGES IN FEDERAL ENVIRONMENTAL AND RESOURCE MANAGEMENT LEGISLATION SINCE 1978, AS WELL AS AGENCY EXPERIENCE WITH NEPA**

We are pleased that the Council has recognized the need to improve and modernize NEPA analyses and to foster improved NEPA-related coordination among all levels of government and the public. In our view, there is a substantial need for improvement with respect to current NEPA practice. More specifically, we believe that the CEQ needs to engage in a comprehensive update of its increasingly stale 1978 NEPA Regulations. This revision process must reflect both the changes in federal environmental and resource management legislation that have occurred since 1978 as well as the collective NEPA-

related experiences of the federal agencies and their state agency partners. (Wisconsin Department of Natural Resources, Madison, WI - #458.1.10110.XX)

CEQ needs to engage in a comprehensive update of its increasingly stale 1978 NEPA Regulations. This revision process must reflect both the changes in federal environmental and resource management legislation that have occurred since 1978 as well as the collective NEPA-related experiences of the federal agencies and their state agency partners.

The fundamental goal of this long overdue revision of the CEQ NEPA Regulations should be to refocus the federal government's implementation of NEPA away from the present emphasis on unproductive process and documentation and toward meaningful environmental outcomes. (Other, Washington, DC - #506.25.10500.XX)

#### **TO REFLECT CASE LAW AND RECENT CEQ GUIDANCE**

The WUWC believes it is time for revision of the NEPA regulations. Case law played an important role in the formulation of the 1978 CEQ NEPA regulations. There would be great value in promulgating new or supplemental regulations taking into account NEPA case law since 1978, which is substantial. In addition, CEQ has issued considerable guidance, some of which should be in the regulations. Among other things, this would improve consistency in the implementation of NEPA. It is very difficult to track the very extensive body of NEPA case law as applied to a particular project. New regulations could synthesize this law and present a concise, cohesive, and up-to-date statement of the requirements governing NEPA analysis. Obviously, this is a major undertaking and would require considerable lead-time. It is an effort the WUWC considers to be worthwhile. (Utility Industry, Washington, DC - #474.7.10520.XX)

#### **TO HELP THE EXECUTIVE BRANCH REGAIN CONTROL OVER THE NEPA PROCESS**

Thirty years of NEPA litigation should tell us where the major problem areas are, and what areas need to be fixed. CEQ is charged with enacting regulations to implement NEPA, and the creation of the Task Force provides the opportunity for reviewing NEPA and revising its process. Strong CEQ regulations could help the executive branch reclaim control over the NEPA process. In so doing, it would guide agencies to become more efficient and effective in the way they discharge their NEPA responsibilities. (Individual, Hot Springs National Park, AR - #505.8.10200.XX)

#### **TO DETERMINE WHETHER A PROJECT HAS SIGNIFICANT EFFECT ON THE HUMAN ENVIRONMENT OR NOT**

The thousands of EA's prepared each year for proposed actions, significant effect on the quality of the human environment are not required by NEPA. This truly is analysis paralysis. . . . The NEPA statute requires no study at all of proposals that do not have significant environmental effects—so why perform all these EAs each year? (The EA requirement was imposed in the CEQ regulations). Modern NEPA regulations need to ultimately be structured to reveal whether a project has a significant effect on the quality of the human environment, or it does not. This is the relevant question. (Timber or Wood Products Industry, Kalispell, MT - #462.11.10240.XX)

#### **TO DISALLOW ACTIONS THAT ARE NOT STATUTORILY REQUIRED**

Homeless stipulations - Agencies often require stipulations in an EA or EIS that are not required in either statute or regulation of the agency. These so-called "homeless stipulations" are used to blackmail the applicant to do certain things not required by law.

Recommendations: NEPA regulations should be changed to specifically disallow requiring anything that is not required in statute or regulation. (Mining Industry, Anchorage, AK - #645.10.10520.XX)

### **86. Public Concern: The CEQ Task Force should reemphasize CEQ's previous guidance to agencies and incorporate that guidance in the CEQ regulations.**

Perhaps the largest barrier to effective NEPA implementation by federal agencies is the sheer volume of environmental documents currently prepared. The result is dilution of a meaningful application of this landmark Act towards federal decision making. The spirit and intent of NEPA will be better served by

concentrating review and analysis efforts on federal actions that truly require analysis of impacts on the human environment. One reason for this dilution is that federal agencies and their responsible personnel apparently continue to be unaware of, or have forgotten, guidance previously provided by the CEQ. This 2002 request for comments is remarkably similar to processes the Council embarked upon decades ago. The CEQ should reemphasize the guidance previously provided to federal agencies on these issues by incorporating such guidance into the formal CFR regulations. (Wisconsin Department of Natural Resources, Madison, WI - #458.9.10230.B2)

**87. Public Concern: The CEQ Task Force should require NEPA implementing regulations to mirror CEQ regulations.**

Require that the NEPA implementing regulations mirror CEQ regulations and do not reinterpret what NEPA and CEQ require (Preservation/Conservation Organization, Weldon, CA - #473.11.10200.XX)

We need a stronger NEPA and not a weaker one. This can be done in the following way:

Please understand that any delays that NEPA supposedly causes are usually caused by the agencies that do not implement NEPA as required by law, court cases, CEQ regulations, and the agency's own NEPA regulations. The number of lawsuits is not nearly as large as it could be because citizens cannot afford to go to court every time a federal agency violates NEPA.

Require that agency NEPA implementing regulations mirror CEQ regulations and do not reinterpret what NEPA and CEQ require. (Preservation/Conservation Organization, Charlottesville, VA - #555.9.10200.XX)

**88. Public Concern: The CEQ Task Force should clarify NEPA through authoritative rules, not guidance memoranda.**

When Congress legislates, it anticipates the reduction of vague commands into rules. Indeed, were it not vague, much important legislation could never command majorities in Congress. As varied as are the federal actions that affect the environment, we can not accept that NEPA defies some substantive clarification. The system established by CEQ casts judges in the role of finders of fact instead of determiners of law, thereby destroying predictability and facilitating arbitrariness. Uncertainty is incompatible with the Rule of Law. Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175 (1989).

The trick, as Justice Scalia observes, is to carry the general principle as far as it can go in substantial furtherance of congressional policy. *Id.*, 1183. If, because of uncertainty surrounding NEPA implementation, agencies find it necessary to buy protection and if, as a consequence, "millions of dollars, years of time, and tons of paper have been spent on documents that have little effect on decisionmaking," logic suggests that CEQ clear away some brush in order to reduce the uncertainty that plagues NEPA implementation. And by this we mean authoritative rules, not guidance memoranda which have proved to be ineffective. (Other, Washington, DC - #506.15.10520.XX)

## *NEPA Application*

**89. Public Concern: The CEQ Task Force should direct agencies to concentrate their efforts only on those major federal actions truly having a significant effect on the human environment.**

The largest barrier to meaningful NEPA review is the sheer volume of environmental documents currently prepared. This volume is due in part to the fear that federal agencies have of lawsuits filed for inadequate NEPA compliance. The NEPA process often becomes an unproductive effort to document steps followed, rather than a tool for making better decisions. This dilutes NEPA and results in an increasing tendency by DOI/FWS to "federalize" state activities by invoking NEPA for what are essentially state resource management actions conducted under the authority conferred to the states by Amendment X of the Constitution. We believe the spirit and intent of NEPA will be better served by

concentrating effort on those major federal actions truly having a significant impact on the human environment. (Michigan Department of Natural Resources, Lansing, MI - #563.8.10230.XX)

The fundamental goal of this long overdue revision of the CEQ NEPA Regulations should be to refocus the federal government's implementation of NEPA away from the present emphasis on unproductive process and documentation and toward meaningful environmental outcomes. The important purposes of NEPA are best achieved when the environmental analysis and public disclosure requirements of this landmark law are applied only to those federal decisions truly in need of further environmental analysis in a process emphasizing timely interagency collaboration. This collaboration must be accomplished with full knowledge of how the federal and state governmental agencies function and with the goal of avoiding unnecessary impact evaluation, documentation and public input processes. (Wisconsin Department of Natural Resources, Madison, WI - #458.2.10200.XX)

#### **PETITIONS, LICENSES, AND MAJOR PERMITS WHICH RESULT IN SIGNIFICANT EFFECTS**

Detailed NEPA Analysis should be limited to major actions such as petitions, licenses and major permits that will result in large scale economic, cultural, social, watershed or ecosystem level impacts (State of Tennessee, No Address - #543.8.10240.XX)

#### **FOREST PLANS**

The NEPA process should be limited to the Forest Plan (a major federal action). (Domestic Livestock Industry, Arivaca, AZ - #583.6.10200.XX)

#### **MULTIPLE USE PROGRAMS**

Multi-use programs and management should be considered rather than single-issue management . . . . (Individual, Buellton, CA - #511.10.10200.XX)

### **90. Public Concern: The CEQ Task Force should address the increasing application of NEPA to no- or low-impact projects.**

As the federal office responsible for overseeing NEPA implementation, it is the duty of CEQ to address the chasm that has developed between what NEPA has become and what NEPA was intended to be (hereinafter "the gap"). More specifically, we think the gap involves the increasing application of NEPA, for defensive purposes, to no- or low-impact projects never intended by Congress to be covered. (Other, Washington, DC - #506.4.10200.XX)

### **91. Public Concern: The CEQ Task Force should not exempt certain projects from NEPA review.**

#### **FIRE FIGHTING AND FUEL REDUCTION, DEFENSE PROJECTS, MINING, AND OIL/GAS DEVELOPMENT**

Do not exempt fire fighting and fuel reduction projects, defense projects, mining projects, oil/gas projects, and other projects from NEPA. We need a more inclusive use of NEPA and not a less inclusive use. Fire fighting and fuel reduction projects need to be planned carefully to ensure they do not harm the very environment they purport to protect. Bulldozing fire lanes, clear-cut logging, destruction/damage to streamside zones, are all products of fire fighting and fuel reduction projects. Defense projects can damage the environment as massively as projects by other agencies. As prepared as our troops have shown themselves to be, it is a sham for the Defense Department to pretend that it is being held hostage by NEPA. (Preservation/Conservation Organization, Weldon, CA - #473.15.10200.XX)

### **92. Public Concern: The CEQ Task Force should clarify that the extent of any NEPA process is limited to areas where federal jurisdiction is properly asserted.**

National Association of Home Builders . . . urges the NEPA Task Force to clarify that the extent of any NEPA process is limited to only those areas over which federal jurisdiction is properly asserted. (Business, Washington, DC - #517.8.30800.XX)

## Examples

### 93. Public Concern: The CEQ Task Force should consider general examples of NEPA implementation.

FYI—per chance you are following in real-time how NEPA works or does not work in the Arcata Resource Area.

RE: Comments on the Draft Management Plan and Accompanying EIS/Environmental Impact Report (EIR) for the Headwaters Forest

Dear . . . :

This letter represents the official comments of the Blue Ribbon Coalition (BRC), a national recreation group, on the Draft Management Plan and accompanying environmental impact statement/environmental impact report (EIS/EIR) for the Headwaters Forest.

As you know, the BRC represents both motorized and non-motorized user groups that have an interest in access to the Headwaters Forest. However, these comments will only be advocating for our mountain-bike, equestrian, and general use hiking members. This letter does not preclude other BRC members or affiliate organizations from submitting their own comments.

Normally, I would go through the document associated with the Plan and EIS/EIR and comment on relevant sections. However, I feel the “closure oriented” preferred alternatives (which ban horseback riding, bicycling, camping, swimming, and casual day hikes) are fatally flawed so I will ask that the entire process be withdrawn and a new set of preferred alternatives be developed that include a reasonable balance between recreation and preservation. The two should not be mutually exclusive. The implementation of your closure alternatives would be a tragic misuse of almost a billion dollars of taxpayer funds that were used to “buy this land for the public”.

Regardless of whether you withdraw and reissue the Plan or if you do a substantial overhaul of the preferred alternatives within the current public process. I ask that you make a strong commitment to the trail community and consider developing a user committee of hikers mountain bikers, and equestrians to look at developing a quality system of multi-user trails in the Forest.

I believe that a number of looped trail opportunities could be developed using existing logging roads and connecting them with new trail construction. Some of these new trail systems could be “companion trails” that parallel existing and more developed roads in the Forest. I have attached a draft map with potential routes outlined with an orange marker. (Recreational Organization, Oakley, CA - #101.1.10900.XX)

### 94. Public Concern: The CEQ Task Force should consider examples of effective NEPA implementation.

#### MONTANA DIVISION OF NATURAL RESOURCES COUNCIL DIVISION OF STATE LANDS

I'm submitting documents as case studies of NEPA—processes [for certain salvage operations] as accomplished by the Montana DNRC Division of State Lands. . . .

A few observations. 1) When DNRC made the decision to go forward with this project they pulled staff from well beyond the responsible management unit, so planning and assessment was accomplished within a compressed timeline. The Department Director provided financial backing to pay the overtime necessary. 2) Project management was organized like a fire using the ICS model (see project direction appendix of the EA). 3) The public was involved from the outset. 4) The management decisions were highly professional minimizing criticism. 5) An executive summary, intentionally written as a layman's document, promoted understanding with the public as characterized by this comment from a local environmentalist: “In reading the summary and phase II draft EIS for the Moose Fire, I noticed how well they were written. It is possible to read a sentence just once and understand what is intended. The clarity of the documents and the straightforward answers to difficult questions are unusual in government documents.” (John Frederick, President, North Fork Preservation Association) (page 36 of FEIS). This comment is particularly poignant coming from an opponent of the preferred alternative. . . .

What we can learn

- 1) keep it simple (Your recent draft EA template looks great)
- 2) involve, not just inform, the public)
- 3) be clear, understandable in verbal and written communication
- 4) good science applied with a steward's heart minimizes opposition
- 5) commit whatever personnel and financial resources are necessary to do the project in a timely fashion. (Government Employee/Union, Missoula, MT - #75.1.10200.XX)

#### **BOISE NATIONAL FOREST SILVER CREEK PROJECT**

There are examples of the NEPA process working successfully and we highlight several such examples here in an effort to illustrate that utilized correctly, NEPA is an asset to the public and land managers. For example, a recent project in the Boise National Forest demonstrates how one of the cornerstones of NEPA—input from a diverse number of persons and organizations—can ensure that land management agencies reach the best result. The Boise National Forest Silver Creek project began as a typical fuel reduction effort in a roadless area, with plans to harvest ponderosa pine to pay for the project. During the NEPA process, the agency was receptive to public comments which helped identify the project's shortcomings before resources were futilely expended. The public comment and dialogue after the draft environmental impact statement (EIS) was issued resulted in the Forest Service developing and ultimately adopting a new alternative that avoided the construction of new roads in the roadless area and focused on the most pressing problems of illegal ATV stream crossings and the need for fire reduction near a private resort. This change in outcome represented the best application of the Forest Service resources and would not have been possible without extensive public involvement. (Preservation/Conservation Organization, No Address - #498.2.10200.XX)

#### **SIERRA NEVADA FRAMEWORK AND YOSEMITE NATIONAL PARK MANAGEMENT PLAN**

The NEPA process for the development of the Sierra Nevada Framework and the Yosemite National Park management plan represent NEPA successes. In both examples, two essential principles were respected and adhered to. First, agency decision-makers did not view NEPA as a process to justify a pre-determined "preferred alternative." Rather, the agencies used NEPA as it was intended—a tool to disclose expected consequences of agency action before decisions are made. Second, both processes were fluid, transparent, and flexible and provided many opportunities for comment and interaction from interested parties throughout the process. The Sierra Nevada Framework process in particular excelled in opportunities for the decision-makers and the interested public to gather information through public meetings and website and electronic tools. (Preservation/Conservation Organization, No Address - #498.2-3.10200.XX)

#### **OSM LAND'S UNSUITABLE PETITION FOR MINING EIS NEAR FALL CREEK FALLS STATE PARK**

The Clinton Administration sought to allow coal mining in the watershed of the South's most popular state park, Fall Creek Falls. The state's scoping comments and draft EIS comments, with private environmental organization input, helped the Department of Interior identify legal mechanisms to avoid a takings claim for a decision to limit or ban mining. Local tourism was protected by a legally sound decision.

#### **TVA LAND BETWEEN THE LAKES EIS**

The state commented in response to a proposal by TVA to consider disposing of the Land Between the Lakes property to focus more on its power and river roles. Many options were considered. With local and private input, the state position highlighted the need to preserve the land for its traditional uses. The state's reviews showed that the LBL transfer to the Forest Service was economically, technically and politically appropriate. This option was chosen.

#### **TVA COLUMBIA DAM LAND DISPOSITION AND WATER SUPPLY EIS'S**

Early state involvement and cooperative agency status helped TVA Navigate a 25-year-old controversy. Close coordination under NEPA was initiated between the state, TVA and local government to address a trust fund audit, disposition of funds, two environmental impact statements, a problem state agency and a state land use plan for the property. Based on thorough research by the state and TVA, the state received the land for recreation, trust funds provided for local water needs created by the abandoned

TVA dam project, an EIS identified local water options and the state created a newly protected State Scenic River. TVA repaired a very damaged public image.

#### **DOE CLEANUP OF THE OAK RIDGE RESERVATION**

Numerous environmental assessments and environmental impacts statements issued by DOE helped the state to track numerous environmental and technical issues in the cleanup of the Oak Ridge reservation. Decades of chemical and radioactive contamination exist. Without the NEPA process to break the issue into manageable pieces, these extremely complex and technically detailed issues could not be analyzed and resolved effectively. The DOE NEPA process ensures state and local input.

#### **SOUND STATE POLICY DEVELOPMENT**

The State of Tennessee models its most critical policy assessment on the NEPA process. Scoping, broad technical input and review, general public and private organization consultation, alternatives analysis and impact assessment as a process help the state resolve many complex policy issues with less controversy and failure. When the process is not followed we invariably fail. This process applies to all major policy concerns. (State of Tennessee, No Address - #543.13-14.10800.XX)

### **95. Public Concern: The CEQ Task Force should consider examples of effective NEPA implementation with early involvement.**

#### **AIRCRAFT CARRIER HOMEPORTING**

The Navy began planning for facilities development for the newest aircraft carrier homeports on the west coast early in the Military Construction Program funding process. Through the involvement of Environmental Planners in San Diego, Pearl Harbor, and the Pacific Northwest, common needs and purposes were identified for several proposed facilities. The Navy supported a Pacific Fleet-wide environmental assessment of homeporting the new aircraft carriers and the facilities that would be needed to provide acceptable homeports.

The development of a strategic plan of action was a watershed event in the early planning for this NEPA compliance effort. An interdisciplinary team had been established, but little progress had been made toward preparing a NEPA document. After prolonged discussion with the help of a consultant, the working team agreed there was a multitude of potential alternatives that met the purpose and need of the proposal. Thus, the Navy strategy called for a planning study to identify which alternatives were reasonable to pursue in further analysis by the NEPA document.

The preparation of the EIS that followed these discussions was effective and efficient in achieving Navy goals. Significant issues were identified and analyzed. The public commented extensively on controversial issues involving alternative selection. Very few, if any, serious issues arose regarding the fundamental purpose and need, or alternative development. Responding to comment on the fundamentals of the decision was a matter of the action scope, which had been well established in the early planning. Stakeholders generally supported the logic flowing from the statement of the proposed action through the alternatives listing. Thus, this EIS document was relatively easy to produce and complete. In the northwest, the EIS formed a solid basis for obtaining the necessary permits including integration of Clean Water Act and CERCLA requirements. (Individual, Bainbridge Island, WA - #467.4-5.10230.XX)

#### **FIRE FIGHTING FACILITY**

A Fire Fighting training facility had been proposed for construction at a base in the Seattle area. In early planning, a team including proponent representatives concluded the purpose of the proposed facility was to service all Navy employees in the region, not just at the base where it was slated to be located. The team agreed after clearly identifying the proposed action and purpose and need that one action alternative would be to use existing State and Local fire fighting facilities.

In conclusion, the proponent withdrew the proposed Military Construction project in favor of revising the location and timing of training activities. The proponent's needs were met and the purposes were achieved by continuation of ongoing activities. (Individual, Bainbridge Island, WA - #467.6.10230.XX)

### **WATERFRONT SECURITY BARRIER**

A proponent working team was established to plan environmental compliance for installing and operating a floating security barrier to protect against potential water-borne threats. During this time, several barrier types were in consideration and the actual location for the barrier was unknown. The team charged with preparation of an Environmental Assessment (EA) developed the proposed action and purpose and need from the limited amount of information available before design had been conducted. The early planning allowed the proponent to clearly see the combinations of barrier type and location available for consideration. The details of the individual barrier design were not significant issues in the NEPA analysis.

In this effort, the deliberate evaluation of real alternatives reduced risk of controversy, thus allowing consideration of real issues. The alternative structure was consistent with concurrent engineering and economic evaluations also. Thus, in the true spirit of NEPA, the decision to install a specific security barrier considered potential environmental effects and included innovative design constraints to avoid adverse effects on listed endangered fishery species. The Environmental Document was an effective equal partner in presenting decision factors to the decision maker. It formed a solid basis for compliance with the Endangered Species Act and the Rivers and Harbors Act. Stakeholders supported the effort. (Individual, Bainbridge Island, WA - #467.6-7.10230.XX)

### **96. Public Concern: The CEQ Task Force should prepare case studies of ineffective practices.**

#### **IN ORDER TO CAUTION AGENCIES ABOUT IMPROPER ACTIONS**

CCNS believes that the NEPA Task Force should also prepare case studies that include examples of bad practices in order to caution federal agencies about improper actions. (Preservation/Conservation Organization, Santa Fe, NM - #571.8.10200.F1)

### **97. Public Concern: The CEQ Task Force should consider examples of NEPA abuses.**

#### **ELIMINATION OF REVIEW FOR OCEAN ACTIVITIES**

Prompted by an NRDC lawsuit challenging a Navy program that tests powerful sonar systems responsible for harming whales, the Bush administration has taken the position that NEPA does not apply beyond the U.S. territorial sea (three nautical miles from the nation's shorelines) to the so-called Exclusive Economic Zone (EEZ). The EEZ is a vast area extending 200 nautical miles from shore and covering millions of square miles of rich ocean habitat where the U.S. exercises exclusive control over fisheries, endangered species, marine habitat and other natural resources.

On September 20, 2002, a federal judge in Los Angeles rejected the administration's position. Nevertheless, the White House may seek to change the law to strip NEPA protection from the oceans. If this major policy change occurs, it would open up a Pandora's box of potentially harmful environmental consequences. For example, if NEPA no longer applies to activities within the EEZ, the area then would be subject to unregulated waste dumping, commercial fishing, oil and gas drilling, military maneuvers, and other activities—all without careful review of environmental impacts, assessment of alternatives, and opportunity for public scrutiny that NEPA currently provides. (Preservation/Conservation Organization, Washington, DC - #471.34.10200.XX)

#### **ELIMINATION OF REVIEW FOR TIMBER HARVEST IN NATIONAL FORESTS**

In his Healthy Forests Initiative, President Bush has proposed to waive environmental review and appeals for certain logging projects in the national forests. The summer's record wildfire season is the excuse. However, the proposal does little to address the problem. Rather than getting on with the non-controversial removal of small trees and brush that will best protect communities, the administration is proposing to waive NEPA for a broad category of commercial logging, even in remote, wild—roadless—areas of national forests. Congress is now considering free standing legislation based on the President's proposal (H.R. 5214, H.R. 5309, H.R. 5319), as well as NEPA waivers in the Senate Interior

appropriations bill (S. 2708). (Preservation/Conservation Organization, Washington, DC - #471.34-35.10200.XX)

#### **ACCELERATION OF COALBED METHANE DEVELOPMENT IN WYOMING'S POWDER RIVER BASIN**

BLM's draft environmental impact statement for thousands of new gas wells in the Powder River Basin relies on out-dated environmental analysis that did not even consider coalbed methane development. In addition, the draft EIS failed to address a full range of alternatives. The draft looked at only two action alternatives, both of which allowed the maximum number of wells desired by industry and neither of which explored different timing, spacing, mitigation, directional drilling and reclamation options. The BLM has conducted no analysis regarding whether fewer wells, combined with improved energy efficiency and conservation measures (such as higher appliance efficiency standards and increased fuel economy standards for automobiles), provides a better alternative. The U.S. Environmental Protection Agency, the National Park Service and the U.S. Fish and Wildlife Service have all criticized the draft EIS prepared by BLM. (Preservation/Conservation Organization, Washington, DC - #471.35.10200.XX)

#### **NATIONWIDE WETLANDS DESTRUCTION**

Last summer, the U.S. Army Corps of Engineers issued a draft programmatic environmental impact statement that ignores the significant adverse impacts of the agency's nationwide permit program for filling wetlands. U.S. Army Corps of Engineers, Draft Nationwide Permits Programmatic Environmental Impact Statement (July 2001). The Corps has done little to assess the cumulative impacts of the numerous activities—such as housing development, surface coal mining and road construction—on the land and people. The agency assumes, despite undisputed scientific research to the contrary, that mitigation will prevent any significant environmental impacts from the wetlands destruction that is authorized. (Preservation/Conservation Organization, Washington, DC - #471.35.10200.XX)

#### **HIGHWAY EXPANSION**

In an effort to speed up the pace of transportation projects, highway proponents have blamed the environmental review process for delays and have suggested restricting opportunities for public participation and imposing unrealistic deadlines on participating federal agencies. In fact, where delay has occurred, recent data have shown that more often than not such delay resulted from lack of funding and project complexity—not environmental review. Federal Highway Administration, Reasons for EIS Project Delays (September 2000).

On September 18, 2002, the Bush Administration issued an executive order highlighting the problem of delay in highway projects. Some in the Bush Administration and in Congress are considering legislative proposals to limit environmental review requirements and public participation opportunities for highway projects. (Preservation/Conservation Organization, Washington, DC - #471.35-36.10200.XX)

#### **SEISMIC EXPLORATION IN UTAH'S REDROCK CANYON COUNTRY**

In its efforts to encourage new oil and gas drilling, BLM has failed to conduct the environmental analysis required by NEPA before approving the Yellowcat seismic project near Arches National Park. BLM has authorized WesternGeco to take 50,000 lb thumper trucks across miles of fragile desert soil to test for new oil and gas deposits. BLM failed to consider alternatives to the destructive trucks such as shot-hole seismic testing or using existing paths instead of new ones. BLM also failed to address damage to wildlife habitat and soils that could last hundreds of years from increased off-road vehicle use encouraged by the new access created by the thumper trucks. (Preservation/Conservation Organization, Washington, DC - #471.36.10200.XX)

### **98. Public Concern: The CEQ Task Force should carry out an in-depth study of the misapplication of NEPA in the Animas-LaPlata project.**

Suffice it to say that an interpretation of NEPA which allows for the kind of malice aforethought, fraud and collusion so flagrantly and pervasively perpetrated in the management and generation of the 2000 A-LP [Animas-LaPlata project] EIS, stands as an indictment, not only of the lead agencies and the cooperating Environmental Protection Agency, but of the President's Council on Environmental Quality. I strongly urge you to undertake an in-depth study of the misapplication of the NEPA in the

unprecedented case of the A-LP, and to fully investigate the failure of Federal agencies to refer the A-LP EIS to the CEQ. (Individual, Farmington, NM - #91.11.10200.XX)

## Agency Compliance with NEPA

### 99. Public Concern: The CEQ Task Force should require agencies to comply with CEQ regulations and guidelines.

I believe the implementing regulations and guidelines for NEPA by the Council of Environmental Quality are quite good. They have been revised over the years, and I think little changes are required at this time.

Unfortunately, I must say that those regulations and guidelines are often not followed or understood by the implementing agencies. Some agencies, to this day, resist beginning the NEPA process. Once begun, they miserably fail to follow the CEQ regulations and guidelines. (Individual, Las Vegas, NV - #359.2.10000.XX)

I strongly believe the NEPA and related regulatory requirements are the foundation for making decisions and taking actions that will protect our environment. While there are a number of environmental laws and numerous regulations that are intended to protect our environment, I consider the NEPA to be the most important and fundamental. The NEPA was intended to open up the decision-making process to include a variety of stakeholders and to hopefully allow for better decisions to be made at earlier stages of the decision-making process. If NEPA were correctly followed and implemented, I believe we would have better decisions, better environmental protection, and less litigation and delay. Unfortunately, I must say that I seldom see federal agencies following the principles and regulations of NEPA to allow those objectives to be achieved. (Individual, Las Vegas, NV - #359.1.10200.XX)

One way in which federal agencies, related agencies and private parties frequently delay their own work is by ignoring the requirement to integrate "the NEPA process into early planning." 40 C.F.R. [Section] 1500.5(a). Whether it is federal managers on public lands or international negotiators at the State Department, federal officials from federal agencies frequently do not comply with NEPA to the required "fullest extent possible." 40 C.F.R. [Section] 1500.6. (B1-3). Instead, we frequently see agencies either ignore NEPA or use its structure to reach pre-ordained results. Examples here include, but are not limited to:

- complete lack of on-the-ground environmental analysis for various public land actions, whether it be timber harvesting or trail/road construction in wildlife (e.g., lynx, grizzly bear, salmon) habitat, or oil and gas leases/actions on sensitive public lands;
- shirking relevant environmental procedures with regard to federal road or other transportation infrastructure development;
- failure to meaningfully incorporate endangered species or general environmental information into the U.S.-Canada softwood lumber negotiations and discussions;
- refusal to prepare meaningful environmental analysis regarding the impacts of active sonar testing on sensitive marine wildlife and ecosystems, including the omission of relevant information; and
- absence of any comprehensive environmental analysis regarding the impacts of dams and diversions upon the Colorado River, its habitat and its imperiled species. (Preservation/Conservation Organization, Washington, DC - #465.5.10200.XX)

Clearly state how to prevent the outright avoidance of the NEPA process.

I have discovered five different approaches used by the Forest Service to avoid NEPA.

Highly Hostile. A federal Senator tells the Forest Service to not use the NEPA process for a major land deal. The Forest Service agrees and then tells employees not to speak negatively about the deal.

Sneakiness. Forest Service employees perform management actions outside of public notifications and the NEPA process.

Decision Memo Abuse. Certain management activities have been incorrectly classed as activities that can be categorically excluded.” Also, larger projects are broken down and done piece-meal.

Background Development. Works privately with “partners” to develop and promote activities and mutually beneficial outcomes.

CEQ Guidance.

The latter item occurs at the request of the Forest Service, not the public. Planning for “emergency” responses to events, such as ice storms or insect outbreaks, can be done prior to these events. Everyone can agree that certain things should be done—even without intervention by the CEQ. However, the Forest Service can cause the CEQ to get embroiled in the approving of matters (impacts) far beyond their capabilities to understand. The CEQ should redirect federal agencies to prepare for situations where quick work is needed. However, the public deserves the right to appeal projects and components of projects, especially when they are unnecessary or too damaging to the environment. (Individual, Nashville, TN - #513.19.10310.XX)

#### **BY INCLUDING MORE PRACTICAL INFORMATION ON THE CEQ WEBSITE**

The CEQ web site (<http://www.whitehouse.gov/ceq/>) contains little practical information on preparing documentation to comply with NEPA. Model documents that satisfy CEQ expectations could be attached. Examples of successful tiering or adopting of documents could also be shown, attached, or described. (United States Air Force, Washington, DC - #525.26.330.XX)

#### **THROUGH USE OF AN ENVIRONMENTAL PLANNING STRATEGY**

The Environmental Planning Strategy is recommended for CEQ dissemination as a tool to help comply with the NEPA process. The tool would involve three components: a proponent-based Team, working from a similar knowledge base about NEPA, producing a report summarizing the compliance information normally contained in Chapter 1 and 2 of the NEPA Environmental Document. The three parts may be as elaborate or as minimal as necessary to support the proposal at hand.

The proponent establishes a working team to conduct the Environmental Planning Strategy. The environmental planning involvement early will encourage original thought. An established team also encourages communication of a plan of action for the NEPA project, the scope for NEPA analysis, and the type of document needed. The team’s efforts will develop a point of departure for easier document production.

An Environmental Professional briefs the team on NEPA compliance. The team members will have various understandings about NEPA. The briefing is intended to develop a unified understanding about NEPA and a conceptual framework for the work to come. Information that is usually helpful includes the requirements for and the ability of EISs, EAs, and Categorical Exclusions. Amplifying agency rules can be referenced also. The brief should also address the concepts of Proposed Action, Purpose and Need, Alternatives, Significant Issues and how these concepts are related in the Environmental Document.

Following introductory briefings, the Environmental Professional facilitates the team through the NEPA regulations as they apply to the agency, allowing the team to develop a management consensus about the strategies to be used in each case. The team will develop a plan of action for the conduct of NEPA compliance for a specific proposed action. The use of boilerplate strategies is discouraged since it stymies original thought.

Finally, the team will produce a report summarizing team strategy for Environmental Planning compliance. The report should present a brief summary of the Proposed Action, Purpose and Need, Alternatives to be evaluated, Significant Issues, and which NEPA document type is appropriate to the action. The report is essential in accounting for the work of the team and setting a base plan of action for preparing a NEPA document. This report also forms the basis for continued teamwork under the proponent’s supervision. Within DOD, such a report may already be required to initiate environmental planning. For example, the Navy requires the proponent to notify the chain of command of the intent to prepare a NEPA document. The Air Force provides a format for this type of notice. In each case, the requirement calls for a brief summary of the basic NEPA concepts identified above. (Individual, Bainbridge Island, WA - #467.13-14.10200.XX)

## TO ENSURE CONSIDERATION OF REASONABLE, LESS ENVIRONMENTALLY HARMFUL ALTERNATIVES

The value of active NEPA compliance is shown in two recent cases in Illinois where the procedural requirements have been at issue. The first involves the City of Marion's (Illinois) proposal to build a dam and reservoir to provide water to both Marion and the nearby Lake of Egypt Water District. Marion's proposal would have had numerous significant environmental impacts, including the damming of one of the last free-flowing streams in Illinois; flooding of one-and-a-half square miles of wetlands, woods, fields, and farms; and the destruction of habitat for bald eagles and two federally protected bats. Furthermore, the goal of providing more water to Marion and the Water District could have been achieved by the less environmentally destructive alternative of obtaining water from two different existing sources, rather than from a single new lake.

Despite these environmental impacts, the U.S. Army Corps of Engineers, from which the City of Marion would have to obtain a permit before the project proceeds, refused to carry out the analysis required by NEPA. First, the Corps declared that the project would have no significant environmental impacts. A federal judge in the U.S. District Court for the Southern District of Illinois rejected this contention and, in 1992, ordered the Corps to prepare a full EIS for the project. The Corps did so in 1996, but, once again, the Corps failed to comply with NEPA. On review, the U.S. Court of Appeals for the Seventh Circuit found that the Corps completely failed to consider the reasonable alternative, including obtaining the water from two other viable sources. *Simmons v. U.S. Corps of Engineers*, 120F.3d 664 (7th Cir. 1997).

As the Seventh Circuit noted in its opinion, the Marion case "provides a textbook vindication of the wisdom of Congress in insisting that agencies follow [the procedural requirements of NEPA] in the first place." *Id.* at 666.

Without active enforcement of NEPA, there could have been no consideration of the less environmentally destructive alternative. Moreover, if the Corps has fully followed the requirements of NEPA in the first instance, it could have either settled on the two other water sources as viable alternatives or, instead, sought to justify why these alternatives were not reasonable. By seeking to limit the NEPA review process, the Corps has delayed the ability of the City of Marion and the Water District to obtain new water while also posing dangers to the environment.

A second example involves the Illinois State Toll Highway Authority's ("ISTHA") and the Illinois Department of Transportation's ("IDOT") proposal to build a very expensive (\$700 million) 12.5 mile extension of the 1-355 tollway into Will County, Illinois, the far-south suburban area in the Chicago region. The proposed tollway would: harm numerous natural and historical sites; destroy a significant amount of wetlands, wildlife habitat, and forests; and bring additional sprawl to this region of the state. In addition, there are alternatives involving local road improvements and better public transportation and planning that would achieve the traffic reduction goals of the 1-355 proposal more effectively and for less money.

In 1966, the IDOT issued an EIS that did not seriously explore alternatives to the proposed expensive new tollway and, thus, failed to comply with this core requirement of NEPA. On review, the federal judge for the United States District Court for the Northern District of Illinois held that IDOT acted arbitrarily and capriciously by failing to fully consider and seriously explore alternatives. *Sierra Club v. U.S. Department of Transportation*, 962 F.Supp.1037 (N.D.Ill.1997). In addition, the Court held that IDOT's EIS failed to adequately consider the air pollution impacts of the proposed new tollway. *Id.*

Once again, the 1-355 example demonstrates that it is only through careful compliance with the requirements of NEPA that the environmental protection goals of NEPA can be achieved. Without NEPA, the environmentally destructive 1-355 project would have been built without an adequate consideration of less destructive alternatives that would achieve better results at a lower cost. ISTHA's and IDOT's failure to fully comply with NEPA has unnecessarily delayed the creation and implementation of such alternatives. (Preservation/Conservation Organization, Chicago, IL - #87.11-13.10200.XX)

## TO AVOID ECONOMIC AND ENVIRONMENTAL COSTS

Compliance with NEPA is essential for providing the public with a minimum base of knowledge on projects using Federal taxpayer funding. Without the information provided in NEPA documents, the public simply cannot participate in important decisions affecting their environment in a meaningful

fashion. Compliance with NEPA has resulted in avoidance of huge economic and environmental costs across the nation and has protected environmental quality and human health in a variety of ways. However, these benefits are impossible to fully quantify since they represent costs that are never incurred. Thus, conventional cost/benefit analysis will miss these benefits and instead focus only on the costs, as perceived by proponents of projects and activities affected by NEPA. (Preservation/Conservation Organization, Madison, WI - #553.2.10200.XX)

#### **TO AVOID BAD FAITH PROPOSALS**

NEPA and the CEQ should provide further help for federal agencies to avoid bad faith proposals.

It is the duty of the Administration to prevent the pursuit of proposals in an environment of distrust and intentional misdeeds. Also, everyone needs to be able to recognize failures in the public planning process since it is the focus of federal agencies. Environmental-minded citizens have been calling for a halting of commercial logging on the Ouachita NF for a variety of reasons. Congressmen and businessmen may describe us as “radical”—but they don’t understand the management situation provided by the Forest Service. Here are some of the elements of the management environment that many have seen on the Ouachita NF.

- Lack of information and understanding of the scoping/planning process.
- Lack of trust of the Forest Service at all levels, especially on site-specific projects.
- Lack of protection of forest elements from the Forest Service.
- Lack of government-provided legal resources to assist citizens with participation.
- Lack of time and money to be significantly involved with all individual projects.
- Lack of knowledge about how proposals can be defeated without appeals/lawsuits.
- Lack of public support for the Forest Service and many of their proposals.
- Lack of external audits of all phases of planning, including implementation.
- Lack of adequate, honest, and knowledgeable Congressional oversight.
- Lack of CEQ oversight.
- Lack of a permanent atlas of forest stands.
- Lack of a master bibliography of local research.
- Lack of an understanding of activities and their short-and long-term effects.
- Lack of external scientist involvement with all phases of management concerns.
- Lack of unbiased research.
- Lack of peer review of the interpretation of local research results.
- Lack of information systems that support public awareness.
- Lack of suitable management documentation.
- Lack of audits of all financial aspects of management of the Ouachita NF.
- Lack of respect for those who oppose Forest Service proposals and conclusions.
- Lack of published, detailed procedural standards for all employee activities/tasks.
- Lack of quality communications with the public.
- Lack of access to uncollected and/or uncompiled information.
- Lack of ability of the public to initiate forest planning or amendments.
- Lack of ability of the public to incorporate changes in an EIS or an EA.
- Lack of interest in avoiding repetitive and cumulative effects to specific sites.
- Significant impacts are routinely and illegally proposed and implemented under decision memos.
- Political partnering with the timber industry and others.
- Polarization of communities.
- Intimidation of citizens for trying to participate in the protection of public lands.

I believe that my experience shows that the Forest Service remains stuck in Stage I (strong resistance to the implementation of NEPA), i.e. using the broad categories cited by N.A. Robinson (see page 12 of

Twenty-five Year Report). I also believe that the leadership of the Forest Service could not do such a poor job without planning to do such a poor job. It does not seem that the Forest Service is merely offering “strong resistance”—but they are setting the stage for the defeat or the weakening of the law to meet “internal” desires. “Whether an agency reaches this [third] stage of evolution seems to depend largely on the commitment of individuals in an agency” (statement of Dinah Bear, CEQ General Counsel, see last reference). This would seem to be an embarrassing situation for two reasons: a) the inability of the Department of Justice and the Office of General Counsel to reach the same conclusion and to identify these individuals and have them dismissed; and b) the crude realization that federal authorities (responsible persons) find it acceptable to look the other way when they learn about glaring problems. (Individual, Nashville, TN - #513.22.10440.XX)

#### **100. Public Concern: The CEQ Task Force should recognize that delays are caused by agency failure to comply with NEPA.**

The existing NEPA regulatory framework has the necessary tools in place for an effective and efficient process than can work for all involved—the agencies, industry and the public—if agencies would simply follow these clear guidelines. The failure to do so by the agencies, as encouraged by industry, is where the NEPA process breaks down. When the public is intentionally left out of the NEPA process, agencies repeatedly rely upon old and outdated NEPA documents to justify proposed actions, and in newly developed NEPA documents the agencies fail to describe the existing environment and develop a full range of reasonable alternatives, the NEPA process deteriorates. The result—often with the agency required to supplement or start over—is what industry perceives as “delay” and agencies refer to as “backlog.” A better way to view the NEPA process is that if things are done correctly the first time around, instead of agencies taking short cuts, the result will be a more efficient process that more fully educates, involves and informs the interested and affected public, thereby leading to agency actions that utilize the best science, latest technologies and mitigation measures to balance extractive uses on our public lands while preserving other resource values and the multiple use ethic. (Preservation/Conservation Organization, Washington, DC - #475.47.10200.XX)

Some have criticized the Act for delaying unnecessarily agency decisions and actions; National Park Conservation Association believes strongly that this is not the case. It is, in fact, an agency’s non-compliance with the Act and its implementing regulations that cause delay. Additionally, the delay caused by an agency’s failure to comply with the Act is absolutely necessary. It is imperative that both the agency and the public is fully aware of the impacts of a proposed action prior to committing significant resources towards implementing an agency decision. (Preservation/Conservation Organization, Washington, DC - #539.1.10200.XX)

#### **101. Public Concern: The CEQ Task Force should provide adequate guidance for agencies to comply with NEPA.**

Agencies would obtain greater efficiencies with NEPA if requirements were spelled out more clearly and administrative uncertainties were minimized. NEPA gives the federal agencies, in conjunction with CEQ, the authority to define and develop procedures “which will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations.” (43 U.S.C. 4332 (B)).

CEQ should better and more clearly define key NEPA terms such as “major federal action,” “no action alternative” and “significant impacts on the human environment,” so action agencies have a better idea of what their requirements are. NEPA processes need to be better and more clearly defined in order to withstand judicial attack. The NEPA Task Force needs to develop a clear administrative roadmap for satisfying NEPA requirements, enact it into regulations, and defend it in court. While a certain amount of agency flexibility is necessary to accommodate different agency situations, CEQ should take a stronger position on core elements of key aspects of the NEPA process. (Business, Washington, DC - #403.9.10200.XX)

We hope to see some movement in the direction that the CEQ takes in revising the NEPA guidelines that will not only benefit the health of our forests, but also to re-establish the credibility of the various agencies within the federal government to the American public.

The US Department of Agriculture and the US Department of the Interior must be given reasonable guidelines from this administration to ensure the health and sustainability of our natural resources. The guidelines must be concise and clearly defined in order to avoid the litigation that has been a result of the broadness of interpretation of the current NEPA regulations and guidelines. (Timber or Wood Products Industry, Cleveland, TX - #402.18.10200.XX)

The broad, general language defining the environmental review process has never been adequately supplemented by agency direction. Federal courts have defined the scope and direction of NEPA policy, and not the agencies that have to comply with it. The result is uncertainty at all levels about what is needed to comply with NEPA. Federal agencies routinely do much more analysis than is necessary to address an issue in order to make an analysis defensible in court. NEPA decisions are also routinely appealed and litigated. A recent report issued by the Forest Service indicates that over 40 percent of agency time is spent on NEPA or NEPA-related activities. The “procedural” process envisioned by Congress has become a substantive one, as proposed agency projects collapse under the weight of NEPA requirements. (Business, Washington, DC - #403.2.10200.XX)

#### **WITH PROCEDURES DETAILED ENOUGH THAT AGENCIES CAN BE HELD ACCOUNTABLE**

The public desires detailed procedures or at least clear enough so that the agencies can be held accountable. (Preservation/Conservation Organization, Eugene, OR - #106.19.10200.XX)

### **102. Public Concern: The CEQ Task Force should investigate agencies that do not comply with NEPA.**

There should be an investigation of the Nevada and Ely BLM offices and other federal agencies that operate in Nevada for their utter failure to comply with NEPA again and again. The way they intrude into local government to control the outcome of NEPA comments and the way they encourage lawsuits to avoid good land management. (Individual, Pioche, NV - #343.2.10250.F1)

### **103. Public Concern: The CEQ Task Force should recognize that there is a conflict of interest when the agency conducting the action is also the agency responsible for compliance with NEPA.**

One of the problems that we have identified is that the agency that is taking the action must prepare the NEPA documents. We feel that they are able to guide the document to the conclusion that they want. Most of the projects have a pre-determined conclusion meaning that the Record of Decision has already been made and that they are just going through the motions because they have to. It seems that it would be a conflict of interest for the agency conducting the action, be responsible for NEPA compliance. (Oglala Sioux Tribe Environmental Protection Program, Pine Ridge, SD - #455.2.10300.XX)

### **104. Public Concern: The CEQ Task Force should conduct a special NEPA compliance study on the Department of Defense.**

NEPA could and should have a bigger impact on military projects and operations. CEQ should conduct a special NEPA compliance study on the Department of Defense, including its stupid security exemptions: “We neither confirm or deny the presence of nuclear weapons and other weapons of mass destruction that might obliterate your bio-region.” (Preservation/Conservation Organization, Seattle, WA - #363.6.10500.XX)

### **105. Public Concern: The CEQ Task Force should require regulatory or oversight agencies to legally enforce compliance with NEPA decisions.**

A major concern that the CAP has with NEPA is not addressed by the CEQ comment solicitation. Specifically, our organization foresees no realistic improvement in quality of analyses and consistent

implementation of mitigating actions unless the NEPA process is overseen by a regulatory agency. To ensure follow-through, compliance with decisions made under NEPA should be legally enforceable by regulatory or oversight agencies. (Civic Group, Oak Ridge, TN - #88.3.10200.XX)

## *Consistent Application of NEPA*

### **106. Public Concern: The CEQ Task Force should ensure consistent application of NEPA.**

A recurring problem the County has faced when addressing NEPA on our FHWA assisted transportation projects has been inconsistency in interpretation of NEPA "policies". In our case, the California Department of Transportation (Caltrans) has been the local agency contact who has provided their interpretations of what actual environmental studies would be require for various projects we have constructed. Our projects have included road resurfacing projects, bridge replacement projects, safety sign projects and a seismic retrofit of an existing bridge. In all cases, the level of documentation for these projects has varied depending upon circumstances. However, we have had individuals require studies or reports where we have disagreed based on differing opinions and interpretations of what NEPA actually requires. This has resulted in delay, and in some cases, eliminating of projects within our region. The State Environmental staff mention they are following Federal mandates via the NEPA process and local agencies such as ourselves have little recourse other than to provide whatever documentation the State staff dictate. In few cases are they willing to consider common sense or local issues.

It would help if NEPA Task Participants could consider a mechanism within NEPA that could provide better consistency in application of requirements for various projects. (Imperial County Department of Public Works, El Centro, CA - #15.1.10200.XX)

It is the tribe's belief that although NEPA sets up guidelines, most agencies have developed their own process. Not all of the agencies are consistent, each have their own way of dealing with NEPA, which creates confusion. (Oglala Sioux Tribe Environmental Protection Program, Pine Ridge, SD - #455.3.10200.XX)

#### **TO ASCERTAIN LEGALLY DEFENSIBLE PLANNING PROCESSES**

Congress continues to struggle with issues perceived to be whether to eliminate the NEPA or eliminate avenues of appealing the process.

We suggest that the Task Force considers guidelines that explore ways to set attainable thresholds with guidelines for rules so everyone is on the same page when applying the NEPA. One overriding necessity will be consistency of application of regulations between the various federal agencies to ascertain legally defensible planning processes. If the threshold of guidelines is placed unreasonably high or remains ambiguously worded, we will repeat history and the litigations resulting from those past debates. (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.1.10200.XX)

#### **BY STREAMLINING THE NEPA PROCESS**

I recently analyzed 500 bridge permit cases dating from 4th quarter of FY93 through 3rd quarter of FY02. These cases cover the gamut of environmental documentation.

The average processing times should interest you. These are the times from receipt of completed application for bridge permit until the permit is issued. Most of the in-between time is used complying with NEPA regulations.

The results are:

Categorical Exclusions = 9.8 months; N = 232

EA/FONSI = 9.3 months; N = 72

EIS/FEIS = 10.6 months; N = 63

FONSI = 10.2 months; N = 133

Analyzing the data distributions for each type of case using the t Test, shows no significant processing time differences. In my opinion, significant differences should exist if the NEPA process is being applied consistently and logically.

One would expect a significantly shorter time for a Categorical Exclusion than for an EIS. The sequence of increasing processing times should be: CE < FONSI < EA/FONSI < EIS.

Therefore, I suggest that you look for advice on streamlining/compressing the NEPA process, since the processing times for our agency are probably typical for other agencies.

The above result partially answers question E.3 regarding whether improvements are needed in the CE process specifically. The answer is yes. A CE should not take the same time as an EIS to process. (Government Employee/Union, Bowie, MD - #17.1.10200.E3)

#### **BY ESTABLISHING GUIDELINES FOR ALL AGENCIES TO FOLLOW**

While the fundamental NEPA procedures differ little from one federal agency to another, each agency has its own way of implementing NEPA. If the purpose of the NEPA Task Force is to improve and modernize NEPA then may we suggest that the Council on Environmental Quality establish Guidelines for all federal agencies to follow. Each and every federal agency must interpret NEPA as a supplement to its existing authority and is required to view its traditional policies and missions in light of NEPA's environmental objectives. Unfortunately with each federal agency interpreting NEPA differently often leads to confusion when dealing with more than one federal agency. (Santa Barbara County Public Works Department, Santa Barbara, CA - #79.1.10200.XX)

#### **BY ESTABLISHING OBJECTIVE CRITERIA**

The mere availability of improved technology for information synthesis and or retrieval will not by itself assure better decision-making. Proper application of NEPA will require consistent application of objective criteria. While we believe it essential that CEQ reemphasize the NEPA guidelines directing federal agencies to reduce needless environmental analysis, it is unfortunately evident that should CEQ limit its action to providing further guidance, NEPA will continue to smother long standing successful resource management programs. (Michigan Department of Natural Resources, Lansing, MI - #563.17.100.XX)

#### **BY ELIMINATING REDUNDANCY IN THE INTERPRETATION OF NEPA**

Duplicate requirements: Each federal agency has developed its own procedures for NEPA implementation, creating inconsistency in the interpretation of NEPA. The Council on Environmental Quality's (CEQ) regulations are now superceded and overshadowed by multiple regulations promulgated by federal agencies who believe their regulations to be superior to all others. Other redundant laws and regulations relating to NEPA implementation have been promulgated. This redundancy must be eliminated. For example, Section 4(f) and Section 106 provide redundant protection of historic properties. Section 404 of the Clean Water Act and NEPA require redundant federal decisions based on a review of project factors such as Purpose and Need, Alternatives, Costs, and Environmental Impacts. (Virginia Department of Transportation, No Address - #203.4.10500.XX)

#### **BY MAKING THE POST-DECISIONAL ADMINISTRATIVE REVIEW PROCESS MORE CONSISTENT**

A general area of improvement would be to make the post-decisional administrative review process more consistent across the federal bureaucracy. The US Forest Service has a well-developed administrative appeal process. The BLM has an archaic quasi-judicial process that is more geared toward private developers who are trying to protect an investment backed expectation, but it should be reoriented to facilitate public interest appellants who are seeking to protect publicly enjoyed natural resources. The U.S. Fish and Wildlife Service lack any administrative review procedure, even though they make lots of decisions balancing natural resource conservation and exploitation on federal lands (such as farming and logging on national wildlife refuges). (Preservation/Conservation Organization, Eugene, OR - #106.2.10200.XX)

#### **BY ENSURING THAT ALL AGENCIES HAVE THE SAME APPEAL REQUIREMENTS**

All Federal agencies should have the same requirements regarding NEPA. The Forest Service should adopt the same appeal requirements as those used by the Federal Highway Administration and Army

Corps. The Forest Services public involvement and appeals regs are extreme when compared to those of other agencies. (Individual, Hamilton, MT - #11.1.10200.F1)

### **107. Public Concern: The CEQ Task Force should consider that vague implementing rules lead to unequal application of NEPA.**

The vague implementing rules result in unequal application of the NEPA process. The Pittman-Robertson Act (PR) funds wetland management activities in Kansas that are properly CATEXed [from] further NEPA reviews, while the FWS decided that identical management in Michigan would require an EA. Contrary to NEPA's purpose "not to generate paperwork—even excellent paperwork—but to foster excellent action." 40 CFR 1501.1, Michigan was prevented from using PR for its most important purpose, wildlife management and restoration. It is incumbent upon CEQ to ensure that extraordinarily successful resource management programs, such as PR, are not stifled and eventually crippled by NEPA. (Michigan Department of Natural Resources, Lansing, MI - #563.9.10200.XX)

### **108. Public Concern: The CEQ Task Force should address the different NEPA requirements associated with different land allocations.**

It is the ski industry's experience that different land allocations appear to have different NEPA standards. At Brundage Mountain Resort (in Idaho), there are multiple communication sites on the summit ridge of Brundage Mountain. While not exactly similar, these communication sites and the nearby ski area have comparable earth disturbing activities—summit access roads, permanent buildings, steel towers, utility infrastructure, etc. Recently, the local USDA Forest Service unit produced a Communications Site Plan and contributed the necessary environmental analysis required by NEPA. The NEPA process was timely and efficient, which is a sharp contrast to what the nearby ski area operator has experienced during the same time period. The ski area was required to produce its own master development plan and finance the accompanying NEPA analysis. The operator has experienced one delay after another, largely due to the requests for additional information of a highly technical nature. The ski area has encountered consulting fees in excess of \$500,000.00 and the process remains unfinished. (Special Use Permittee, Hood River, OR - #528.5.10200.XX)

## *Funding for NEPA Processes*

### **109. Public Concern: The CEQ Task Force should encourage agencies to allocate greater resources to the NEPA process.**

The NEPA process cannot be implemented effectively, and the laudatory goals in the enabling legislation cannot be achieved, if inadequate resources are provided. All too often I find project proponents hosting scoping hearings, receiving comments, responding to comments and preparing the environmental documents. While some of these tasks may be shared with the private sector and project proponents, I often question the role and objectivity of the overseeing agency and decision-making official. The response I receive is that they do not have the resources. This creates the perception of a biased process that can be, and should be, challenged. Inadequate resources and a biased process work against the goal in NEPA of creating an open, efficient decision-making process. (Individual, Las Vegas, NV - #359.8.10200.XX)

Agencies must commit to, and be given the resources to complete, data collection necessary to analyze the impacts of their decisions adequately. Baseline data about current conditions are needed in order to be able to assess the impact of a proposed action. In addition, monitoring is needed to assess the actual impacts that occur once a decision is implemented. Unfortunately, monitoring and mitigation, even when provided for in an EIS, frequently do not occur. Environmental management systems need to be strengthened to help assure that agency planning and management are routinely directed to avoid and minimize adverse environmental, equity, and social impacts to measure their actual performance at accomplishing these goals, and to identify options for improved performance. (Preservation/Conservation Organization, Washington, DC - #469.9.10210.XX)

**WITH OUTSIDE RESOURCES CONTROLLED BY THE APPROPRIATE DECISIONMAKING OFFICIAL**

Greater resources need to be allocated by the agencies to the NEPA process. When additional resources need to be obtained from the outside, those resources should be controlled by the appropriate decision-making official whenever possible. (Individual, Las Vegas, NV - #359.8.10200.XX)

**WITH RESOURCES OPENLY AND CLEARLY IDENTIFIED**

Additional resources provided to a federal agency for implementing the NEPA process should be openly and clearly identified to reduce the perception that the project proponent is buying and controlling the NEPA process. (Individual, Las Vegas, NV - #359.8.10200.XX)

**110. Public Concern: The CEQ Task Force should encourage the full funding of NEPA implementation.**

Given the importance of active NEPA compliance, ELPC and CNT believe that the Task Force should consider ways to improve NEPA implementation that would increase the ability of agencies to fully comply with NEPA. In particular, any recommendations should work to strengthen both the informed decisionmaking and public participation goals of NEPA. With these goals in mind, ELPC and CNT encourage the Task Force to make the following recommendations.

**Fully Fund Agency Implementation:** The Task Force should recommend that all agencies receive sufficient resources to properly carry out the requirements of NEPA. Often, deficiencies in NEPA review are the result of a lack of the monetary and personnel resources necessary to implement NEPA. Such lack of resources creates an incentive for an agency to cut corners in carrying out project reviews under NEPA, and hinders the ability of an agency to complete its NEPA duties in a timely manner. Therefore, full agency funding will improve NEPA implementation and help achieve the goals of NEPA. (Preservation/Conservation Organization, Chicago, IL - #87.19.10210.XX)

**111. Public Concern: The CEQ Task Force should support state funding for NEPA.**

States need funding if they are to be expected to continue to prepare federal NEPA documents. Funding should be earmarked and provided to appropriate state agencies as part of the overall federal project budget. (Other, Washington, DC - #506.37.10210.B2)

**112. Public Concern: The CEQ Task Force should support a shift in federal funding to states from cooperative agreements to block grants.****TO GIVE STATES THE FLEXIBILITY TO ESTABLISH THEIR OWN ENVIRONMENTAL POLICIES**

A good national environmental policy encourages state-specific solutions to environmental problems unique to the individual state.

The states cannot take additional responsibility or develop innovative environmental policy solutions without financial support. Resources should be granted by the federal government to the states, in order to rectify environmental problems unique to their jurisdiction. Ideally, federal funding should be shifted from cooperative agreements to block grants allowing states to have the flexibility to establish their own environmental policies. (Business, Concord, NH - #16.3.10210.XX)

**113. Public Concern: The CEQ Task Force should support stable, non-grant federal funding for environmental assistance for small businesses.**

Business and industry, particularly small businesses, lack the professional expertise and support to cope with the myriad of federal permitting and compliance issues.

**Suggested Action:**

Support stable, non-grant federal funding for environmental assistance for small businesses. This can be done by federal government paying for state workers to assist them in compliance with federal environmental rules and regulations. (Business, Concord, NH - #16.11.10250.XX)

# NEPA Analysis Requirements

## Summary

This section includes the following topics: NEPA Analysis Requirements General, Application of Analysis, Level of Analysis, Scope of Analysis, Time and Expense of Analysis, Meaning of Significance, Analysis of Risk and Uncertainty, Cumulative Effects Analysis, Quality of Research/Best Available Science, and Determination of Need and Development/Use of Alternatives.

Note: Comments and concerns appearing in this section are very closely related to those which appear in the following section, NEPA Documentation. This is to be expected, since NEPA analysis and NEPA documentation are such closely interrelated topics. For organizational purposes, comments directed primarily toward documentation appear in the following section.

**NEPA Analysis Requirements General** – Many respondents comment in general that the Task Force should ensure adequate NEPA analysis. Relative to this general request, respondents suggest specifically that the Task Force not allow complex paperwork to diminish the need for environmental review on every project; clarify that analysis is required, regardless of how land is acquired by the agency; advise federal agencies not to defer analysis to state agencies and, as federal agencies, to perform the highest level of environmental analysis; encourage agencies to emphasize their agency mission in NEPA analysis; clarify that supporting studies should be carried out by the agency prescribing the action and that such analysis should not be deferred to subsequent NEPA stages; and allow agencies to build upon previous analyses and decisions for new NEPA projects.

Some assert that there is tremendous agency pressure to achieve certain targets—e.g. timber volume or animal unit months—and contend that “this pressure leads some in the agency to take NEPA shortcuts, or perhaps propose projects much larger than what might be sustainable for the ecosystem. . . . The project moves forward with a decision, with little change.” These writers ask the Task Force to address the influence of this pressure on NEPA analysis. At the same time, some suggest that the environmental community ought to be required to show significant effects from a proposed action before NEPA analysis will be initiated.

**Application of Analysis** – Of those who address the application of analysis in general, many ask the Task Force to delimit the application of the analysis requirements. Some advise the Task Force, for example, to eliminate study of small scale projects; to limit analysis only to effects pertinent to the proposed action; to limit required information to that which indicates the proposed action will have significant effects; or to require only concise information regarding areas that could potentially be affected. One federal agency asserts, “EIS and EA documents have gotten longer over the past three decades. However, a document’s quality is not related to its length. Concise information about areas that could potentially be affected is all that should receive only a cursory overview. This expansion of NEPA analyses is largely driven by opponents seeking to forestall an action without specific environmental concerns.”

Other respondents contend that the application of analysis does not presently go far enough. According to some, agencies often analyze only types of effects rather than actual, on-the-ground effects. Notes one preservation/conservation organization, “Without an analysis of the on-the-ground effects that are likely to flow from the various ‘risks’ identified in EAs and EISs, there is no way for either the agency or the public to make a meaningful evaluation of competing

alternatives—which, after all, is the core purpose of preparing a NEPA document in the first place.” Others believe agencies should analyze how the proposed decision will affect natural and social resources beyond the planning unit boundaries.

Other suggestions include tailoring review requirements to area of country and local situation, and limiting analysis to issues within the agency’s jurisdiction.

**Level of Analysis** – Of those who submit general comments regarding the level of analysis required by NEPA, many assert that current expectations go well beyond that originally envisioned by Congress. One individual remarks, “Each year additional requirements are placed on the specialists. The most recent was the requirement to consider all information. Recently, the courts found that we should have included findings from the Beschta Report in our environmental document. This report has not been peer reviewed or accredited. If we need to include this type of report, where does it end? How much is enough?” Respondents thus ask the Task Force not to increase information and analysis requirements any more, and not to allow the fear of appeals to dictate the needed level of analysis.

**Scope of Analysis** – Regarding the scoping process, a number of respondents ask the Task Force to require adequate scoping, while some say scoping contributes to delays and should be reduced. Regarding the actual scope of issues to be addressed during NEPA review, some insist that agencies ought to stay within the scope set out in the NOI for the project and dismiss any issues outside the scope of analysis.

**Time and Expense of Analysis** – State agencies, special use permittees, and individuals alike express a great amount of frustration over the time and expense involved in NEPA analysis. “Presently, a large Master Plan EIS will cost \$2,000,000-\$3,000,000,” comments one special use permittee, “with small one life environmental documents costing \$250,000-\$400,000. No ski resort, regardless of its size, can spend \$2-3 million and not feel its effect on business operations, employment, facility upgrades and the like. To compound the dilemma, many small ski areas spend as much on the environmental document as the lift or wastewater facility will cost to construct and then find [themselves] unable to construct the project due to financial limitations.” Others claim that due to the time and expense of NEPA analysis requirements, agencies put high priority actions requiring NEPA analysis aside in favor of lower priority work that does not require NEPA analysis. In consequence, some advocate statutory changes to NEPA to reduce the time and expense involved in analysis.

The question of whether actual time limits should be imposed on NEPA analysis prompts different views. According to one state agency, “One of the greatest complaints of the NEPA process is the interminable delay for decision-making. Some state agencies have described the NEPA process as the ‘black hole’ into which huge amounts of public time and resources are expended with no apparent end in sight. . . . We suggest establishing clear, uniform and certain timetables for evaluating and concluding the NEPA process, across all federal agencies.” A preservation/conservation organization counters, however, that “time limits . . . do nothing to solve one of the underlying causes of delay in agency action—namely that agencies tend to be under-funded and overworked. Given this reality, time limits will simply force agencies to cut corners on their environmental reviews in order to meet arbitrary deadlines and will limit the ability of the public to participate in the review process.”

**Meaning of Significance** – One of the key terms respondents often ask the Task Force to clarify is the term significance. One respondent states that “according to CEQ, the term ‘significantly’

as used in NEPA requires consideration of both ‘context’ and ‘intensity,’ [Section] 1508.27, and ‘controversy’ is expressly listed as an ‘intensity’ factor: ‘The degree to which the effects on the quality of the human environment are likely to be highly controversial.’ [Section] 1508.27(b)(4). Environmental plaintiffs regularly invoke this provision to argue that their own opposition to a project demonstrates ‘controversy’ so as to tip the balance in favor of a full EIS. Courts have generally disfavored the notion of a ‘heckler’s veto’ implicit in the regulation as out of keeping with a tradition of ordered government. But the matter is not free of doubt because of the improvident wording of the CEQ regulation.” Thus a common request is that the Task Force review the original congressional understanding of “significant federal action.”

According to some, agencies should have to explain why an impact is not significant. One respondent argues that “because context and intensity form the definition of ‘significantly’ under Section 1508.27 of the CEQ NEPA regulations, it is critical that agencies use these factors to explain why an impact is not significant,” and requests that the Task Force develop a recommended context and intensity worksheet or checklist for each potential environmental effect that agencies must complete to document why an effect is not significant.

**Analysis of Risk and Uncertainty** – Several respondents urge the Task Force to require analysis to address scientific uncertainty. As one preservation/conservation organization puts it, “The NEPA analysis is not intended to present an argument either for or against a project as a whole or of any of its component parts (or any of the alternatives or their component parts), but rather to provide to the public and the agency the best information that can be reasonably achieved. Unfortunately, it is exceedingly rare for EISs to discuss the uncertainties in the science discussed, or the implications of the predicted impacts should those predictions indeed be inaccurate.” Respondents likewise request that the Task Force require risk assessments, including analysis of consequences, and error analysis; and to reinstate worst case scenario analysis.

**Cumulative Effects Analysis** – Cumulative effects analysis is a topic of great interest to many respondents. Many state that cumulative effects are not given adequate consideration in NEPA analysis and urge the Task Force to address that inadequacy—by encouraging development of long-term data sets and analysis techniques essential for proper cumulative effects analysis; by providing regulations for the adequate evaluation of indirect effects and connected actions; by prohibiting fragmentation of analysis; and by requiring that effects be validated. Likewise, some caution that agencies should not be allowed to use the distinction between programmatic and tiered analysis as an excuse to dismiss concerns over cumulative effects. As one individual puts it, “By producing two or more levels of environmental considerations, the Forest Service plays a shell game. Is the cumulative effects analysis under Shell #1 (forestwide EIS)? Is it under Shell #2 (environmental assessment for a site specific project)? Or, is it under Shell #3 (empty by design)?”

According to one federal agency, “This area of NEPA practice [analysis of cumulative effects] appears to be evolving and has proven to be a ‘weak link’ in some agencies’ defense of the adequacy of their EAs and EISs. It would be beneficial if the Task Force’s report included a review of recent court decisions on this matter and summarized the current opinions on the appropriate scope, methodology, and level of detail required for a CEA.” Some also ask the Task Force to review the history of cumulative effects analysis under the Endangered Species Act.

While there is much concern, however, that cumulative effects analysis should be made a higher priority, some feel such analysis is of limited value and contributes unnecessarily to process delays by providing an easy target for litigation. According to a mining industry representative, “The argument that all cumulative impacts have not been considered has been taken to ridiculous extremes. No matter how detailed a NEPA review, someone can always make an obscure argument that some cumulative or far-afield impact has not been evaluated.” Some respondents thus request that the Task Force eliminate the requirement for cumulative effects analysis altogether. Barring that, suggestions include placing clear limits on what such analysis must include, or requiring all interested parties to fund the analysis on an equal basis.

A few respondents address their remarks to the application and scope of cumulative effects analysis. Some state that the Task Force should encourage more cumulative effects analysis at the project level by promoting interagency collaboration on combined analysis for a given geographic area. Others advocate that the Task Force should require cumulative effects analysis at the regional level and clarify that analysis of regional effects should meet full NEPA standards of procedure. Some recommend that the cumulative effects of oil and gas drilling in western lands be analyzed in one comprehensive, programmatic document, while others state that projects designed to conform with local planning and zoning ordinances should not be required to undergo a cumulative effects analysis. Finally, a few respondents ask the Task Force to address the geographical scope of cumulative effects analysis. Given the vague terminology in CEQ regulations, contends one wood products industry representative, “It may well be enough for any plaintiff to suggest even a single speculative impact beyond the area chosen for the effects analysis to invalidate the entire NEPA document.”

In connection with cumulative effects, several respondents also address analysis of connected or related actions. Some say simply that the terms “connected,” “similar,” and “related” are too vague and request that the Task Force provide clearer definitions. One proposal relative to the term “connected” action is that it exclude any action not funded at the time the NOI is published in the federal register. Some request that the Task Force specify when connected and related actions must be considered in NEPA analysis, while some say the requirement to consider connected actions in the same EIS be eliminated. Likewise, some advocate eliminating analysis of connected actions altogether.

Finally, a few respondents provide examples of EISs that lack adequate cumulative effects analysis.

**Quality of Research/Best Available Science** – A number of respondents ask the Task Force to ensure high quality agency research—by e.g. encouraging use of the best advice from the best sources, reliable information, objective studies, ‘outside’ science, information provided by interest groups, and rigorous scientific methods.

Some ask the Task Force to specifically define best available science, to encourage its use, and to establish criteria for its use in NEPA documents. A few writers express particular concern over the “gap between what the best available science indicates is an ecologically appropriate management approach and what the responsible agency actually proposes,” and suggest that a direct link be provided between the science used and the management implemented as part of the process record. Likewise, several respondents insist that agencies must provide sufficient analysis to support the conclusions drawn from it.

Specific aspects of research quality mentioned by respondents include OMB's guidelines, peer review, use of data, use of references, and agency accountability.

Some respondents ask the Task Force to consider OMB's guidelines regarding the quality of information. According to some, "The NEPA Task Force should make it clear that all information included in all NEPA documents is subject to the new information quality standards."

The need for peer review is mentioned often in public comment within a number of contexts. One individual explains, "Unless NEPA is strengthened to force federal agencies to utilize peer review more effectively, citizens will have to continue appeals and to pursue litigation." Notes another, "Independent review of agency proposals would go a long way towards opening up bureaucracies that tend to ignore the wealth of information available to them."

A number of respondents also urge the Task Force to require use of current data. "Too often," comment some, "agencies are relying on old out-dated information to justify new actions." Equally important to others is the use of adequate site-specific data. Some recommend sampling or modeling when site-specific data is unavailable or difficult and costly to collect.

In addition to adequate data, several respondents cite the need for adequate references. Some suggest that a list of references be required for each resource issue, as well as full, accurate bibliographic citations.

Finally, a number of respondents ask the Task Force to require accountability for document information. Suggestions include holding persons submitting information accountable for the legitimacy of the information; holding federal agencies to the same scientific standards to which scientists in non-federal roles must adhere; and requiring the decision maker to certify that all information in the document is accurate.

**Determination of Need and Development/Use of Alternatives** – Respondents express a number of varied concerns regarding the determination of need and development/use of alternatives. In general, people ask the Task Force to address the determination of purpose and need and to provide guidance regarding the development of alternatives. Some say that agencies should involve the public when determining the purpose and need, and should define the purpose and need according to public benefit rather than applicant intent. People also state that agencies should not limit the analysis of purpose and need and development of alternatives, and should not make changes to the proposed action and alternatives late in the process.

Several respondents ask the Task Force to provide clearer guidance regarding the factors that should guide alternative development. One suggestion is that the Task Force sponsor a conference/workshop to address the identification of alternatives, and publish the results of the workshop as a guidance document. Some also believe agencies should be encouraged to engage stakeholders in developing alternatives.

A few respondents question the process for development of alternatives in relation to overall NEPA objectives. According to one state agency, the Task Force should examine "the question of whether 'alternatives analysis,' in the shape it now takes in NEPA, creates a context for discussion and problem-solving that maximizes the polarization of opinion, the staking out of positions, and the exclusion of iteration and compromise in problem-solving. Is it possible that part of the frustration at delay and gridlock that now animates NEPA's critics grows from the analytic mechanism of 'alternatives' in which project examination now finds itself mired?"

Others express concern that agencies have a tendency to predetermine the outcome of the NEPA process based on the alternatives they choose.

Following from this last point, a number of respondents urge the Task Force to reinforce the need to develop an adequate range of reasonable alternatives. Others stress, however, that NEPA does not require the analysis of every conceivable alternative, and advocate limiting the number of required alternatives to two.

Finally, some respondents express particular concern over use of the No Action Alternative. Several suggest that the Task Force should explicitly clarify that the No Action Alternative represents the status quo. According to one agriculture industry representative, “Agencies construe the ‘no action alternative’ to be the non-renewal of a permit or the discontinuance of the particular action. This is not the status quo. Non-renewal of permits, for example, can result in significant changes in environmental conditions from the conditions that existed while the permit was in operation. As such, it is not a true baseline, as the ‘no action alternative’ was intended to be. The impacts from non-renewal of a permit or discontinuance of an activity need to be considered separately. The ‘no action alternative’ needs to be clarified to mean the true environmental baseline upon which different alternatives can be measured. For permit renewals or ongoing activities, the only true baseline is the condition as if the permit or activity were continued.” Not only should use of the No Action Alternative be clarified, respondents maintain, it should receive adequate analysis. According to one individual, “The agencies fail every time to honestly study the no action category, their agendas don’t allow them to leave things alone . . . and their lack of scientific knowledge leaves them unable to recognize that sometimes no action is the best action to take.”

## NEPA Analysis Requirements General

### 114. Public Concern: The CEQ Task Force should ensure adequate NEPA analysis.

The process is bogged down with fancy exclusions, word games and lies. The process was to determine a balance, it is now bastardized into a cursory lick and a promise, no studies get done, no real science is included; therefore the documents are full of gaping holes that allow the agency allies the green groups like Centers for Biodiversity, Western Watersheds and Nature Conservancy to drive through with their attorneys.

The only chance a small community has to survive a federal decision is NEPA and it has been hamstrung by lawsuits, failure of the employees to really do the process and an utter breakdown in honesty of federal employees in general. (Individual, Pioche, NV - #340.3.10240.E1)

If the agencies started today to really do science, no one would believe them anyway because they have lied and falsified their studies for so long, there is no credibility in any federal decision currently. No one believes the bogus studies of a federal agency employee, we know from law suits and court decisions that they can and do lie and the courts won’t hold them in contempt but rather protect their lies which you should expect federal types to lie to you. (Individual, Pioche, NV - #340.4.10240.E1)

The current NEPA process involves no timeframes at all. EAs drag on for years. Environmentalists appeal and sue on every decision. Many times they win these suits because the environmental documents are not based on science and specialists have no idea at all how to write cumulative effects. Some of the projects which were documented under CEs and EAs 10 years ago, are today documented in EISs. This so called “Cadillac of NEPA documents” is no more defensible in court than an EA when junk science is used as the baseline for the document. (Individual, Unity, OR - #216.9.10240.XX)

I would like to see an increase in required studies and work before a corporation can produce anything—if the product is deemed necessary and not harmful in its creation, then it should be cleared for production. This measure would easily extend to other non-productive practices that businesses utilize as well. Filling out requisite paperwork may take time, but taking actions should always be carefully thought out, not only in terms of profit, but also in how it will affect the people, their health, and their surrounding world. (Individual, No Address - #283.2.10240.XX)

The proposed changes are in response to a study that determined the current Categorical Exclusion policy was resulting in higher administrative costs to the agency and delayed service to the customer. We believe that those individuals benefiting from the utilization of public resources should have to follow the same rules and regulations that were put in place to protect the needs and interests of the agencies' other customers (i.e., the species that inhabit our national forests and grasslands). Better outcomes for our national forest ecosystems are more likely if the US Forest Service does an environmental analysis and involves the public as directed under the National Environmental Policy Act. (Preservation/Conservation Organization, Eugene, OR - #98.3.60400.F1)

#### **BY REQUIRING LONG-TERM ENVIRONMENTAL EFFECTS STUDIES**

We need to keep NEPA intact.

The idea that 'developers', in general, will consider environmental impact is, in my opinion, absurd. We need long-term impact studies; we need to remain mindful that we are part of the Earth, and responsible for all life!

You ask a local timber man who is out of work what he thinks about saving the Spotted Owl. I haven't read or heard anything that would indicate these men care about an owl when it comes to having work.

Please don't allow this Act to be weakened. I know I will do my best to see it isn't. (Individual, Brooklyn, NY - #232.1.10700.XX)

#### **BY REQUIRING ANALYSIS OF ALL AFFECTED ISSUES**

Agencies must consider all impacted issues to adequately fulfill NEPA's requirements. (Individual, Buellton, CA - #511.10.10200.XX)

### **115. Public Concern: The CEQ Task Force should not allow complex paperwork to diminish the need for environmental review on every project.**

Please do not allow complex paperwork to diminish the need for environmental review on every project required to face this procedure. While I applaud simplicity, the incredible need to protect our Earth should remain the priority of this act. (Individual, No Address - #356.1.10700.XX)

### **116. Public Concern: The CEQ Task Force should clarify that analysis is required, regardless of how land is acquired by the agency.**

CEQ should provide clear direction to the agencies that the means of acquisition does not change their responsibility to analyze the impacts of this government action. The agencies tend to develop a NEPA document when they purchase land directly, but not when a third party (usually non-profit) gifts them the land or holds the title but cedes them the management. The avoidance of the public review process with these kinds of dealings is frustrating to rural counties that need to keep what private land still remains on the tax rolls and producing economic activity. (Willy Hagge, Supervisor, Modoc County Board of Supervisors, No Address - #636.20.10240.XX)

### **117. Public Concern: The CEQ Task Force should require federal agencies, as the model for state agencies, to perform the highest level of environmental analysis.**

#### **IN VIEW OF THEIR RESPONSIBLE POSITION IN SAFEGUARDING THE ENVIRONMENT**

Federal agencies, as the model for state agencies, should perform the highest form of environmental analysis as the responsible entity for safeguarding against potential impacts on the environment. Only a

few states in the Nation even have an environmental quality act, which is detrimental to the nation's natural resources as a whole. Any reduction in requirements for impact and alternatives analysis using the best scientific information available and protocols at the time of writing, is inconsistent with established methods available today. As scientific knowledge advances, additional information can easily be incorporated into a supplemental addendum for recirculation (online) and implementation. (Individual, San Leandro, CA - #607.1.10200.F1)

### **118. Public Concern: The CEQ Task Force should advise federal agencies not to defer analysis to state agencies.**

#### Deferral to State Agencies

The Bureau of Land Management in the habit of not studying impacts because of overlapping state agency responsibilities. In short, if a state agency has any authority in permitting an aspect of development (e.g., the Wyoming Dept. of Environmental Quality regarding the Clean Water Act or the Wyoming Oil and Gas Conservation Commission on well spacing and drilling operations), Bureau of Land Management in its NEPA documents punts all responsibility to the state agency and performs little or no analysis of the impacts itself. This is illegal. See, e.g., *Idaho v. Interstate Commerce Commission*, 35 F.3d 585,595 (D.C. Cir. 1994) (holding that responsible federal agencies may not delegate their NEPA responsibilities by deferring "to the scrutiny of other agencies"); *Citizens Against Toxic Sprays, Inc. v. Bergland*, 428 F. Supp. 908, 927 (D. Or. 1977) C "the responsible agency may not attempt to abdicate to any other agency merely because that agency is authorized to develop and enforce environmental standards"). Bureau of Land Management is often reminded of its independent Clean Water Act responsibilities under the Federal Facilities Clause, see 33 U.S.C. section 1323(a), and yet generally performs little analysis of this responsibility if there is a state agency with overlapping authority. (Preservation/Conservation Organization, Washington, DC - #475.16.10310.XX)

### **119. Public Concern: The CEQ Task Force should encourage agencies to emphasize their agency mission in NEPA analysis.**

It is by now a well-worn cliché that much environmental impact has degenerated into defensive compliance for the purpose of developing a litigation record. Such documents are like a speech marked by punctilious grammatical accuracy, but having little meaning and no eloquence. We recently reviewed EIS Cumulative 2000, the latest compilation of environmental impact statements filed by federal agencies, to see just how lengthy these documents have become. The compilation, which abstracts all draft and final EISs, reveals that in the year 2000 the average length of a draft EIS was 493.65 pages.

Why do federal agencies deem it advisable to buy protection against the enjoining of agency action (and the assessment of attorneys' fees) through the device of lengthy environmental documentation? On this question the 1997 Effectiveness Study is more revealing than CEQ may think in that only a single reference is made in the entire study to "an agency's mission," that to be found in a discussion of adaptive management on the last page of the study immediately prior to the conclusion section. While agencies are obliged by NEPA to integrate environmental analysis into agency decision making, it was not the intent of Congress that NEPA abridge an agency's mission but instead that it be evaluated in a new light. It is unwise for CEQ to be indifferent to the imperative of "an agency's mission." (Other, Washington, DC - #506.3.10230.XX)

### **120. Public Concern: The CEQ Task Force should clarify that supporting studies should be carried out by the agency prescribing the action.**

Resource agencies have complained that Congress has not supplied sufficient funding to carry out their congressionally authorized duties (for example, with respect to hydropower licensing). Accordingly, there is a concern that resource agencies will require private parties affected by NEPA actions to perform, at their expense, studies designed to support resource agency positions, such as to support the installation of fishways. By way of contrast, FERC has ruled that it is not obligated to provide a record to support the Department of Interior's decision-making. It is up to the Department of Interior to provide the record to support any fishways it prescribes. 92 FERC 61,037. The CEQ should make NEPA consistent with this approach. (Utility Industry, Birmingham, AL - #584.4.10200.XX)

### **121. Public Concern: The CEQ Task Force should encourage agencies not to defer analysis to subsequent NEPA stages.**

The NEPA Shell-Game: Deferral of Analysis to Subsequent NEPA Stages

This area of concern is disturbing in many respects—with the end result that many aspects of impacts from oil and gas development end up severely understudied or completely ignored. In public lands oil and gas development there are four primary stages before development can occur: (1) land use planning (i.e., which areas in a resource area are open to oil and gas leasing, which are open to special stipulations, including no occupancy of the surface, etc.); (2) leasing individual oil and gas parcels; (3) project approval for wells on existing leases; and (4) drill permits (APDs) after project approval. (In many cases, the final APD NEPA document may simply tier back to the earlier studies, with the result being no study of a category of impacts).

The “shell game” works against the full understanding, disclosure and mitigation of impacts in two key respects. First, is the “we’ll study it later” routine. BLM, in some cases understandably, states that impacts of oil and gas development are “too uncertain or speculative” to be studied during the land use planning or leasing stages. A perfect example of this concerns historic and cultural artifacts and the National Historic Preservation Act. WOC [Wyoming Outdoor Council] urges that before even opening an area to oil and gas development and leasing, the necessary cultural surveys and clearances should occur at the land use planning stage. What is certain is that when a lease sale is proposed, BLM knows of the specific acreage and should conduct these surveys. It doesn’t. (Preservation/Conservation Organization, Washington, DC - #475.11.10240.XX)

### **122. Public Concern: The CEQ Task Force should address the influence of target achievement pressure on NEPA analysis.**

Target Achievement Pressure Skews the NEPA Analysis. The Forest Service gets politically assigned targets and budgets earmarked for those targets Each year. Targets are almost always assigned in commodity output units. One that has been with the US Forest Service for decades has been timber volume in millions of board feet. I can certainly understand Congress wanting accountability for the budget they distribute that is earmarked for certain tasks.

However, its unfortunate that so many targets have the potential to be so environmentally damaging. Rather than providing funding for millions of board feet or the number of animal unit months, and recreation visitor days that are produced by and on a national forest, it would be great if these targets were. They must also be measurable. Examples might be: acres and stream miles monitored, miles of road maintained, miles of road decommissioned, fire susceptibility evaluations of structures on the forest etc. etc.

There is probably nothing you can do about this, but I want to point out that this is one of the primary reasons for the high number of appeals and court actions that the agency gets. Forest level and even personal performance indicators are based on whether the yearly target is achieved. So is the following year’s budget level.

There’s a tremendous amount of pressure to achieve the targets. Legally though, each of these timber sales that contribute to the target must pass through the NEPA process. I think this pressure leads some in the agency to take NEPA shortcuts, or perhaps propose projects much larger than what might be sustainable for the ecosystem. Our critics know this and they tell us this during scoping. The project moves forward with a decision, with little change. Then the plaintiffs’ attorneys end up arguing the same points in court. Judges could care less about targets. (Government Employee/Union, Grangeville, ID - #44.34.10700.XX)

### **123. Public Concern: The CEQ Task Force should properly classify projects for environmental review.**

Properly classify projects for environmental review. Too often, problems in project reviews arise because transportation agencies seek to waive appropriate environmental review for a complex project with multiple impacts by classifying it as a Categorical Exclusion or Environmental Assessment. This

often causes later legal or regulatory delay as critics seek to challenge a flawed administrative process. (Preservation/Conservation Organization, Washington, DC - #535.47.10220.XX)

**124. Public Concern: The CEQ Task Force should require the environmental community to show significant effects from a proposed action before NEPA analysis will be initiated.**

The public and the commercial sector continue to have put up with bulky NEPA documents that cost many thousands of dollars; are prepared over an unreasonable amount of time; and result in decisions that are quite evident before the scoping even takes place. If the final decision were different, the cost and time to prepare the documents should be borne by the public or the commercial sector; however, if the decision is the same before and after, the environmental community should bear the burden. A better solution would be to require that the proof of any significant impacts to a proposal has to be provided by the environmental community before the NEPA analysis is initiated. (Charles Childers, State Representative, State of Wyoming, Cody, WY - #656.6.10200.XX)

**125. Public Concern: The CEQ Task Force should allow agencies to build upon previous analyses and decisions for new NEPA projects.**

Wherever practicable, prior surveys, studies, analyses, and decisions conducted for previous NEPA analyses or as part of earlier reviews of the proposed project or a part of it should be used as long as the studies were based on sound science, remain timely, and are appropriate to the study area of the federal action triggering the new NEPA review. For example, if a facility has already been federally authorized and is up for reauthorization, the prior permit and NEPA reviews should be built upon, not repeated. Furthermore, the fact that the facility being reauthorized is part of the electricity system and is now relied on, and that it has reached equilibrium with its current environment, both need to be recognized in the reauthorization process, including any associated NEPA review. Similarly, if a transmission corridor has been designated under the Federal Land Policy and Management Act or as part of the federal land planning process, and a particular line is being sited within such a designated corridor, the permitting reviews, including review under NEPA, should be tailored to reflect the decision-making process that already has occurred in designating the coordinator. (Utility Industry, Washington, DC - #586.9.10500.XX)

**126. Public Concern: The CEQ Task Force should require adequate taking implication assessment.**

The assessment of disproportionate effects is the key for displaying full disclosure in the NEPA document. This is where the analysis is done to determine if there are potential effects on property rights or any takings. CEQ should close the standard escape clauses the agencies use for not doing an appropriate Taking Implication Assessment (Willy Hagege, Supervisor, Modoc County Board of Supervisors, No Address - #636.18.10240.XX)

**127. Public Concern: The CEQ Task Force should develop a new category of analysis—the Strategic Environmental Assessment.**

Our group recommends a new category of environmental impact analysis be developed; the Strategic Environmental Assessment (SEA). CEQ should develop a handbook on SEA and training for (NEPA Professional or Association - Private Sector, Washington, DC - #450.23.40210.C2)

**128. Public Concern: The CEQ Task Force should address the trend for indirect issues to become direct effects.**

On January 12, 1993, a CEQ memorandum (informational only?) to Heads of Federal Departments and Agencies from Michael R. Deland summarized that, “This memorandum provides guidance to the federal agencies on incorporating pollution prevention principles, techniques, and mechanisms into their planning and decisionmaking processes and evaluating and reporting those efforts in documents prepared pursuant to the National Environmental Policy Act.”

Since the time of its inception, good or well-intentioned NEPA principles have had so many indirect issues becoming direct “impacts” to its implementation, that what was once thought to be a well-defined process is now merely an open-ended target for continual litigation. The 1993 memorandum quotes *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989)—As the United States Supreme Court has noted, the “sweeping policy goals announced in 101 of NEPA are thus realized through a set of ‘action-forcing’ procedures that require that agencies take a ‘hard look’ at environmental consequences.” (The crux of the case was not mentioned; just the component necessary for effect of this memorandum.)

The 1993 memorandum goes on to state:

The very premise of NEPA’s policy goals, and the thrust for implementation of those goals in the federal government through the EIS process, is to avoid, minimize, or compensate for adverse environmental impacts before an action is taken. Virtually the entire structure of NEPA compliance has been designed by CEQ with the goal of preventing, eliminating, or minimizing environmental degradation . . . Pursuant to the policy goals found in NEPA Section 101 and the procedural requirements found in NEPA Section 102 and in the CEQ regulations, the federal departments and agencies should take every opportunity to include pollution prevention considerations in the early planning and decisionmaking processes for their actions, and where appropriate, should document those considerations in any EISs or [EA] prepared for those actions. In this context, federal actions encompass policies and projects initiated by a federal agency itself, as well as activities initiated by a non-federal entity which need federal funding or approval. Federal agencies are encouraged to consult EPA’s Pollution Prevention Information Clearinghouse which can serve as a source of innovative ideas for reducing pollution. (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.26.10500.XX)

## Application of Analysis

### **129. Public Concern: The CEQ Task Force should eliminate study of small scale projects.**

Smaller scale projects and actions should be excluded from study entirely so that the NEPA process can focus on the most important actions. (State of Tennessee, No Address - #543.10.10240.XX)

### **130. Public Concern: The CEQ Task Force should advise agencies to address only effects pertinent to the proposed action.**

NEPA documentation should be the minimum necessary to adequately decide the proposed action. This means that each decision will address only those impacts pertinent to the proposed action. The Task Force will succeed if the process makes NEPA documentation easier, simpler, and more expedient. (NEPA Professional or Association - Private Sector, Rolla, MO - #625.2.10230.XX)

### **131. Public Concern: The CEQ Task Force should limit required information to that which indicates the proposed action will have significant effects.**

A primary purpose of NEPA is to establish a process that assures full disclosure of potential significant impacts for the benefit of the decision maker and concerned public. A return to that focus would be helpful. Too often, documents are cluttered with information that is known to not have a significant impact. Valuable time and expenses are spent including information of little environmental consequence. Required information should be limited to that which, either individually or collectively may indicate the proposed action will have a significant effect. (Placed-Based Group, Sacramento, CA - #522.33.10240.F1)

### **132. Public Concern: The CEQ Task Force should advise agencies to provide only concise information regarding areas that could potentially be affected.**

EIS and EA documents have gotten longer over the past three decades. However, a document’s quality is not related to its length. Concise information about areas that could potentially be affected is all that should receive only a cursory overview. This expansion of NEPA analyses is largely driven by

opponents seeking to forestall an action without specific environmental concerns. (United States Navy, Washington, DC - #568.27.10240.F1)

**133. Public Concern: The CEQ Task Force should encourage agencies to focus analysis on alternative management strategies to solve site-specific management issues.**

NEPA analyses should focus on evaluating the use of one or more alternative management strategies (from those evaluated in the planning document) to solve site-specific management issues. Decisions should be necessary only when a line officer selects an alternative management strategy from among those identified in the planning document. (Recreational/Conservation Organization, Washington, DC - #89.34.10200.F1)

**134. Public Concern: The CEQ Task Force should advise agencies to analyze actual, on-the-ground effects, not just types of effects.**

A serious flaw that permeates almost all BLM/FS oil and gas NEPA analyses concerns qualitative versus quantitative impact assessments. BLM has mastered the Obvious in these documents by being able to state the types of impacts but has done very little in actually telling the public what the actual impacts to various resources will be. Examples in the recent Wyoming PRB 51,000 CBM [Coal Bed Methane] well DEIS include: roads will fragment wildlife habitat; compressor stations will cause noise; soil loss will affect vegetation communities; produced wastewater will increase sedimentation; 39,000 wells will cause soil loss, and on. However, the point of NEPA is to study and disclose what the actual impacts will be. In other words, there must be much more than a terse qualitative overview serving as a meaningful impact analysis, e.g.: what will impacts be by species, location and distinct populations of wildlife due to roads; with displaced vegetation communities, what types of new species will invade and how long will it take to reach equilibrium; how will increased sedimentation affect aquatic life; and what are impacts to species, vegetation, ecological functions, etc., from 200,000 acres of soil loss?

Simply stating the obvious that massive industrial development will cause qualitative impacts really misses the point of a NEPA analysis; rather, in its NEPA documents BLM must look at what the actual degree of impacts will be. As with other areas, deficiency by BLM may result in many of its oil and gas NEPA documents receiving a failing grade.

See, e.g., *Defenders of Wildlife*, 130 F. Supp. 2d 121,128 (D. D.C. 2001) (setting aside agency's EIS where it "states that noise would be increased and both the pronghorn and their habitat would be disturbed" but contained "no analysis of what the nature and extent of the[se] impacts will be"); *National Parks and Conservation Association v. Babbitt*, 241 F.3d 722, 743 (9th Cir. 2001) (NEPA document inadequate where it identified "an environmental impact" but "did not establish the intensity of that impact."); *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1379-80 (9th Cir. 1998) ("General statements about 'possible' effects and 'some risk' do not constitute a 'hard look' absent a justification regarding why more definitive information could not be provided . . . Nor is it appropriate to defer consideration of cumulative impacts to a future date . . .").

Therefore, without an analysis of the on-the-ground effects that are likely to flow from the various "risks" identified in EAs and EISs, there is no way for either the agency or the public to make a meaningful evaluation of competing alternatives—which, after all, is the core purpose of preparing a NEPA document in the first place. (Preservation/Conservation Organization, Washington, DC - #475.20-21.10240.XX)

**135. Public Concern: The CEQ Task Force should encourage agencies to analyze how the proposed decision will affect natural and social resources beyond the planning unit boundaries.**

When preparing NEPA documents, the federal agencies should assess how the proposed decision would impact natural and social resources beyond the boundary of their planning units. At least in the northeastern states, we often spend much of our time locating landscape level measurements to conduct a comprehensive review of NEPA documents. (Recreational/Conservation Organization, Washington, DC - #89.34.10200.F1)

**136. Public Concern: The CEQ Task Force should tailor review requirements to area of country and local situation.**

The “thresholds” need to consider the area of the country and local situation. For example, Alaska has more than 100,000,000 acres of wetlands and yet Alaska projects are held to the same requirements of review as locations in the other states where wetlands are truly scarce. In Alaska, fish and wildlife populations and water recharge are not restricted by wetlands availability. Yet projects incur major costs dealing with wetlands as if [it] were a major problem. (Mining Industry, Anchorage, AK - #645.5.10200.XX)

**137. Public Concern: The CEQ Task Force should require agencies to limit analysis to issues within their jurisdiction.**

The Tenth Circuit has declared that the ESA does not enlarge the Corps’ jurisdiction under the Clean Water Act. *Riverside Irrigation Dist. v. Andrews*, 758 F.2d 508, 512 (10th Cir. 1985). See also *Vieux Carre Property Owners v. Brown*, 875 F.2d 453, 460 (5th Cir. 1989) (in assessing scope of federal review under National Historic Preservation Act, ruling that “federal environmental protection statutes do not enlarge the Corps’ jurisdiction”); *NRDC v. EPA*, 822 F.2d 104, 129 (D.C. Cir. 1987) (NEPA “does not work a broadening of the agency’s substantive powers. Whatever action the Agency chooses to take must, of course, be within its province in the first instance”); *Gage v. Atomic Energy Commission*, 479 F.2d 1214, 1220 n.19 (“NEPA does not mandate action which goes beyond the agency’s organic jurisdiction”).

CEQ has already evaluated the pertinent scope of review issues in light of many of the cases discussed above and “the ‘rule of reason’ expressed in those cases in its 1987 Findings. NEPA, the broadest federal statute in terms of requiring agencies to consider all of the possible environmental consequences of its action, works no substantive expansion of any agency’s jurisdiction. Any other interpretation would provide no limiting principle to restrain the injection of federal jurisdiction into every square inch of any private project that happens to include a federal nexus, such as a small pocket of wetlands, endangered species, or require federal funding; the agency would just consider everything.

Limiting the scope of review is not only consistent with CEQ policy and legal findings, it can serve to eliminate the federalization of private development projects and allow the local agencies to rightfully make decisions about land use, economic growth, and environmental protection.

This approach also would eliminate the need for federal agencies to analyze impacts outside of their expertise, such as impacts of the development project that are primarily of local concern, including traffic, fire and safety hazards, hazardous materials, and induction of job and population growth. While federal agencies are, as above, required to limit their NEPA reviews to the primary impacts of permit issuance, they are constantly under attack by environmentalists to broaden the scope of review exactly for the purpose of federalizing local land use determinations. The NEPA Task Force provides an opportunity to minimize this inappropriate use of NEPA and streamline the approval process. NAHB strongly urges the Task Force to do so. (Business, Washington, DC - #517.10-11.10520.XX)

## Level of Analysis

**138. Public Concern: The CEQ Task Force should address ‘analysis paralysis.’**

“Analysis Paralysis” is an acceptable planning term adequately descriptive of the current U.S. Forest Service/USDA management. The Forest Service has essentially become impotent from its chartered purpose and the public’s confidence and esteem continues to fade. (Individual, Spearfish, SD - #360.1.10200.C1)

**139. Public Concern: The CEQ Task Force should address the necessary level of information to be considered in environmental analysis.**

Each year additional requirements are placed on the specialists. The most recent was the requirement to consider all information. Recently, the courts found that we should have included findings from the Beschta Report in our environmental document. This report has not been peer reviewed or accredited. If

we need to include this type of report, where does it end? How much is enough? (Individual, Willows, CA - #317.1.10240.A2)

With the tidal wave of information that is now available, we now suffer analysis paralysis in our nation. I would like to see some practical balance in the amount of “research” that is done. With multiple levels of government, we see multiple layers of overlapping research being done on every facet of our lives. I for one believe that enough is enough. (Individual, Challis, ID - #287.1.10240.XX)

CEQ and the action agencies should specify with much more clarity the level of analysis that is sufficient to meet the requirements of NEPA, and the type of information required to be analyzed. A related issue concerns the level of analysis agencies are required to perform under NEPA, and the considerations they must make in evaluating alternatives. How detailed do different analyses have to be in order to meet NEPA requirements? What issues must an agency consider with regard to certain impacts? Both agencies and the NEPA process itself would benefit from clearer answers to these questions. Greater clarity will help agency personnel determine what they must consider, and how in depth it must be analyzed. It will provide a measure to determine NEPA adequacy, in contrast to the amorphous process being inconsistently shaped by the courts on a case-by-case basis. (Business, Washington, DC - #403.12.10240.XX)

Provide guidance on the level of risk analysis appropriate for evaluation to reduce uncertainty about cost, timing and litigation. (Timber or Wood Products Industry, Helena, MT - #445.3.10200.XX)

Over the course of several years and many modifications the NEPA is being used by the federal government as a document for planning, permitting and compliance. Because of this misuse in implementation by the federal government the NEPA process is constantly identified in litigation and appeals against mining companies. The parties entering into litigation with mining companies site incompleteness in NEPA review because there is no clear level of analysis in the policy, there are no limiting factors on comprehensive analysis and no clear time frames for how much analysis is necessary and for how long. (Mining Industry, Helena, MT - #541.2.10200.XX)

#### **BY GRANTING AGENCIES BROAD DISCRETIONARY AUTHORITY TO DETERMINE THE APPROPRIATE LEVEL OF ANALYSIS**

NEPA Compliance has become the “weapon of choice” for those who wish to disrupt or stall active federal land management. In order to circumvent this problem, federal decision makers should be given broad discretionary authority to determine the appropriate level of adequate NEPA analysis. (Domestic Livestock Industry, Boise, ID - #576.11.10300.XX)

#### **IN THE FORM OF A “BEST COMPROMISE SOLUTION”**

Breadth and Depth of Environmental Analyses under NEPA. NMFS Regional staff have indicated difficulty in reconciling how to achieve targeted, straightforward, and short environmental analyses (whether for an EA or an EIS) in the face of recent court decisions that place emphasis on use of a greater number of action alternatives and on more in-depth analyses of environmental impacts. Many agencies are currently responding to public, political, and legal pressures to increase NEPA document scope, provide greater detail, and consider a wider range of reasonable alternatives for addressing the need for Federal action. CEQ might consider if it is possible to provide further guidance on how best to achieve a “best compromise solution” when determining the scope and level of detail for an environmental analysis. (National Oceanic and Atmospheric Administration, Washington, DC - #637.52.10230.XX)

### **140. Public Concern: The CEQ Task Force should encourage agencies not to allow fear of appeals to dictate their level of analysis.**

Fear of appeals, as opposed to sound decision-making, is what is driving many unfortunate trends, such as requiring EISs, lengthier EAs, multiple EISs, SEISs, and a seemingly unlimited scope to cumulative

impacts analysis. Driven by this fear, agencies attempt to “cover all the bases” in search of a consensus they will never reach. The fact is, in many cases an appeal will be filed regardless of how detailed or voluminous the environmental analysis is. Agencies must stop letting fear of appeals dictate how much, and which type, of information they will require in the NEPA process. (Recreational Organization, No Address - #19.10.10200.A1)

#### **141. Public Concern: The CEQ Task Force should not increase information or analysis requirements.**

##### **TO AVOID MORE NEPA-BASED APPEALS**

For many ski areas, NEPA-based appeals are virtually inevitable as the agenda of environmental groups is to stop any further resort development, improvement or expansion. In some instances, appeals are a legitimate way to dispute substantive issues, and are raised by individuals who are openly and genuinely participating in the NEPA process. More commonly, however, appeals are brought as a way to delay or stop a project, often by individuals who did not participate in substantive discussions of the proposed action. Since opponents to ski area improvement and expansion now have potentially seven “bites at the apple,” (front loading, scoping, public hearings, pre-decisional comment period, SEIS, appeal, litigation), we should not lengthen the process any further by increasing information or analysis requirements. (Recreational Organization, No Address - #19.8-11.10240.A1)

#### **142. Public Concern: The CEQ Task Force should require agencies to conduct NEPA analysis on a scale equal to that of the effects from similar actions.**

NEPA is an action-forcing statute. Its sweeping commitment is to “prevent or eliminate damage to the environment and biosphere by focusing government and public attention on the environmental effects of proposed agency action.” *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989). It requires the federal agency to ensure “that the agency will inform the public that it has indeed considered environmental concerns in its decision making process.” *Baltimore Gas and Elec. Co. v. Natural Resources Defense Council*, 462 U.S. 87, 97 (1983).

NEPA ensures that a federal agency makes informed, carefully calculated decisions when acting in such a way as to affect the environment and also enables dissemination of relevant information to external audiences potentially affected by the agency’s decision. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) . . . NEPA documentation notifies the public and relevant government officials of the proposed action and its environmental consequences and informs the public that the acting agency has considered those consequences. *Catron County Board of Commissioners v. U.S. Fish and Wildlife Service*, 75 F.3d 1429, 1437 (10th Cir. 1996).

Recommendations:

Land Management Agencies should conduct NEPA analyses on a scale equal to that of the impacts from similar actions. As an example, since nearly the whole of the Humbolt River watershed is impacted by either some or all of the air, water, wildlife, cultural, and other impacts from large scale gold mining in the region, the BLM and the Forest Service should conduct an analysis that looks at these impacts in the comprehensive manner recognized as beneficial to proper decision making. (Preservation/Conservation Organization, Durango, CO - #523.16.10700.XX)

## **Scope of Analysis**

#### **143. Public Concern: The CEQ Task Force and agencies should regain control over defining the scope and requirements for NEPA analysis.**

CEQ and the action agencies must regain control over defining the scope and requirements of NEPA analyses. One of the major problems with the NEPA process is it is being run by the courts in a piecemeal and a case-by-case basis. The statutory provisions of NEPA are very broad, with plenty of room for agency interpretation. Instead of taking advantage of this opportunity, the agencies have let court decisions from different parts of the country dictate the process on a piecemeal basis. The result is an uncertain process in which agency personnel doing NEPA work are not sure what the requirements

are. As a result, agencies often do much more analysis than is necessary, or spend more time trying to insulate their work from judicial attack. They become mired in the process. The Forest Service estimates that planning and assessment consumes 40 percent of direct work, at a cost of \$250 million. The agency also estimates it could redirect \$100 million to on-the-ground work with more efficient processes. The Forest Service is not alone. (Agriculture Industry, Bozeman, MT - #451.9.10500.XX)

#### **144. Public Concern: The CEQ Task Force should address the temporal scope of analysis.**

Some current practices . . . if taken to their logical conclusion, would require federal agencies to anticipate every action that could possibly be taken or developed in a particular area for up to 20 years. Such an approach was not the intent of Congress. (Oil, Natural Gas, or Coal Industry, No Address - #634.7.10200.XX)

#### **145. Public Concern: The CEQ Task Force should require adequate scoping.**

Scoping is most often where the agencies fail. Insufficient notice is provided to potential stakeholders. Scoping is done late in the decision making process. Often, scoping is conducted not by the agencies, but by the party promoting the proposed action; consequently, there is the perception that the process is biased from the beginning. (Individual, Las Vegas, NV - #359.3.10440.XX)

Scoping is rarely done efficiently. As part of the scoping process, the following considerations should be addressed: (i) the eliminating of unreasonable alternatives; (ii) the definition of the environmental baseline and (iii) the scope of cumulative and indirect impacts. In all cases, the scoping process should advance the policy of focusing the NEPA process on the most useful information by limiting the analysis of alternatives that are not realistic in the judgment of the lead agency. Scoping should also be used to set an environmental baseline that reflects pre-decisional or existing conditions instead of dismantlement or removal of alternatives. Also, pre-scoping efforts, such as pre-meetings, data distributions, and public education presentations, etc. should be used to educate the public on the scoping process. These policies do not require a formalized approach. (Utility Industry, Birmingham, AL - #584.15.10230.XX)

Federal agencies preparing the 2000 Animas-LaPlata Project (A-LP) EIS conspired to act in violation of the NEPA. The NEPA requires that, in scoping the study of a proposed action, there “shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed “action,” and that the process must include “interested persons (including those who might not be in accord with the action on environmental grounds).” In the case of the A-LP EIS, however, scoping was anything but “open”. This becomes clear with even a cursory reading of documents released to Earth Justice Legal Defense Fund responsive to a complaint filed in connection with the DOI’s denial of a Freedom of Information Act request. The complaint alleged the DOI’s illegal withholding of the substance of a series of 1998 meetings arranged by the federal government for the purposes of privately and illegally controlling the scope and outcome of the 2000 EIS, and secretly and exclusively crafting amendments to the Colorado Ute Indian Final Water Rights Settlement Agreement.

The minutes of these clandestine meetings reveal the extent to which federal agencies colluded with promoters of the A-LP to circumvent key provisions in the NEPA and disregard regulations guaranteeing the interested public timely access to information and ample opportunity for direct participation in the scoping process.

An examination of these documents, obtained through litigation under the FOIA, demonstrates that the federal government’s “preferred” alternative for the A-LP was, in fact, shaped during this exclusive, secret scoping process, which occurred months before the public was ever provided proper Notice of Intent in the Federal Register.

In fact, the Secretary of the Interior came out with his administrative proposal before the official scoping sessions had begun, and then used the EIS to validate his alternative. So, in the end, a series of much-trumpeted “official” public scoping hearings for the A-LP EIS (When finally held nearly half a year later) amounted to nothing more than a dog and pony show, making a mockery of the NEPA. (Individual, Farmington, NM - #459.5-6.10320.XX)

### **BY INCLUDING ALL INTERESTED PERSONS IN THE SIGNIFICANT ISSUE IDENTIFICATION PROCESS**

Federal agencies preparing the 2000 A-LP [Animas-LaPlata Project] EIS conspired to act in violation of the NEPA. The NEPA requires that, in scoping the study of a proposed action, there “shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action,” and that the process must include “interested persons (including those who might not be in accord with the action on environmental grounds).” In the case of the A-LP EIS, however, scoping was anything but “open”. This becomes clear with even a cursory reading of documents released to Earth Justice Legal Defense Fund responsive to a complaint filed in connection with the Department of Interior’s (DOI) denial of a Freedom of Information Act (FOIA) request. The complaint alleged the DOI’s illegal withholding of the substance of a series of 1998 meetings arranged by the federal government for the purposes of privately and illegally controlling the scope and outcome of the 2000 EIS, and secretly and exclusively crafting amendments to the Colorado Ute Indian Final Water Rights Settlement Agreement.

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### **146. Public Concern: The CEQ Task Force should require agencies to stay within the scope of the NOI for the project.**

Federal agencies should stay within the scope of the NOI for the project. Inconsistencies between the NOI and other project documents are not acceptable. (Mark A. Semlek, Chairperson, Crook County Board of Commissioners, et al, Sundance, WY - #73.1.10250.XX)

### **147. Public Concern: The CEQ Task Force should allow agencies to direct the scope of analysis to pertinent issues.**

The process has been written to support delays. . . . allow the ID Team or Responsible Official to direct the scope of analysis to the pertinent issues. (Special Use Permittee, Naches, WA - #71.5.10200.XX)

### **148. Public Concern: The CEQ Task Force should encourage agencies to dismiss issues outside the scope of the analysis.**

Improve Issues Management on Scoping, Purpose and Need, and Alternatives

During public scoping of proposed actions, the Forest Service receives numerous comments that are far outside the scope of the proposal. Yet, the agency, trying to be as responsive as possible, addresses and analyzes all of these comments. In some instances, alternatives are developed to address issues raised in scoping even though the alternative proposal does not meet the Purpose and Need for the proposed action. The need for better issue management will only be heightened by the larger volume of comments the agency will receive in the future via email, from participants who may not be well versed in the project specifics. The Forest Service needs to manage issues better, specifically by dismissing issues outside the scope of the analysis early in the process, and by not developing alternatives which do not meet the stated Purpose and Need. (Recreational Organization, No Address - #19.7.10200.A1)

**149. Public Concern: The CEQ Task Force should reduce scoping.**

The process has been written to support delays. Reduce scoping . . . (Special Use Permittee, Naches, WA - #71.5.10200.XX)

**Time and Expense of Analysis****150. Public Concern: The CEQ Task Force should address the time and expense of NEPA analysis.**

We support the effort to “improve and modernize NEPA analysis and documentation,” however, we believe the proposed course of action falls short of addressing that challenge.

The challenge associated with improving NEPA implementation exceeds the limits of technology, intergovernmental collaboration, programmatic analysis/tiering, adaptive management, and increased use of categorical exclusions. NEPA issues that should be addressed by the task force are much more fundamental. Environmental Impact Statements often exceed \$10,000,000 in cost and require many years of process time. We believe that the result of these studies does not justify the time and money expended. (Virginia Department of Transportation, No Address - #203.1.10200.XX)

The Chief of the Forest Service is very concerned about the amount of time and effort required to meet procedural requirements such as preparing voluminous plans, studies, and associated documents, including those required by the National Environmental Policy Act of 1969 (NEPA) as this often delays our efforts to implement programs and projects. (United States Department of Agriculture, Washington, DC - #110.1.10200.XX)

I believe the argument for dramatic change in NEPA stands on its own without a discussion on cost; however, it is an issue, which must be addressed. Presently, a large Master Plan EIS will cost \$2,000,000-\$3,000,000, with small one life environmental documents costing \$250,000-\$400,000. No ski resort, regardless of its size, can spend \$2-3 million and not feel its effect on business operations, employment, facilities upgrades and the like. To compound the dilemma, many small ski areas spend as much on the environmental document as the lift or wastewater facility will cost to construct and then find [themselves] unable to construct the project due to financial limitations.

The solution always comes down to streamlining the process to arrive at a decision; I might add the same decision, in much less time without employing the resources and time of unnecessary individuals. (Special Use Permittee, Naches, WA - #71.6.10210.XX)

In June 1998, Anthony Lakes Mountain Resort, North Powder, Oregon was purchased by a small group of private investors. Principally out of respect for the nearby communities and a desire to provide this part of the county with healthy, outdoor, wintertime activities, the new corporation has committed itself to undertaking improvements to both the lift equipment and ancillary amenities related to guest services. The ALMR Master Development Plan (MDP) represents a short-term rehabilitation strategy, which will help rehabilitate and enhance the ski facility—with an implementation strategy of seven to ten years (once approvals are in place and the USDA Forest Service reissues our special use permit).

On the grand scheme of things (considering other plans for much larger ski properties), the ALMR MDP is a modest endeavor. ALMR management hopes the projects in the MDP will provide ALMR with the necessary base area and on-mountain amenities to meet the demand for alpine recreation in our local and regional markets. Most of the projects are aimed at rectifying existing deficiencies in our operations, principally to help improve the overall balance of the ski area’s various capacities (i.e., mountain, base area, parking, sewage treatment, etc.). The ALMR MDR was submitted late in 1998. The ALMR MDP Draft Environmental Impact Statement was published in July of 2000. The ALMR MDP Final Environmental Impact Statement, and associated Record of Decision, was published in November 2001. Currently, our organization has invested more than four years in planning efforts and NEPA analysis. This endeavor has cost us an estimated \$350,000.00. At this point, given the financial means of our ski

area, it is doubtful that we will be able to undertake any of the projects that have been approved in the Record of Decision in the next one to two years.

At no time would I have imagined ALMR was embarking on a \$350,000.00, four-year exercise to achieve necessary approvals. Having seen yet another summer construction season slip away, I am sadly realizing that the public, who is allegedly being served by this NEPA process, is really who suffers the greatest from what the NEPA process has become. Luckily, I have patient, empathetic patrons. (Special Use Permittee, North Powder, OR - #107.1-2.10210.XX)

NEPA currently dominates every environmental decision-making process of federal agencies. The statute itself is short, merely directing preparation of a "detailed statement" for "major federal actions significantly affecting the quality of the human environment." 42 U.S.C. [section] 4332 (2) (c). From this brief direction sprang the extensive, time consuming, and expensive environmental impact statement ("EIS") that every federal project is centered upon.

NEPA also implemented the CEQ as an agency within the Executive Office of the President with its role of coordinating decisions among federal agencies. The CEQ is responsible for adopting and amending regulations under NEPA. Congress did not provide CEQ with regulatory authority but President Carter granted CEQ authority to issue regulations through Executive Order 11991, 42 Fed. Reg. 26967 (May 24, 1977). CEQ thereafter adopted regulations that give agencies NEPA implementation guidance and outline when and how an agency must prepare an EIS. 40 C.F.R. [section] 1500-1517.7.

This guidance goes far beyond the words included in the statute. It delineates an extensive, time-consuming process for deciding whether an EIS is required for a project or a separate document, and environmental assessment ("EA") is required. The EA and accompanying Finding of No Significant Impact ("FONSI") have become the accepted form of NEPA compliance. The CEQ regulations require the preparation and publishing a draft document, accept, review and response to public comments on the draft, prepare and publish a final document (sometimes with a second public comment period) and then, at least 30 Days later, to publish a decision on a project (record of decision) restating the major findings of the EIS. This duplicity is redundant, a ridiculous waste of tax dollars, and ultimately leads to burn-out by those of the public that are brave enough to participate! If government agencies are truly interested in the public's input, they would make the process much easier, less time consuming and certainly less repetitive.

It should be noted that most of the NEPA cases that have choked the courts in recent years are based on violations of the CEQ regulations. (Someone forgot to dot an "I" or cross a "t" and has little to do with actual environmental conditions on-the-ground.) NEPA was intended to ensure environmental protection, but has actually created an involved, repetitive, time consuming decision-making process that requires years of analysis and document preparation and millions of dollars of staff time. The result is paralysis by analysis, with little on-the-ground activities as compared to in-the-office planning activities. (Individual, Joseph, OR - #424.8-9.10200.F1)

#### **THROUGH GUIDANCE ON SPECIFIC ISSUES**

As a general matter, the WUWC believes the following fundamental principles should guide NEPA procedures:

Cost Efficiency. The NEPA process itself can be very expensive to complete. In addition, delays in decision-making can greatly add to project costs. NEPA guidance must insure timely, cost-effective review, and clear, recommended schedules for completion of various NEPA tasks. This can be done through guidance that specifies, among other issues: how interagency teams will function and establish binding timeframes; how to tier off of previous NEPA compliance; how to incorporate applicants into the process; and how to ensure that other procedures that cover the same action (e.g., consolidation under the Endangered Species Act and Fish and Wildlife Coordination Act) are coordinated with the NEPA review. (Utility Industry, Washington, DC - #474.4.10210.XX)

**151. Public Concern: The CEQ Task Force should consider statutory changes to NEPA to reduce the time and expense involved in NEPA analysis.**

NOIA supports the efforts of agencies to comply with the procedures of NEPA and the Council on Environmental Quality (CEQ) regulations in order to ensure that environmental information is available to public officials and citizens before decisions are made. In recent years, however, the time, expense and other costs of completing environmental impact statements, environmental assessments, and related documents and processes represent a major burden for businesses, local governments, and individuals. Furthermore, third parties use the procedural statute to litigate and forestall development, which causes agencies to conduct a NEPA process with the goal of creating legally “bullet-proof” documents, rather than producing the best decision based on the best scientific and other information.

We agree with the Task Force’s assertion that agency planning and decision-making processes using NEPA can obtain higher levels of efficiency, clarity and ease of management through the improved use of existing authorities, better information management, improved interagency and intergovernmental collaboration, and the use of new technologies. We hope the Task Force will also consider statutory changes to the Act. (Oil, Natural Gas, or Coal Industry, Washington, DC - #61.1.10200.XX)

**152. Public Concern: The CEQ Task Force should address the effect of NEPA expense—that high priority actions requiring NEPA analysis are put aside in favor of lower priority work that does not require NEPA analysis.**

Preparation of NEPA documents, whether EISs or EAs, requires significant staff commitment, but the appropriate staff is often fully preoccupied with other activity more relevant to an agency’s core mission. As a result, high priority actions that require NEPA documentation are often put aside in favor of lower priority work that does not involve NEPA analysis. The NEPA process is put on hold until funds are obtained through a budget process that often takes several years. (Other, Washington, DC - #585.4.10210.XX)

**153. Public Concern: The CEQ Task Force should establish time limits for NEPA analysis.**

Unwieldy delays: One of the greatest complaints of the NEPA process is the interminable delay for decision-making. Some state agencies have described the NEPA process as the “black hole” into which huge amounts of public time and resources are expended with no apparent end in sight. We have seen delays of eight years, 12 years, and the worst case—18 years for decision-making on different projects by a federal agency. (In each case, a decision has yet to be rendered.) “More study” is often viewed as the excuse for delay and inaction.

Recommendation: We suggest establishing clear, uniform and certain timetables for evaluating and concluding the NEPA process, across all federal agencies. (Office of the Governor, State of North Dakota, Bismarck, ND - #635.4.10200.XX)

**154. Public Concern: The CEQ Task Force should not establish time limits for NEPA analysis.**

Public Concern: The CEQ Task Force should reject the suggestion to set time limits for environmental review. Examples of the type of “streamlining” proposals that ELPC and CNT oppose because they would weaken the NEPA process and do little to actually improve NEPA implementation include:

Time Limits for Environmental Reviews: In order to further streamline the process, critics have recommended setting strict time limits in which an agency must complete an environmental review. Time limits, however, do nothing to solve one of the underlying causes of delay in agency action—namely that agencies tend to be under-funded and overworked. Given this reality, time limits will simply force agencies to cut corners on their environmental reviews in order to meet arbitrary deadlines and will limit the ability of the public to participate in the review process. (Preservation/Conservation Organization, Chicago, IL - #87.24.10200.XX)

**155. Public Concern: The CEQ Task Force should consider that the NEPA process is not delayed by required environmental analysis, but by lack of funding, local support, and project complexity.**

In an effort to accelerate transportation project delivery, some have suggested short-changing the environmental review process by eliminating public participation and imposing deadlines on participating agencies. However, recent data . . . tell us that well over half (62%) of delayed projects are stalled due to lack of funding, local support and project complexity—not environmental review. (Preservation/Conservation Organization, Washington, DC - #535.43.10200.XX)

**156. Public Concern: The CEQ Task Force should consider that any delays caused by required environmental analysis are justified.**

In recent days, much to do has been made over the so-called “hindrance” that NEPA causes for federal agency officials who are merely trying to get their job done. The procedures required by NEPA have also allegedly caused what has been referred to as “analysis paralysis.” We believe, however, that in an open democratic society that values the involvement of concerned citizens, procedures that may seem onerous provide the best decision-making over the long term. It is in the spirit and intent of NEPA that federal decision-making be informed by, and accountable to, the citizenry of the country. While this may cause some delay along the way, in the overall balance of things, this delay is not only warranted, but necessary to insure that agency decision-making is the best it can be. (Preservation/Conservation Organization, Tucson, AZ - #538.4.10200.XX)

## Meaning of Significance

**157. Public Concern: The CEQ Task Force should clarify the meaning of significance.**

NEPA should include a scale for the use of the word, “significance,” since it is often used by federal agencies.

Decisionmakers often lump issues raised by the public, as well as their decisions, into two broad categories—significant and insignificant. Since NEPA discusses the need to consider a broad range of perspectives, it would seem that there should be further refinements to the idea of significance. Here is a list of a few considerations for this purpose:

- significance, in terms of costs to the public
- significance, in terms of societal/cultural needs not already available
- significance, in terms of commercial interests
- significance, in terms of maintaining natural conditions and processes
- significance, in terms of quality of life (non-economic)
- significance, in terms of quality for life (economic)
- significance, in terms of the living organisms and their habitats represented in the region of the project
- significance, in terms of the continual interferences by man
- significance, in terms of time

Each use would require definitions for use with site specific projects. (Individual, Nashville, TN - #513.10.10200.XX)

Where there is no major federal action significantly affecting the quality of the human environment, “there is no EIS obligation.” *Fund for Animals, Inc. v. Jack Ward Thomas*, 127 F.3d 80, 84 (D.C. Cir. 1997). Instead of attempting to offer guidance on what federal actions are significant, the CEQ regulations establish a hermetically sealed control system in which all federal actions are subject to NEPA. According to CEQ, any federal action not analyzed in an EIS must be assessed in an EA unless covered by a CATEX unless the CATEX is rendered inapplicable by an EXCEPTION. 40 CFR 1501.4(b).

The statutory concept of “significant” impact “has no determinate meaning” and the CEQ regulations are “of little help” because, while ambitious, they are “nondirective.” *River Road Alliance, Inc. v. Corps of Engineers*, 764 F.2d 445, 449, 450 (7th Cir. 1985) (opinion of Posner, J.). At bottom, significant impact or significant effect is an empty concept that carries no intuitive, empirical or normative weight of its own. While devoid of meaning, the term “significantly” as used in section 102(2)(C) “can be isolated as a question of law.” *First National Bank of Chicago v. Richardson*, 484 F.2d 1369, 1373 (7th Cir. 1973). Although a court in a NEPA case is involved in examining facts to determine whether an action “significantly” affects the environment, that issue is one of law in the same sense that an appellate court may determine whether the evidence was sufficient for a reasonable jury to find a defendant guilty beyond a reasonable doubt.

According to CEQ, the term “significantly” as used in NEPA requires consideration of both “context” and “intensity,” [Section] 1508.27, and “controversy” is expressly listed as an “intensity” factor: “The degree to which the effects on the quality of the human environment are likely to be highly controversial.” [Section] 1508.27(b)(4). Environmental plaintiffs regularly invoke this provision to argue that their own opposition to a project demonstrates “controversy” so as to tip the balance in favor of a full EIS. Courts have generally disfavored the notion of a “heckler’s veto” implicit in the regulation as out of keeping with a tradition of ordered government. But the matter is not free of doubt because of the improvident wording of the CEQ regulation. (Other, Washington, DC - #506.7-8.10520.XX)

## **158. Public Concern: The CEQ Task Force should clarify threshold significance.**

**Significant Impacts Threshold.** There are long-standing discrepancies between what different federal agencies consider to be the “significant impacts” threshold for determining whether to prepare an Environmental Impact Statement (EIS) instead of an Environmental Assessment (EA). For example, most airport projects, ranging from small local airports to large ones, receive funding assistance from the Federal Aviation Administration; and FAA rules apparently require nothing more than an EA for projects ranging from a small runway extension to a plan encompassing multiple runways, taxiways, hangars, and auxiliary facilities. The Newport News-Williamsburg International Airport’s development plan, for which an EA was published in the spring of 2001, is an example of the latter. That Plan contemplates 22 separate projects in and adjacent to the airport’s property, which covers extensive acreage abutting the City of Newport News, local creeks and wetlands, and suburban areas. Assuming the projects are completed as planned, the heavily populated area will be subject to large and sustained increases in air pollution, noise, and threats to surface water quality. In contrast, the National Park Service prepares EISs for construction of a few additional features in National Park units.

I know that federal agencies promulgate their own rules implementing NEPA, and do not object to differing interpretations of the “significant effects” definition in section 1508.27 and the concept of “major Federal action” in section 1508.18 of the CEQ NEPA Rules. However, CEQ should enforce some minimum standards in its oversight role, and require federal agencies to make those distinctions in keeping with the policies of the Act. These policies include but are not limited to the fostering of public involvement in decisions affecting environmental quality, and helping public officials make decisions and take actions that protect the environment (see sections 1500.2(f), 1500.2(a), and 1500.1(c) of the CEQ NEPA Rules).

As you know, public involvement in the NEPA process is more extensive for EIS review than it is for review of Environmental Assessments. An agency preparing an EIS must invite public comments, among others (CEQ NEPA Rules, section 1503.1(a)(4)); the agency need not do this of an EA. Federal agencies, particularly those constructing or facilitating the construction of projects with large impacts on natural resources, should be required to define significant impacts of their activities so that large undertakings get adequate public and agency review. Otherwise, the process works against effective public and agency review of such projects, and unfairly as to agencies whose activities give rise to lesser impacts upon the human environment (and, perhaps not incidentally, receive vastly smaller appropriations every year). (Individual, Washington, DC - #503.4-5.30210.F1)

### **THROUGH REVIEW OF NEPA HISTORY AND DETERMINATION OF NECESSARY LEVEL OF ANALYSIS**

The terms “major federal actions”, “significant affects” and “significant” need to be clearly defined in regulation. The application of “major federal actions” and “significant affects” on the environment have been taken to absurd extremes. A simple review of the issue shows that very minor actions with no real

effects are swept up into major EA or EIS procedures. There is no way Congress intended for replacement of an existing bridge or renewal of a license for a dam or pipeline be forced to go through this program.

Recommendations: 1) The Legislative History of NEPA needs to be reviewed and the definitions in regulation changed to comport with that original intent. 2) Several basic “thresholds” need to be defined in regulation that determine the level of NEPA review for a project. 3) If the level of review for a specific project is not obvious, the burden must be placed on the agency to justify why a project must be elevated to a higher level of review. (Mining Industry, Anchorage, AK - #645.4.10200.XX)

### **159. Public Concern: The CEQ Task Force should review the original congressional understanding of “significant federal action.”**

This brings us full circle to the definition of “significant federal action”. The original congressional intent considering a “major federal action significantly affecting the environment” (or words to that effect) as applied to the NEPA has been lost through Court action, legislation and/or Executive Order. (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.28.10200.XX)

It’s pretty clear that what the courts are now considering a “major federal action significantly affecting the environment” (or words to that effect) is vastly different than what was conceived by the legislation. Somebody needs to go back to record to see what it says about the intent of congress. Case law has piled up contrary, I believe, to the intent of what should be covered by NEPA. I’m not a lawyer either, but it may take more legislation to negate the legal precedents. (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.40.10110.XX)

### **160. Public Concern: The CEQ Task Force should develop a recommended context and intensity worksheet or checklist for each potential environmental effect that agencies must complete to document why an effect is not significant.**

Although there are many examples of successful EAs/FONSIs, we have identified . . . common problems with EA/FONSI practice and offer recommendations to improve each. While not all projects experience all of these problems, they are all too common throughout the federal government.

“Non-Significance” of impacts improperly justified

Summary of problem—Too many agencies do not rely on the “context” and “intensity” factors when determining that impacts are “less-than-significant.” Because context and intensity form the definition of “significantly” under Section 1508.27 of the CEQ NEPA regulations, it is critical that agencies use these factors to explain why an impact is not significant.

Recommended solution—Develop a recommended “context” and “intensity” worksheet or checklist for each potential environmental effect that agencies must complete to document why an impact is not significant. Require that the checklist be supported by data and explanations, which will form the evidentiary support for the conclusions. The use of such a checklist will provide greater assurance that the context and intensity factors will be used and explained in the EA, and will foster greater uniformity from agency to agency and from project to project. Such an approach is used under the states’ little NEPA laws in both California and Washington. (NEPA Professional or Association - Private Sector, No Address - #530.8.10200.XX)

## **Analysis of Risk and Uncertainty**

### **161. Public Concern: The CEQ Task Force should require analysis to address scientific uncertainty.**

Due to the scale of modern mining’s impacts, in both time and space, and the complex natural systems impacted, NEPA analyses of a mine’s potential impacts must deal with the issue of scientific uncertainty. As stated in the NRC report:

The models and tools needed to project and assess the consequences of changes in baseline conditions resulting from the activities proposed for the site include air quality emission factors and models, acid-generation prediction models, pit lake water quality models, and hydrological models, among others. Current models and tools have varying degrees of uncertainty and have been subjected to varying degrees of calibration and verification. (NRC, pg. 59)

The issue of scientific uncertainty as it relates to mining related decisions under NEPA, is itself complex. Included in the primary topics that need to be considered are: risk and risk assessment; the interrelated nature of degrees of uncertainty in various aspects of the overall assessment of a mine's impacts (e.g., how uncertainties in acid drainage generation, when connected to the uncertainties in bedrock fracturing complicate the inherent uncertainties in pollute transport, which affect the uncertainties around the long term effects a mine may have on aquatic systems in the larger region); and the uncertainties in how best to manage impacts that may last decades to hundreds or thousands of years. It is the goal of the NEPA analysis to present to the public, and the decisionmaking agency, an assessment of the impacts a mine may have, and techniques by which those impacts may be mitigated. At the heart of this is the manner in which the study discloses this uncertainty.

The NEPA analysis is not intended to present an argument either for or against a project as a whole or of any of its component parts (or any of the alternatives or their component parts), but rather to provide to the public and the agency the best information that can be reasonably achieved.

Unfortunately, it is exceedingly rare for EISs to discuss the uncertainties in the science discussed, or the implications on the predicted impacts should those predictions indeed be inaccurate. (Preservation/Conservation Organization, Durango, CO - #523.30-31.10240.XX)

The issue of scientific uncertainty is not just one of public confidence, but also of having the ability to make reasonable decisions when affecting such a magnitude of issues in both time and space as can a modern mine. "Successful environmental protection is based on sound science. Improvements are needed in the development of more accurate predictive models and tools and of more reliable prevention, protection, reclamation, and monitoring strategies at mine sites." (NRC, pg. 92 . . . ) "Regulatory agencies and the mining industry are not adequately addressing research needs related to the environmental aspects of hardrock mining and reclamation, including the uncertainty associated with predictive modeling." (NRC, pg. 106)

These statements by the National Research Council contrast sharply with the comments in recent EISs that deal with issues of huge complexity and consequence:

"The BLM recognizes the uncertainties associated with the ground water flow model. However, as indicated above, the model provides an acceptable understanding of potential hydrologic effects that may be caused by the Phoenix Project." (Phoenix Project FEIS, Appendix C, Response 13-65)

"The calibrated model has been accepted by the BLM as a reasonable representation for observed baseline conditions in the study area." (Phoenix Project FEIS, Appendix C, Response 13-67)

These statements also fail to meet NEPA regulations, which at 40 C.F.R. 1502.22, impose three mandatory obligations on the BLM in the face of scientific uncertainty: (1) a duty to disclose the scientific uncertainty; (2) a duty to complete independent research and gather information if no adequate information exists (unless the costs are exorbitant or the means of obtaining the information are not known); and (3) a duty to evaluate the potential, reasonably foreseeable impacts in the absence of relevant information using a four-step process.

This process must remain, and in fact be followed more closely if public confidence is to be maintained, and if the agency is to truly be capable of the 'reasoned approach' to decision making that NEPA requires.

What sometimes occurs is the selective use of uncertainty to argue for a particular decision. In the South Pipeline Project FEIS, the BLM admits, "the long-term predictions indicate that waters of the state (pit water and immediately adjacent ground water) would be degraded." (South Pipeline FEIS, 6-99). However, the response to AA-13 goes on to note that: "It is uncertain if this constitutes a violation of NAC 445A.424 or NAC 445A.429". Id. (NAC refers to Nevada Administrative Code). This uncertainty, we are told, stems from the "uncertainty of the long-term predictions". (Id.).

The BLM here appears to be trying to have it both ways. When the models and studies are attacked for failing to adequately predict future impacts, the agency vigorously defends the modeling and underlying assumptions. However, when the studies reveal potential impacts that are problematic for Project approval, the BLM points to the inherent uncertainties which invariably affect long-term predictions. Under this view, predictions saying that there will be no acid mine drainage, air quality violations, etc., are similarly unusable by the BLM. Clearly, the BLM is not advocating that all long-term predictions that are “uncertain” cannot be used. If that were the case, then clearly no large mine could be permitted on public lands. (Preservation/Conservation Organization, Durango, CO - #523.34-35.10240.XX)

## **162. Public Concern: The CEQ Task Force should require risk assessments.**

### **INCLUDING ANALYSIS OF CONSEQUENCES**

“From an engineering or environmental perspective, risk can be defined as the mathematical product of the probability of an event occurring and the consequences of that event should it actually occur.” (MEND Manual, Vol. 1 - Summary, SENES Consultants Limited, March, 2001, pg. 1-7) Risk is often confused with just the probability component of it, as the claim that the “risk” of a large nuclear accident is less than getting hit by lightning. Yet, clearly a large nuclear accident has consequences much greater than a bolt of lightning (if not for the one struck, at least for society).

Large mines have the potential for massive environmental harm, as has been shown by the mines on the EPA’s Mega-site Superfund list (the Summitville site in Colorado costing over \$230 million total, the Butte-Silver Bow site in Montana costing over \$250 million). Should the prediction that the Phoenix Project’s pollution will be contained and treated be inaccurate, this site will be producing heavy metal contaminated water for many thousands of years. Clearly, while the likelihood of that failure can be debated, the consequences are large. Or in the case of the dewatering of the aquifers in the Carlin Trend area of the Humboldt River drainage, should the predictions that the Humboldt River will not be severely harmed, and that the tributaries that host remnant populations of Lahontan Cutthroat Trout will remain viable, are inaccurate, the whole middle and lower Humboldt River could be in jeopardy, as well as the economy and ecology of the whole region, for many decades. Again, the consequences of a failure in prediction are huge.

Risk assessment is a rapidly evolving science that is utilized by most heavy industries, as well as their investors and insurers. “These techniques can be applied to identify impacts or benefits associated with proposed actions, and determine the sensitivity of outcomes with respect to the underlying assumptions.” (MEND Manual, Vol. 1 - Summary, SENES Consultants Limited, March, 2001, pg. 1-7)

Clearly, such an assessment would be helpful for the public and agencies wrestling with decisions that have the possibility to do as great harm as do many of today’s large mines. Yet, risk assessment is not included in the NEPA process. While the scientists which do the work of predicting and modeling the likelihood of acid generation, or extent and duration of groundwater drawdown, may do sensitivity analysis on that work, it is not presented to the public or agencies in the NEPA documents. In some cases sensitivity analysis is conducted and is discussed in the background documents to an EIS, yet by not discussing this analysis in lay terms in the EIS, the public has limited ability to even be aware the uncertainty exists, or the ramifications it may pose.

The argument often presented to comments raised, is that “NEPA guidance states that EISs must be written for the lay public.” (SOAPA FEIS, Appendix E, pg. 46, Response 32dd) Yet, since most of the lay public does not understand the extent or potential implications of the uncertainties, the lack of discussion in the EIS constitutes a serious misleading of the public. The lack of disclosure fails to allow the process “for clear identification of tradeoffs between values, and promote(s) a better understanding of the implications of the many decisions involved in the preparation and approval of a mine’s operating plan.” (NRC, 109) Lack of discussing uncertainty implies the existence of certainty, which is a deception in many cases. (Preservation/Conservation Organization, Durango, CO - #523.32-33.10240.XX)

## **163. Public Concern: The CEQ Task Force should direct agencies to include error analysis.**

One of the longstanding faults of NEPA is that there is no requirement to provide an estimate of the quality (error range) of the many numerical predictions. This has been exacerbated by the proliferation

of regulations, and associated models, calling for and producing artificially precise outputs. Effective management in the private sector has long ago moved to more robust decisions utilizing error analysis and ranges of expected outcomes. Part of this problem is due to a lack of candor in the technical community, and part to an elitist attitude about the limitations of the public to understand complex issues.

Clearly, adaptive management needs to be based on full discussion of the extent and limits of current knowledge and data. However this concept should be universal. An early key to facilitating the exchange of GIS information was the requirement of metadata quality descriptions. Without this, trust and cooperation remains suboptimal. (Individual, Syracuse, NY - #158.1.10240.F1)

#### **164. Public Concern: The CEQ Task Force should reinstate worst case scenario analysis.**

We need a stronger NEPA and not a weaker one. This can be done in the following way:

Restore Section 1502.22 so the requirement that agencies are responsible for developing important information, if it can be developed in a reasonable timeframe. This worst case scenario analysis was weakened many years ago and needs to be reinstated and strengthened. (Preservation/Conservation Organization, Charlottesville, VA - #555.10.10240.XX)

#### **165. Public Concern: The CEQ Task Force should advise against the “precautionary principle.”**

##### **BECAUSE IT IS NOT SCIENTIFIC**

I reject the entire concept of legislating a concept such as the precautionary principle. This is a waste of valuable resources and time. Not only has this principle been impossible to comply with, it stands against every known scientific method. This principle is based on fortune-telling and astrology as models, as no scientific method has yet to be devised to know the future with any certainty. I am embarrassed that our government could expect this [principle] to be taken seriously in light of the scientific achievements of the last two centuries. (Individual, Moorhead, MN - #153.2.70500.F1)

## **Cumulative Effects Analysis**

### *Cumulative Effects Analysis General*

#### **166. Public Concern: The CEQ Task Force should clarify the definition of cumulative effects.**

##### **WITH REGARD TO THE SCALE OF PROJECTS TO BE CONSIDERED**

Cumulative Impacts: Further clarification of the definition of cumulative impacts should be made. The most widespread question regards the scale of projects that should be considered. For example, if an EA/EIS involves construction of new roads, there is debate on whether the assessment of cumulative impacts should only include other “past, present, and reasonably foreseeable activities (Federal, state, local, and private). (United States Environmental Protection Agency, No Address - #299.37.10200.F1)

#### **167. Public Concern: The CEQ Task Force should require adequate cumulative effects analysis.**

In 1997 the CEQ issued a report titled “Considering Cumulative Effects Under the National Environmental Policy Act” and concluded that consideration of cumulative effects is essential for evaluating and modifying alternatives to avoid adverse environmental impacts and developing appropriate mitigation and monitoring plans. The CEQ report specifically addresses the “scale” issue as follows: Many times there is a mismatch between the scale at which environmental effects occur and the level at which decisions are made. Such mismatches present an obstacle to cumulative effects analysis. For example, while broad scale decisions are made at the program or policy level (e.g., National Energy

Strategy, National Transportation Plan, Base Realignment and Closure Initiative), the environmental effects are generally assessed at the project level (e.g., coal-fired power plant, interstate highway connector, disposal of installation land). Cumulative effects analysis should be the tool for federal agencies to evaluate the implications of even project-level environmental assessments (EAs) on regional resources. (Id. at 4.) The report goes on to discuss a study that evaluated 89 EAs published in the Federal Register in 1992 and found that for the 22 EAs that actually identified the potential for cumulative impacts, five took conclusions from a previous document, one provided for “future” analysis, and only 3 actually discussed cumulative impacts for all affected resources. (Id. at 6.) Clearly, incorporating cumulative impacts analysis into every NEPA decisional document is not only required by the act itself (40 CFR 1508.7) but is necessary to achieve an accurate depiction of potential impacts at both the project and programmatic levels. (Preservation/Conservation Organization, Eugene, OR - #96.2.50900.F1)

Given that NEPA was signed in 1970, I am sure there is room for updating the policies. Updating, so long as we retain thorough impact study requirements, is reasonable and just. Repealing the law, or sweeping changes would undoubtedly satisfy industry, but at what cost? I am not willing to sacrifice my child’s future for the ease of the logging industry today. (Individual, No Address - #225.2.10200.XX)

One of the problems with the Prescott trail designation is that the Forest Service failed to consider their actions in the context of similar actions being taken by other land management districts. Although the cumulative effects of this designation are likely to be significant, the Forest Service has allowed the project to continue without considering cumulative impacts. The oil and gas development in Alaska’s North Slope is a similar, albeit more egregious situation. In the past few decades thousands of individual permits have been issued for oil and gas development in the Arctic. Not only have the cumulative impacts rarely been analyzed, but the agencies have also consistently failed to prepare EISs to address the effects of the development and consider alternatives. The agency’s failure to adhere to the NEPA process and consider the cumulative effects of related projects has resulted in the development of more than 1,000 square miles of public land with little public participation. (Preservation/Conservation Organization, No Address - #498.16.10200.XX)

#### **BY ENCOURAGING DEVELOPMENT OF LONG-TERM DATA SETS AND ANALYSIS TECHNIQUES ESSENTIAL FOR PROPER CUMULATIVE EFFECTS ANALYSIS**

Delays in project implementation associated with NEPA, when present, are often the result of failure to comply with NEPA requirements by responsible agencies. For years, agencies have avoided taking hard looks at environmental impacts of projects as they prepare NEPA documentation. Too often, Environmental Assessments (EA) and Environmental Impact Statements (EIS) are comprised of little more than verbiage substituting for real analysis constituting only a grudging pro-forma compliance with this essential statute.

This situation is particularly problematic within the Forest Service when numerous EA and EIS documents either ignore cumulative effects or fail to address them at a minimum acceptable level. When cumulative effects are mentioned, the “analysis” consists of little more than a rehash of generalizations, assertions and discussions cut and pasted from previous NEPA documents. Forest Service personnel refer to use of such boilerplate wording in NEPA documentation as “NEPA Light”. When challenged to produce real, on-the-ground data regarding spatial juxtaposition of historical and upcoming cutting units, spatial distribution of wildlife habitats, locations of wildlife travel corridors, hydrological data from associated aquatic ecosystems, relevant road density calculations, distribution of fragmenting features (e.g. power lines, pipelines, roads, etc.), or any number of other essential components to a cumulative effects analysis concerned citizens are too often provided with little to nothing in the way of supporting documentation. Assertions, yes. Scientific support and empirical documentation, no.

Thus, the delays in the NEPA process occur when concerned citizens exercise their rights to insist that responsible public officials fulfill the minimum requirements of NEPA documentation. In the case of the Forest Service, NEPA compliance would be more efficient and more substantive if sufficient resources were dedicated to developing the long-term data sets and analysis techniques essential for proper cumulative effects analysis. Unfortunately, in the upper Midwest, as well as other regions, priority is

given to logging and associated activities when planning and budgeting decisions are made. When it comes to proper and scientifically supportable documentation of environmental impacts for NEPA, the Forest Service has a long way to go. Suggesting that NEPA is merely a delaying tactic for opponents of projects ignores the wealth of documented failure of many agencies to comply with the letter and spirit of the law. (Individual, Seattle, WA - #499.2-3.10200.XX)

#### **SHOULD PROVIDE REGULATIONS FOR THE ADEQUATE EVALUATION OF INDIRECT EFFECTS AND CONNECTED ACTIONS**

New regulations should provide for a more meaningful and less arbitrary evaluation of indirect impacts and those of connected [actions]. At present, federal agencies are forced to go on a fishing expedition of enumerating impacts along a causal chain with a basically arbitrary number of links. Unavoidably, this results in federal agencies making piecemeal and token, and largely meaningless, disclosures of indirect impacts and those of connected actions. New regulations should ensure that the lead agency probe meaningful lines of investigation, based on the most significant impacts, using such “hot-button” markers as endangered species, possible biological thresholds, toxic compounds, influence on overarching economic trends or activity, impacts to keystone species, steep slopes and wetlands, effects on ecosystem resiliency, and other constructs that act as causal “magnifiers”. Rather than use vague, token language in describing what indirect impacts will occur, the agencies should rigorously probe these lines of investigation and not shy from the realms of social and economic science over which federal projects can have so much influence. (Individual, Logan, UT - #383.4.10240.XX)

#### **SHOULD PROHIBIT FRAGMENTATION OF ANALYSIS**

A major deficiency in implementing NEPA concerns the related areas of fragmenting analysis and improperly assessing and disclosing cumulative impacts. Current CEQ regulations provide proper guidance on these issues, if they were followed by the agencies. The type of actions to be considered in determining the scope of an environmental impact statement include the following:

Similar actions . . . that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement. 40 C.F.R. 1508.25(a)(3).

In addition, when preparing an EIS for broad actions, agencies should evaluate the proposal “geographically, including actions occurring in the same general location, such as [a] body of water, region, or metropolitan area” and “generically including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.” 40 C.F.R. 1502.4(c)(1),(2). The duty to study all impacts of a proposal extends to connected actions or those “that are closely related and therefore should be discussed in the same impact statement.” 40 C.F.R. 1508.25(a)(1). Connected actions include those that “cannot or will not proceed unless other actions are taken previously or simultaneously,” or “are interdependent parts of a larger action and depend on the larger action for their justification.” 40 C.F.R. 1508.25(a)(1)(ii),(iii).

Many projects URC has commented on have been unjustifiably fragmented into separate projects and separate environmental impact statements. The result of such fragmentation is an unrealistic projection of impacts for a particular project—indeed, if the projects are not fragmented, but combined, a much clearer and more realistic picture of the actual impacts can be obtained. Agencies may have a tendency to fragment analyses so that the separate NEPA documents can more easily conclude a FONSI, thereby avoiding an EIS. (Preservation/Conservation Organization, Salt Lake City, UT - #572.7-8.10200.XX)

Require that projects cannot be segmented, ever. The Grand Parkway, in the Houston Area, is a 170 mile freeway that is being built in segments because the proponents (Federal Highway Administration, etc.) say that each segment serves an independent function. The total impacts of this 170 mile long, \$2-4 billion road to nowhere (that is why we call it the Grand Parkway), have never been analyzed, assessed, or evaluated. Instead citizens are flooded with about 8 individual EISs that hide the true magnitude of cumulative impacts from this highway from hell. Stop segmenting as allowed in Section 1502.4. (Preservation/Conservation Organization, Bellaire, TX - #590.12.10200.XX)

### SHOULD VALIDATE EFFECTS

It appears because the NEPA documents are purposely written with holes the agencies can find, that they are now just a way to manage the land via lawsuit. I don't believe any of the agencies bother in anyway whatsoever to validate anything they just find no impact and skip along. (Individual, Pioche, NV - #325.3.70210.A2)

### IN ALL DOCUMENTS

Require a specific cumulative impact analysis, assessment, and evaluation section in each Environmental Impact Statement (EIS), Environmental Assessment (EA), Categorical Exclusion (CE), and Finding of No Significant Impact (FONSI). Currently lawless agencies either do not include cumulative impacts or say they do but provide no quantitative information. Require both quantification and qualification of all proposals for cumulative impacts. Spell out the cumulative impacts so they include all past, present, and future foreseeable actions, no matter what the action was or who did the action in the project and surrounding areas. (Preservation/Conservation Organization, Missoula, MT - #624.3.10230.XX)

### 168. Public Concern: The CEQ Task Force should require agencies to coordinate cumulative effects analysis with other agencies operating in the same ecosystem.

In terms of addressing the cumulative effects of an action, agencies are often correct that their action does not have a significant effect on the environment and after preparation of an EA, conclude their NEPA responsibilities are finished. However, often multiple federal agencies are operating within the same ecosystem and there are no institutional mechanisms for coordinating the actions of all the agencies in that ecosystem. For instance, the Forest Service and the Bureau of Land Management may issue grazing permits within the same watershed and each of the agencies may prepare an EA and a finding of no significant impact. In fact, the Forest Service itself may prepare two different EAs on two different allotments on the same forest, partly as a result of the timing of the permit. This not only fails to capture the cumulative effects of the federal authorization to graze on public lands, it costs more time and money than is necessary. (NEPA Professional or Association - Private Sector, Washington, DC - #450.7.10500.XX)

### 169. Public Concern: The CEQ Task Force should encourage agencies not to use the distinction between programmatic and tiered analysis as an excuse to dismiss concerns over cumulative effects.

Public input supplied during a NEPA process must not be considered as "Out of Scope" for both site specific proposals and larger scale proposals.

The NEPA planning process should not be used by agencies (Forest Service) to ignore substantive consideration at all levels. The use of a programmatic environmental impact statement is not appropriate for some situations. For example, many cumulative impacts cannot be effectively addressed by simply relegating the assessment of cumulative impacts to the site specific level and then, at the site specific level, reject the consideration of cumulative impacts as "Out of Scope" simply because one can "tier" to an EIS that mentions some ideas about cumulative impacts. By producing two or more levels of environmental considerations, the Forest Service plays a shell game. Is the cumulative effects analysis under Shell #1 (forestwide EIS)? Is it under Shell #2 (environmental assessment for a site specific project)? Or, is it under Shell #3 (empty by design)?

Of all the places that I have seen or heard the Forest Service use the phrase, "out of scope," I can only suggest that the employees are really out of scope. (Individual, Nashville, TN - #513.12.10420.XX)

### 170. Public Concern: The CEQ Task Force should revise the CEQ regulations to reflect CEQ's Cumulative Effects Handbook.

Revise the CEQ regulations to reflect the spirit and method of CEQ's Cumulative Effects Handbook (including inclusion of all activities occurring within the resource base). (NEPA Professional or Association - Private Sector, Washington, DC - #450.9.10240.XX)

**171. Public Concern: The CEQ Task Force should review recent court decisions regarding cumulative effects analysis.**

Cumulative Effects. In January 1996, CEQ published a report entitled “Considering Cumulative Effects under the National Environmental Policy Act.” Since then, numerous court cases have challenged NEPA documents on the adequacy of the cumulative effects analysis (CEA) contained in NEPA documents. This area of NEPA practice appears to be evolving and has proven to be a “weak link” in some agencies’ defense of the adequacy of their EAs and EISs. It would be beneficial if the Task Force’s report included a review of recent court decisions on this matter and summarized the current opinions on the appropriate scope, methodology, and level of detail required for a CEA. (National Oceanic and Atmospheric Administration, Washington, DC - #637.50.10240.XX)

**172. Public Concern: The CEQ Task Force should consider the history of cumulative effects analysis under the Endangered Species Act.**

Although certainly no model for the extent to which the analyses should be restricted, the history of cumulative effects analysis under the Endangered Species Act (ESA) is informative. There, a pro-active Interior Department issued a Solicitor’s Opinion in 1981 (M-36938, 88I.D.903, August 27, 1981) that substantially reduced the scope of cumulative effects analysis (eliminating effects of future federal projects and projects that were speculative) in consultations under ESA section 7(a)(2), and followed it with an amendment to the joint rule of the Fish and Wildlife Service and National Marine Fisheries Service defining cumulative effects. 50 C.F.R. section 402.02; 51 Fed Reg. 19926, 19958 (June 3, 1986). Although that effort was based in part on a distinction between the ESA and NEPA drawn by the courts, the Solicitor (citing the judicial opinions), and the preamble to the rule (51 Fed. Reg. 19932-19933), it still is instructive as to the potential for shaping a more efficient impacts analysis in NEPA documents. (Timber or Wood Products Industry, Washington, DC - #507.14.10520.XX)

**173. Public Concern: The CEQ Task Force should eliminate the requirement for cumulative effects analysis.**

CEQ should consider eliminating the required analyses of “connected actions” and “cumulative effects.” (Timber or Wood Products Industry, Cleveland, TX - #402.10.10240.XX)

**OR LIMIT THEIR SCOPE**

Cumulative impacts - The argument that all cumulative impacts have not been considered has been taken to ridiculous extremes. No matter how detailed a NEPA review, someone can always make an obscure argument that some cumulative or far-afield impact has not been evaluated. Cumulative impact considerations must be limited to the immediate area of the project. Any project must not be held hostage to the possibility of other projects that may or may not occur at some time [or] in the future.

Recommendations: 1) Consideration should be given to removal of any requirement for cumulative impacts. 2) If this is not possible, the limitations must be clearly defined to limit the current expansiveness of this issue. 3) Specific lists of example impacts that will not require considerations should be defined in regulation. 4) Specify measurable, objective measures in regulation that will place limits on the expansiveness of review and on cumulative impacts review. (Mining Industry, Anchorage, AK - #645.14.10200.XX)

Section 102(2)(C) requires the analysis of the “environmental impact” and “environmental effects” “of the proposed action” . . . yet, the CEQ, aided and abetted by the courts, (or vice-versa) has required analysis of “connected actions” and “cumulative impacts” of unconnected actions. 40 C.F.R. section 1508.7, 1508.9, 1508.25, 1508.27. It may well be that judicial decisions on the extent of analysis required for connected actions and cumulative effects are based primarily on the CEQ regulations and guidance. If so, CEQ should consider eliminating these mandated analyses as contrary to the plain meaning of NEPA, which requires analysis of only the Federal action’s impacts (in the same manner in which CEQ eliminated the worse-case analysis requirement). If the case law purports to interpret NEPA and not CEQ’s rules and guidance and appears not to be refutable (as is more likely the case for “connected actions” arising from the highway lawsuits), then CEQ should certainly limit the scope of

those analyses by rulemaking. (Timber or Wood Products Industry, Washington, DC - #507.13.10200.XX)

**OR REQUIRE ALL INTERESTED PARTIES TO FUND THE ANALYSIS ON AN EQUAL BASIS**

The Forest Service and NEPA consulting agencies have increased the level of analysis required in the area of cumulative impacts. Challenging cumulative impacts analysis is the new growth area for environmental groups aiming to delay ski area project approvals. At Big Mountain we found a consultant and funded 100% of the preparation of the first CEM for Grizzly Bears in the 100 miles surrounding our area. This was done at the request of USA-Wand the USFS. One year later the USFS got their own CEM running which confirmed the outcomes of the earlier CEM. Since 1995, neither one of these CEMs have been used by either agency for decision making in our National Forest Area.

Potential Solution—There is significant concern that any CEM has very limited value, and that any output can be easily challenged. Consider dropping the need (requirement?) for CEMs. If they are not dropped consider having all interested parties fund the CEM on an equal basis. This would force early communication and coordination of these parties so that a CEM has some mutual value. (Special Use Permittee, Whitefish, MT - #478.3.10240.XX)

### *Application of Cumulative Effects Analysis*

**174. Public Concern: The CEQ Task Force should encourage more cumulative effects analysis at the project level.**

**BY PROMOTING INTERAGENCY COLLABORATION ON COMBINED CUMULATIVE EFFECTS ANALYSIS FOR A GIVEN GEOGRAPHIC AREA**

We need a realistic approach to indirect and cumulative impacts analysis, consideration, and documentation within the framework of the CE, EA, EIS processes respectively. Current provisions create unrealistic expectations for analysis at the project level. One way that CEQ might approach this is to more actively promote interagency collaboration on a combined cumulative effects evaluation upon which all agencies could rely for their individual actions in a given geographic area. (Federal Highway Administration, Washington, DC - #658.29.10240.XX)

**175. Public Concern: The CEQ Task Force should require cumulative effects analysis at the regional level.**

One of NEPA's goals was to ensure a comprehensive decision making approach so that long term and cumulative effects of unrelated decisions could be recognized, evaluated, and either avoided, mitigated, or accepted as the price to be paid for the federal action. NEPA regulations define "cumulative impact" as:

The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. 40 CFR 1508.7.

Under current practice, comprehensive regional, or programmatic, impact analyses are generally limited to situations where there is an explicit Federal Agency decision to undertake a regional program (such as the decision to open an area to oil and gas leasing, or change the nature of such a leasing program). Such a limitation does not allow for a comprehensive analysis of agency decisions when an area is increasingly dominated by nominally separate but regionally connected mining projects. Some instances of this type of regional impact are: the Carlin Trend, Crescent Valley, and Battle Mountain to Winnemucca regions of Northeast Nevada where gold mines dominate the landscape; the Globe-Miami/Superior/San Manuel region of Central-Southeast Arizona where there are many large copper mines; the Grants, New Mexico to La Sal, Utah-uranium belt of the Four Corners region; as well as others.

In cases such as these, there is a clear need for a larger evaluation of the impacts to the region of all the mine development.

Impacts such as regional scale dewatering of aquifers and loss of springs and stream flow, loss of riparian and wildlife habitat, degradation of surface and ground water quality, and the loss of cultural, recreational, grazing, and other uses of the land, are often felt at the regional level, and are not fully covered in any one project's analysis. We therefore recommend that Federal Agencies be required to evaluate when there is a regional impact due to many projects, and then be required to undertake a larger regional analysis of the development as a whole on the region's environment. (Preservation/Conservation Organization, Durango, CO - #523.13-14.10240.XX)

#### **AND CLARIFY THAT ANALYSIS OF REGIONAL EFFECTS SHOULD MEET FULL NEPA STANDARDS OF PROCEDURE**

There have been some instances where an agency has recognized a regional impact of several projects, and has undertaken limited studies of the cumulative impacts. One recent example is the Cumulative Impact Analysis Of Dewatering And Water Management Operations For The Betze Project, South Operations Area Project Amendment, And Leeville Project (Elko Field Office, Nevada BLM, April 2000). Such a study was clearly called for, due to the scale of dewatering of the upper Humboldt River and its tributaries by current and planned mining operations, which are predicted to dry up dozens of springs, several perennial stream reaches, and last for over 100 years. In the document a definition of "Interrelated Projects" is given for the purpose of the study:

"Interrelated projects are defined in this document as those activities that could interact with water management operations of the individual projects in a manner that would result in cumulative impacts." (section 1.2)

A similar definition could be used to study the whole Humboldt River watershed, as well as similarly impacted air sheds, wildlife habitat, cultural and socio-economic regions.

Unfortunately, while the Cumulative Impact Analysis was released to the public, and has been referred to repeatedly in several subsequent NEPA documents, there was no opportunity for meaningful public comment. While several organizations, including other Federal and State agencies, commented, the document was released as a final product and no discussion of the adequacy of the study was conducted in a public manner. Thus, while done, the study failed to meet any NEPA requirements, rather relying on the individual NEPA studies which referred to it. Any studies done by an agency to evaluate the impacts on regional resources due to mining should meet full NEPA standards of procedure. (Preservation/Conservation Organization, Durango, CO - #523.15-17.10240.XX)

#### **176. Public Concern: The CEQ Task Force should require cumulative effects analysis of oil and gas drilling in western lands in one comprehensive, programmatic document.**

On a larger cumulative impacts level . . . BLM is now aggressively implementing the National Energy Policy, which, among other things, calls for heightened oil and gas drilling on western public lands. Leasing in Wyoming has proceeded at a frenzied pace, along with seismic exploration activities and APD approvals. The public would be much better served if the cumulative impacts of these actions—particularly on air, water and wildlife resources—were studied in one comprehensive and programmatic document. There is a direct link that should be studied and assessed, for example, for the wildlife that are forced to navigate around the oil fields of southwest Wyoming and the wildlife in the Red Desert and within the CBM plays in south central Wyoming. (Preservation/Conservation Organization, Washington, DC - #475.10.10240.XX)

#### **177. Public Concern: The CEQ Task Force should not require NEPA projects that are designed to conform with local planning and zoning ordinances to undergo a cumulative effects analysis.**

Cumulative and Secondary Impact Assessments, and Home Rule Authority

Back in the 1970s, when I was with the US Environmental Protection Agency, we began to review projects for potential secondary impacts. We wanted to avoid funding a sewage plant at Site "A" if it would result in the filling of wetlands at Site "B" for the construction of new homes. If we did not build the sewage plant then development at Site "B" probably would not occur.

From basic issues, like the above, cumulative and secondary impact evaluations are key issues facing us in the 21st Century. Many Federal Highway Administration projects are in limbo facing challenges regarding the validity of cumulative impact assessments.

The issue here is where does federal authority and jurisdiction end and local home rule authority begin? In the Northeast, most of our states and local governments have enacted municipal planning and zoning ordinances. Under such programs, the local government evaluates its own communities and decides what type and how much development it wants. This is reflected in a local zoning map with specific development criteria. Such local ordinances are presented to the public and approved by referendum and/or at the election booth. Developers building projects in specific communities must follow the local planning and zoning ordinances or challenge them in court. Each and every development project must go through the zoning review process before it can be built. That is how the local government controls and regulates things at the local level.

Recommendations:

So long as NEPA projects are planned and designed to conform to the local planning and zoning ordinances, there is no need for projects to undergo a review for secondary or cumulative impacts. The Federal Government should have no jurisdiction regarding local zoning. There should be a waiver of NEPA cumulative and secondary impact review requirements when a project conforms to the local planning and zoning of a municipality. This waiver should apply to NEPA (NEPA Professional or Association - Private Sector, Philadelphia, PA - #286.6.10500.XX)

## *Level of Cumulative Effects Analysis*

### **178. Public Concern: The CEQ Task Force should define cumulative effects parameters.**

The issue of cumulative impacts is so ill-defined that it is susceptible to hostage taking by self-serving groups that philosophically oppose a proposed action. Federal land managers struggle to define the overall scope of a project's cumulative impacts. Consulting agencies must strive to do a better job of determining the parameters of the cumulative impacts analysis. Otherwise, groups wishing to bring about NEPA "monkey-wrenching" can easily manipulate this facet of the NEPA analysis. (Special Use Permittee, Hood River, OR - #528.6.10200.XX)

Adequate analysis of cumulative effects is impossible because the term is a moving and subjective target.

The CEQ regulations require that an agency assess the direct, indirect, and cumulative effects or impacts of the proposed action. 40 E.F.R. 1502.16, 1598.7, 1508.8, 1508.27. CEQ regulations define cumulative impact as:

The impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. 40.C.F.R. 1508.7.

Cumulative impact is thus a moving and highly subjective target. What was not a reasonably foreseeable action when the environmental analysis started may become reasonably foreseeable immediately before the EIS or EA is completed. Equally, what is not reasonably foreseeable to an agency during the EIS process may seem abundantly foreseeable to a judge exercising hindsight after a decision has been made. Failure to adequately analyze cumulative impacts invalidates an entire EIS or EA.

Agencies and the courts have had difficulty in defining the boundaries of cumulative effects analysis. Must an agency make an educated guess on what actions will occur on private lands during the life of the project? Over a decade following completion of the project? Compliance with cumulative impacts regulation has been so difficult for agencies that CEQ has issued a handbook entitled *Considering Cumulative Effects Under the National Environmental Policy Act* (Jan. 1997). The EPA followed this guidance with *Consideration of Cumulative Impacts in EPA Review of NEPA Documents* (May 1999)

for use by EPA's reviewers of NEPA documents. (Timber or Wood Products Industry, Portland, OR - #454.43.10200.XX)

#### **SO THAT SPECIAL INTEREST GROUPS CANNOT USE DOCUMENTS AS LENGTHY DELAYS FOR PROJECTS**

The NEPA process is good tool to ensure environmental protection. When self-serving groups are able to turn these documents into lengthy delays for projects, it is wrong. Cumulative impacts are easily approached by individuals or groups wishing to slow or delay projects. How far, when to stop, or enough is enough, does this documentation need to go? The responsible agency needs to do a good job defining the parameters. (Special Use Permittee, Enumclaw, WA - #74.3.10320.XX)

#### **179. Public Concern: The CEQ Task Force should reverse the trend of requiring increasingly detailed cumulative effects analysis.**

The Forest Service and NEPA consulting agencies have increased the level of analysis required in the area of cumulative impacts. Challenging cumulative impacts analysis is the new growth area for environmental groups aiming to delay ski area project approvals. Cumulative impacts analysis is an easy target for environmental groups because of the speculative and uncertain nature of the undertaking and the amount of discretion the lead agency has in deciding the appropriate scope (geographic and temporal) of the analysis. In the recent past, resorts have seen cumulative impacts analysis used as a reason for requiring SEISs (Example: Vail Mountain); as a basis for appeals (Examples; Breckenridge, Beaver Creek Resort, Crested Butte Mountain Resort); and as a basis for litigation (Examples; Alta Ski Area, Telluride Ski Resort, Loon Mountain, Vail Mountain). EPA's expansive approach to cumulative impacts analysis has exacerbated the problem.

CEQ's regulation defines cumulative impacts as:

The impact on the environment which results from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions, regardless of what agency (Federal or Non-Federal) or person undertakes such other actions. 40 CFR [section] 1508.7.

Agencies directing NEPA cumulative impacts analysis must do a better job of deciding when enough is enough. CEQ's 1997 handbook on cumulative impacts encourages agencies to "focus on important cumulative issues, recognizing that a better decision, rather than a perfect cumulative effects analysis, is the goal of NEPA." Considering Cumulative Effects at vii. The guide also suggests in this context that agencies apply scoping principles and only "count what counts." Considering Cumulative Effects at v.

Courts have repeatedly held that the agency has discretion to decide the scope of cumulative impacts; that qualitative, versus quantitative analysis is sufficient in addressing speculative impacts; that sweeping, detailed analyses or an encyclopedic approach to cumulative effects are not required; and that addressing only those effects that can be meaningfully evaluated is appropriate. The courts have also recognized that balancing the volume of documentation against the delays resulting from exceedingly broad and detailed analyses is appropriate.

The Forest Service and consulting agencies need to apply the above-referenced guidance to their decision-making on cumulative effects, and reverse the trend of requiring increasingly detailed cumulative impacts analyses. The current trend of exhaustive cumulative impacts analysis is wasting time and diverting scarce resources. Project analysis should be sufficiently detailed based on the circumstances. If facts are reliable and not merely speculative, they should be considered in greater detail. It is important for agencies to realize that although you can always "do more," the point is to gather useful, reliable information that supports sound decision-making. Given the rate of change in resort communities and the evolving nature of development projects, cumulative impacts analysis is and will continue to be a challenge. When development plans can be downsized, or even entirely abandoned, it becomes apparent that a detailed look at speculative cumulative impacts can often prove unproductive. In sum, without change, we will continue to see the volume of study diminish the utility of the process. (Recreational Organization, No Address - #19.8-9.10240.A1)

## *Scope of Cumulative Effects Analysis*

### **180. Public Concern: The CEQ Task Force should address the geographical scope of cumulative effects analysis.**

The CEQ should address the geographical scope of the effects analysis in NEPA documents. (Timber or Wood Products Industry, Cleveland, TX - #402.11.10240.XX)

The CEQ should . . . address the geographical scope of the effects analysis in NEPA documents. CEQ's present guidance is of no help whatsoever. The CEQ rule (40 C.F.R. section 1502.4(c)(1)) merely suggests "body of water, region, or metropolitan area" for possible analysis. The "region" could be the western United States; the body of water could be the Mississippi River. Watersheds seem to be increasingly popular geographical units for analysis, but those too can be anything from the watershed of "Brush Creek" to the watershed of the Mississippi River, which could include the entire land mass between the Rocky Mountains and the Appalachians. With so little assistance from CEQ's rule, it may well be enough for any plaintiff to suggest even a single speculative impact beyond the area chosen for the effects analysis to invalidate the entire NEPA document. Certainly the lack of guidance tempts those preparing a NEPA document to expand the effects area to cover the most improbable of impacts, thereby increasing substantially and unnecessarily the preparation time for, and cost and size of, that document. (Timber or Wood Products Industry, Washington, DC - #507.15.10200.XX)

## *Analysis of Connected or Related Actions*

### **181. Public Concern: The CEQ Task Force should clarify the meaning of "connected," "similar," and "related."**

CEQ regulation requires not only that the proposed federal action be subject to environmental analysis, but also that connected (meaning "closely related") actions, cumulative actions and similar actions be considered in an EIS (and by extension in an EA in order to ensure that a FONSI is based on a consideration "of all the relevant factors" in order to determine whether an EIS is necessary). [Section] 1508.25. Are the terms "connected," "similar," and "related" synonyms or does each term have different content? The conventional test applied in determining which "closely related," "cumulative," or "similar" actions must be considered is the independent utility test, but it is not clear that "independent utility" exhausts these vague concepts of section 1508.25 and, in any event, the independent utility test may have been broadened in *Thomas v R. Max Peterson*, 753 F.2d 754 (9th Cir. 1985). Moreover, the term "cumulative action" is defined in section 1508.25(a)(2) as an action which, when viewed with other proposed actions, "have cumulatively significant impacts." By employing a concept devoid of meaning ("significant impact"), the definition of "cumulative action" is notably unhelpful in providing guidance. Other, Washington, DC - #506.10.10230.XX)

#### **TO EXCLUDE ANY ACTION THAT IS NOT FUNDED AT THE TIME THE NOTICE OF INTENT IS PUBLISHED IN THE FEDERAL REGISTER**

Clarify that a separate action is not "connected" to a proposal if the separate action is not funded at the time the notice of intent to prepare the EIS is published in the Federal Register.

In determining whether another action is connected to a proposed action and must be considered in the same EIS, agencies, the courts, and the public often argue whether the separate project is far enough along in its development to have ripened into an action that must be considered in the same EIS as the proposal. If there is a connected action that the agency ignored, then the EIS must be completely rewritten. A clear and narrow definition of connected action should be adopted that excludes any proposed separate project whose implementation is not funded at the time the agency publishes in the Federal Register its notice of intent to prepare an EIS. (Timber or Wood Products Industry, Portland, OR - #454.52.10230.XX)

**182. Public Concern: The CEQ Task Force should specify when connected and related actions must be considered in NEPA analysis.**

Although there are many examples of successful EAs/FONSIs, we have identified . . . common problems with EA/FONSI practice and offer recommendations to improve each. While not all projects experience all of these problems, they are all too common throughout the federal government.

Improperly “segmenting” certain types of proposed actions to avoid or minimize NEPA review and evaluation

Summary of problem—In some situations, federal agencies will describe and evaluate a portion of a proposed action without considering “connected” or “related” actions in the same document as required by the CEQ NEPA regulations. One of the most glaring examples was the situations that gave rise to the decision in 753 F 2d 754 (9th Cir. 1985). In that case, the lead agency evaluated the impacts of a forest road without considering the timber sale for which the road was being constructed. This problem has arisen in other, more recent cases.

Recommended solution—Provide clear and specific advice as to when “connected” and “related” actions must be considered the NEPA documents, specifically in the preparation of Environmental Assessments. (NEPA Professional or Association - Private Sector, No Address - #530.11.10200.XX)

**SHOULD NOT ALLOW MINING COMPANIES TO DETERMINE WHETHER CONNECTED OPERATIONS ARE TREATED AS SEPARATE MINES OR AS PARTS OF A SINGLE OPERATION**

Federal Agencies must not allow mining company decisions to determine whether connected operations are treated as separate mines or as parts of a single operation.

The company may make the decision to mine in a particular areas at different times, and may operationally give them separate names, however, for the purposes of NEPA, the Federal Agency must treat interconnected mining operations as such. (Preservation/Conservation Organization, Durango, CO - #523.8-12.10240.XX)

**183. Public Concern: The CEQ Task Force should eliminate the requirement that connected actions be considered in the same EIS.**

The CEQ should consider eliminating the requirement that connected actions shall be considered in the same EIS. An agency may want to prepare an EIS for one action and later consider the combined environmental effects in an EIS for a subsequent action. (Timber or Wood Products Industry, Portland, OR - #454.52.10230.XX)

**184. Public Concern: The CEQ Task Force should eliminate analysis of connected actions.**

Consideration should be given to dropping the required analyses of “connected actions” and “cumulative effects”. (Multiple Use or Land Rights Organization, Waynesville, NC - #444.5.10200.XX)

An expansive view of “connected actions” enlarges and complicates environmental analysis.

Actions that are “connected” must be considered together in the same EIS. 40 C.F.R. 1508.25’ Thomas v. Peterson, 753 F 2d 754 (9th Cir. 1985). Whether it involves different segments of a road project, parts of an airport improvement project, or forest rehabilitation, courts have ordered agencies to evaluate the impacts of all the connected actions in one environmental document, even though the agency may not have funding for the other actions and wants to act more quickly by narrowing the scope of its review to a single action. (Timber or Wood Products Industry, Portland, OR - #454.40.10200.XX)

## Examples

### 185. Public Concern: The CEQ Task Force should consider examples of EISs that lack adequate cumulative effects analysis.

#### CORTEZ GOLD MINES' SOUTH PIPELINE PROJECT

The South Pipeline Project EIS evaluated an expansion of the Pipeline Project (originally approved in 1996), an open pit gold mine located in north central Nevada. The expansion would increase the size of the mine from 3,166 to 7,616 acres. Ground water pumping and disposal would increase up to 34,500 gallons per minute.

In the South Pipeline Project FEIS, the BLM left out of the Cumulative Effects Study Area (CESA) areas directly connected to the operations of the Cortez Joint Venture (CJV). Just beyond the southwestern boundary of the Cumulative Effects Study Area, yet still within Crescent Valley's southern watershed, lies the Toiyabe Mine and open pit heap leach operation owned by the CJV. Just beyond the northwestern corner of the CESA lies the Hilltop deposit, a proven gold deposit belonging to CJV which has been actively explored under an environmental assessment. Just beyond the southeastern boundaries of the CESA lie CJV's Horse Canyon operations which include open pits, waste dumps (including one with an active AMD problem) and the exploration which has subsequently been proposed by CJV as the Pediment Project. Finally, the CJV has acquired control of the Buckhorn Mine properties through direct purchase or lease. This site is undergoing reclamation but includes several open pits, heap leach pads, and ongoing water quality problems. There is a known gold reserve at this site. We mention these areas because they are mining areas ignored in the cumulative impact assessment which are controlled by the CJV. Having been recently acquired (Toiyabe and Buckhorn have been acquired in the last five years), they obviously figure in the future plans of the CJV.

The boundaries as expressed in the FEIS do not reflect hydrology, wildlife use areas, or areas used by and important to the Western Shoshone. The failure to include the complete scope of the Cortez Joint Venture's operations underestimates the cumulative impact of the South Pipeline operation.

The BLM also ignored a pending land exchange(s) which involve all of CJV's operations in the Crescent Valley area (Pipeline/S. Pipeline, Cortez, Dean Ranch, Toiyabe and Buckhorn). The proposed transfer is of immense proportions.

Transfer of these lands to CJV would effectively eliminate Federal regulation of CJV's operations. This would render the NEPA process both past and present as effectively moot. Mitigation required by the BLM and implemented as a result of the NEPA process could be meaningless after these lands leave Federal jurisdiction.

By narrowly defining the CESA, the BLM limited its own, and the public's, ability to understand the full impacts to the area of gold mining by just this one operator. Such a limitation serves to decrease the ability of the NEPA studies conducted from achieving the "comprehensive, integrated mechanism for decision making" noted by the NRC. By this it also undermines the ability for the process to "allow(s) for clear identification of tradeoffs between values, and promote(s) a better understanding of the implications of the many decisions involved in the preparation and approval of a mine's operating plan." (NRC, 109) (Preservation/Conservation Organization, Durango, CO - #523.6-8.10240.XX)

#### NEWMONT MINING CORPORATION'S SOUTH OPERATIONS AREA PROJECT AMENDMENT (SOAPA)

The SOAPA is a large expansion of Newmont's current gold mining operations in the Carlin Trend of northeast Nevada. The EIS evaluates a proposal to disturb over 1,390 additional acres, and continue groundwater pumping and the dewatering of local aquifers, streams, springs and seeps—up to 25,000 gallons per minute—for at least an additional 13 years. The resulting groundwater drawdown will extend at least 18 miles away from the mine pit, with maximum drawdown predicted for the next 50 years. The overall drawdown will last for hundreds of years, if not indefinitely.

The SOAPA FEIS limits its discussion of environmental impacts, alternatives, and other NEPA requirements to just the activities associated with the SOAPA Plan of Operations (POO). However, the SOAPA POO and the FEIS fail to acknowledge and analyze the impacts from a number of other Newmont mining operations that are directly interconnected with SOAPA.

The BLM has recently completed the environmental reviews for several of these mines and formal approval is imminent.

The first connected operation is Newmont's Pete Project. The Pete Project is a gold mining operation disturbing roughly 863 acres located approximately 7 miles to the northwest of SOAPA. According to the BLM's recently issued Environmental Assessment (EA), "Refractory ore produced from the Pete Project would be processed at existing Mill 5/6, located in Newmont's South Operations Area." Pete EA at 2-4. Over a 7-year lifespan, approximately 1.9 million tons of refractory ore will be sent to the SOAPA for processing.

The second interconnected Newmont mining operation is the Leeville Project. The Leeville Project is about 10 miles northwest of the SOAPA. The BLM recently issued a Final EIS for Leeville and a Record of Decision approving the Project is expected shortly. A total of 486 acres (453 public land) would be disturbed and the Leeville Project is expected to continue for 18 years. "Tailing material that would result from processing of the Leeville project ore would be managed at Newmont's tailing disposal facility in the South Operations Area." Leeville FEIS at 3-6.

Another interrelated Newmont operation is the company's North Operations Area located less than 15 miles north-northwest of SOAPA. Although it appears that ore or waste from that mine will not be transported to SOAPA, substantial ore from the Pete Project will be leached at the North Operations Area. "Oxide ore would be processed at the existing North Operations Area Leach facility." Pete EA at 2-4. Thus, the Pete Project is dependent on both the North and South (SOAPA) Operations Areas.

The only mention of the Pete Project, Leeville and North Operations Area in the SOAPA FEIS is a single-line inclusion of these operations in a generic map and listing of over 40 existing and reasonably foreseeable mining and exploration projects within the overall Carlin Trend. The SOAPA FEIS is devoid of any description of these other operations, their interconnected relationship to SOAPA, or the impacts from these operations. For example, the amount of air pollution resulting from the truck traffic to and from these operations is not discussed. Impacts to visual, scenic, and recreational resources from the ore and waste hauling are similarly omitted. This is in addition to the lack of any discussion of the impacts from these operations themselves in the SOAPA FEIS—or the cumulative on-site impacts from the additional ore and waste at the SOAPA site.

The BLM cannot claim that these other operations are speculative or will not occur. Indeed, the NEPA process for these mines is complete and approval of the Plans of Operation will likely occur in the near future.

Overall, it appears that, at least SOAPA, Pete, Leeville, and North Operations are in essence one comprehensive Carlin Trend Operation by Newmont, separated by Newmont's haul roads. As such, the impacts, alternatives, mitigations, and other NEPA requirements should have been reviewed in a comprehensive EIS. At a bare minimum, the SOAPA FEIS should have reviewed these operations. (Preservation/Conservation Organization, Durango, CO - #523.8-12.10240.XX)

## Quality of Research/Best Available Science

### *Quality General*

#### **186. Public Concern: The CEQ Task Force should ensure high quality agency research.**

The quality of scientific information in Forest Service and BLM (the two agencies with which we are most familiar) proposals for activities on public lands is consistently either nonexistent or of very poor quality. Therefore, we face the challenge of analyzing a project without the benefit of adequate scientific analysis provided by the agency that seeks to affect the environment. This situation means that we are forced to expend our minimal resources to attempt to gather the requisite information. In demonstrating the viability of federal projects, this role should be filled by the federal government, not grassroots organizations such as ours. (Preservation/Conservation Organization, Vancouver, WA - #103.2.10240.A2)

I have not experienced real scientific review of the decisions being proposed by federal agencies. There has been a real lack of honest science that is not biased, or end result in mind sort of study. (Individual, Pioche, NV - #336.1.10240.C1)

#### **BY ENCOURAGING USE OF THE BEST ADVICE FROM THE BEST SOURCES**

NEPA needs to mature into something that is more useful for the public at the lowest levels of agency decisionmaking. Even though NEPA may have been designed solely “for” government agencies, as a mere framework, the framers did make many statements about the “environment” and “public participation.” The greatest value for the NEPA is recognized when the public recognizes that the framework is about local people and local federal projects. The NEPA needs to do more to constrain agencies to seek out the best advice from the best sources in trying to provide the best protections for what our nation has not yet severely impacted. (Individual, Nashville, TN - #513.1.10400.XX)

#### **BY ENCOURAGING USE OF RELIABLE INFORMATION**

Another important information issue is the reliability and use of information itself. The information typically available is appropriate for developing hypotheses, and occasionally calculating predictions from models. Using these hypotheses and models to design conservation projects leaves ample room for disagreement. Changes in NEPA that provide a routine and timely way to resolve these disagreements are desperately needed: we recommend that the Task Force particularly look for such changes. (Idaho Office of Species Conservation, Boise, ID - #578.6.10240.XX)

#### **BY ENCOURAGING USE OF OBJECTIVE STUDIES**

I don't understand some of the information that is used in the environmental species act. In Duncan, AZ, a bridge can only be worked on part of the year because someone heard, but did not ever see a certain bird. Couldn't they have been mistaken—why doesn't someone have to actually spot the bird to make sure it is there. The same thing happened with the Spotted Owl that destroyed our lumber industry in Arizona. What reports existed that really proved that animal was endangered? I'm sure whatever owls were there have now burned up in the forest fires we have had. I don't trust the radical environmental's studies, they are disproven so often. Yet the government doesn't seem to work to present two sides of the story. The press only prints the environmentalist's side of the story—we need more non-biased reporting. We need honest studies and data with input from different sides!

Ranchers/Farmers and Environmentalists can work together, but sometimes the environmentalists want it their way or nothing. Does the government ever present reports with pros and cons that the public can read? (Individual, Tolleson, AZ - #155.1.10240.E1)

Under “A Technology, Information Management”, I have grave concerns about the Forest Service's continued use of “junk science”. When the agency has an axe to grind, (such as get the cattle off the National Forest, or stop mining) the agency tends to make up data about the effects of the current situation in order to prove that a change in management is needed. There is no accountability.

The South Fork Burnt River Grazing EIS is a good example where this was done. The Water Master in the South Fork Burnt River area for 17 years commented on the draft EIS, pointed out where the watershed data was wrong and provided the accurate watershed information to the Forest Supervisor during the DEIS comment period so that she could rewrite the document based on the facts. The correct information about the watershed is readily available from Oregon Water Resources Department, Oregon Department of Environmental Quality, studies by Oregon state University, Baker County Water Master and the Burnt River Irrigation District, yet the Forest supervisor chose to ignore all this information. She signed a decision with completely erroneous statements, such as; the current grazing situation is increasing peak flows, decreasing late season flows, that bacteria count is high, that stream temperatures are exceeding State law, that there is an adverse effect on lynx (which are not present) because of the present degraded condition of the watershed. Even though none of this is true, the FEIS states all these things as if they were facts. I believe the Forest Supervisor understood the obvious problems with this EIS, but because of the time and money spent on the document, and her agenda to see an end to cattle grazing on the National Forest, she and the Regional Forester chose to implement her decision, even though the baseline watershed information was wrong.

The problems with flawed EIS does not end with that document. All other EAs in the watershed tier to it.

Thus the original problems are compounded until a new document is written. The recent Snow Creek Mining Amendment and Orion Mine EAs on the Unity Ranger District also reported as if they were facts, untrue statement about the current condition of the watersheds. Both EAs were sent back to the drawing board due to the public comment which pointed out the errors in the baseline data.

The Forest Service must be held accountable for the information they use. They must not be allowed to manipulate data to prove a point. (Individual, Unity, OR - #216.1-2.10240.XX)

Many federal laws require documentation that is supported by science which means articles that meet criteria for "best available science" should dominate the discussions. Agencies rely on their own work and their own reports. No one knows what they mean by "science".

Government publications are not science literature and generally fall in the categories of "opinion and observation". The documents do not include data and data analysis, nor are the assumptions and conclusions provided in the narratives appropriately framed with respect to the prevailing body of pertinent scientific knowledge.

During professional scientific journal reviews, reference lists are often scrutinized to ensure the authors have provided adequate appeals of authority that support the foundation of an experimental effort. The government process does not have an objective mechanism in place to cause the authors to edit or change errors in statements which may not accurately reflect the results of cited literature used for support. The process fails to prevent production of "laundry lists" and does not inspire well critiqued science literature. (Domestic Livestock Industry, La Grande, OR - #496.4.10240.A2)

#### **BY ENCOURAGING USE OF 'OUTSIDE' SCIENCE**

One of the largest barriers we see to the whole process is the inability to use "outside" science. The land management agencies' hands are tied to using their own science, science that was either developed by them or under contract to them. Whether or not the science is biased or not, it would be much better to use ALL the science that is available rather than limit the science to the above. If one of the purposes of the NEPA process is the analysis of the effects, then every piece of science should be put on the table to determine the effects. It is very frustrating to try and submit science that is different to what is published after it is in print. One case in point is the recent grizzly bear EIS. For every scientific argument put out for putting the bear back in our back yard, we could put an equal scientific argument to the contrary. Why was not this considered before the document hit the street? (Lin Hintze, Chairperson, Custer County Board of Commissioners, Challis, ID - #104.1.10240.A2)

#### **BY ENCOURAGING USE OF INFORMATION PROVIDED BY INTEREST GROUPS**

Public comment is particularly useful in identifying information or information systems (grounded in modern technology or not) that might not be known to the agency. We and our allies commonly possess unique or publicly unavailable data on many actions pertaining to biodiversity protection. (A3-4). See also CEQ, Incorporating Biodiversity Considerations Into Environmental Impact Analysis Under the National Environmental Policy Act (January 1993). Other interest groups presumably possess expertise in their area of specialty. (Preservation/Conservation Organization, Washington, DC - #465.10.10300.XX)

#### **BY REQUIRING USE OF RIGOROUS SCIENTIFIC METHODS**

Scientific methods must again become a part of the agency knowledge and practice. Instead of shoe boxes of data, they should structure monitoring in such a way as to be able to attain an objective interpretation and move away from the "opinion" or experience of the employees. Measure resources before projects begin, measure during and after projects, and when the time arises to determine what is working and what isn't and objective evaluation will be available. Seek expertise at the Universities for data collection designs and learn about the practices known to be sound and feasible for local areas. (Domestic Livestock Industry, La Grande, OR - #496.25.10240.XX)

**187. Public Concern: The CEQ Task Force should define best available science.****AS INVOLVING PEER REVIEW, APPROPRIATE METHODS, LOGICAL REASONING, QUANTITATIVE ANALYSIS, APPROPRIATE CONTEXT, AND ADEQUATE REFERENCES**

We would find it useful if in the NEPA process, science received some kind of definition. Below is the definition Oregon Cattlemen have adopted as policy and included are 6 criteria modeled from the Washington state law which is an excellent guideline to selecting “best available science”.

The Steps Required for Publication as “Best” Science.

In general, to meet the rigors of a science journal review, the following criteria have been met for publication:

Peer review. The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline. The criticism of the peer reviewers has been addressed by the proponents of the information. Publication in a refereed scientific journal usually indicates that the information has been appropriately peer-reviewed.

Methods. The methods that were used to obtain the information are clearly stated and able to be replicated. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer-revised to assure their reliability and validity.

Logical conclusions and reasonable inferences. The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained.

Quantitative analysis. The data have been analyzed using appropriate statistical or quantitative methods. The use of descriptive statistics alone (presentation of means, ranges, whisker box graphs, etc.) do not meet this requirement.

Context. The information is placed in proper context and limitations are noted. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge.

References. The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other pertinent existing information.

Most professional journals require a “blind” national review before articles are approved for printing. A “blind” national review is an attempt to provide an objective assessment of the quality of the work as well as the writing and analysis of the study. Authors are not in contact with the peers who are conducting the review and usually do not know who is providing edits and comments about their work.

The criteria above can be found in the State of Washington’s Administrative Code as guidance to determine “what is best available information”? (Domestic Livestock Industry, La Grande, OR - #496.5-6.10240.A2)

**188. Public Concern: The CEQ Task Force should encourage the use of best available science.**

[A] problem plaguing BLM NEPA documents is their use of flawed scientific data to assess impacts. For example, in the current WY PRB [Powder River Basin] CBM [Coal Bed Methane] DEIS, BLM bases most of its treatment of impacts assuming that 80% of the produced CBM water will be conveyed (either by infiltration into the ground or by evaporation). However, that study was done in dry summer months and for one isolated area of the 8 million acre project study area. Critical factors were ignored such as differing soil types throughout the PRB and different infiltration rates during winter months. Nonetheless, BLM applied the isolated study to the entire 8 million acre PRB; obviously, conveyance rates will vary in different parts of the Basin and the one study cannot be applied universally. Therefore, this assumption on conveyance, based on bad science, will throw off water quantity and quality impacts, and effects on soils, stream hydrographs, native vegetation and aquifer recharge, for the entire analysis.

The regulatory framework is very clear on this issue: overlooking important data, faulty assumptions and incorrect data render an EIS meaningless. NEPA mandates the use of all relevant data as an integral part

of good science. NEPA regulations require that, “Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in [EISs]. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement.” 40 C.F.R. [section] 1502.24.

Moreover, “obviously inadequate or bad faith analyses by an agency are not to be validated.” 27.09 Acres, 760 F. Supp. at 350. See also *Silva v. Lynn*, 482 F.2d 1282, 1285 (1st Cir. 1973) (“Comments from responsible experts . . . [that] disclose new or conflicting data or opinions . . . may not simply be ignored.”); *County of Suffolk v. Secretary of Interior*, 562 F.2d 1368, 1383 (2d Cir. 1977); (“The agency’s conclusions [must] have a ‘substantial basis in fact’ . . . . Where evidence presented to the preparing agency is ignored, serious questions may arise about the . . . efforts to compile a complete statement.”); *Sierra Club v. United States Army Corps of Engineers*, 701 F.2d 1011, 1030 (2nd Cir. 1983) (holding in the context of an EIS, “If the . . . agency did not make a reasonably adequate compilation of relevant information and [if] the EIS sets forth statements that are materially false or inaccurate . . . it cannot provide the basis for an informed evaluation or a reasoned decision.”).

We ask that CEQ analyze to what extent agencies are using the best available science in assessing impacts in their NEPA documents. (Preservation/Conservation Organization, Washington, DC - #475.30-31.10240.XX)

### **189. Public Concern: The CEQ Task Force should establish criteria for the use of the best available science in NEPA documents.**

Better criteria must be established for the use of the best available science in NEPA documents. This phrase is decades old and needs to be replaced with a better standard that incorporates peer review, avoidance of conflicts of interest, and recognition within the scientific community. This is of particular concern for those who have seen the land management agencies pick and choose their science to fit their agenda. Issuing regulations to better define what constitutes the best available science, and reduce agency discretion over this, would help to streamline the process of “discovery” that is part of NEPA, and help to resolve many of the controversies that arise regarding whose information is more accurate. (Individual, Logan, UT - #383.6.10240.XX)

### **190. Public Concern: The CEQ Task Force should address the gap between the best available science and plan recommendations.**

In many of the EISs we review, repeatedly we have identified a gap between what the best available science indicates is an ecologically appropriate management approach and what the responsible agency actually proposes. Sometimes the preferred alternative even contradicts the recommendations of agency scientists. Other times, the analysis contained within an EIS relies on information that is not readily available to the general public, and so interested parties cannot evaluate the applicability of the underlying assumptions. And more often than not the analyses of different topic areas within an EIS are presented in a piece meal fashion, so that the end result is a set of recommendations that is entirely disconnected not only from the best available science but also from the analytical underpinnings of the EIS itself. For example, many national forest EISs contain goals and desired future conditions that described a functioning landscape with natural watershed processes and biological integrity, but more often than not the preferred alternative does not describe adequately how management would achieve this vision nor what ecosystem improvements would be made during the life of the plan. In other words, there are no explicit linkages between ecological goals and the standards and guidelines necessary to achieve them. The end result is an EIS that lacks the necessary linkages between stated ecological goals (supported by the best available science) and management direction (standards and guidelines) to successfully implement a scientifically sound management plan.

Two examples of the science disconnect problem can be found in the development of the Interior Columbia Basin Ecosystem Management Project (“ICBEMP”) and the Sierra Nevada Framework for Conservation and Collaboration (“Sierra Framework”).

In the case of the ICBEMP Draft EIS, scientific conclusions reached by federal agency scientists on the Science Integration Team (“SIT”) were ignored, misrepresented, misunderstood, and even misapplied. For instance, the Aquatic SIT Report identified road-related problems as a major contributor to the

decline in status of fish species and stream condition. It concluded that the importance of existing refugia (i.e., aquatic species strongholds) and roadless areas to recovery of aquatic species would be difficult to overstate. The Report found a correlation between low road density and high quality habitats and between increasing road density and declining aquatic habitat conditions. It also found that increases in sedimentation are unavoidable even using the most cautious road building methods. The preferred alternative, however, did not incorporate these findings. It did not adopt standards to require a reduction in road density in subwatersheds that support fish refugia, nor did it adopt standards prohibiting new road construction in areas important for recovery of vulnerable fishes. Moreover, the preferred alternative explicitly allowed for an increase in road density in the least disturbed sub-watersheds; provided no direction regarding decreasing road density in moderately roaded subwatersheds; and allowed construction of new roads through the few remaining areas of high quality habitat in the most degraded subwatersheds. We documented many other science disconnect problems with the ICBEMP Draft EIS that followed a similar pattern. The ICBEMP effort ultimately stalled, partly because of problems like the one described above, and partly because of a lack of political will to complete the regional planning process. (Preservation/Conservation Organization, Eugene, OR - #93.1-2.10240.F1)

The Sierra Framework planning process also languished for many years because of the large gap between the best available science and what was being recommended in the plan. The problem was so severe that on September 4, 1996, then Under Secretary of Agriculture James R. Lyons convened a Federal Advisory Committee of scientific and planning experts to review the Draft EIS (at that time called the California Spotted Owl DEIS) in light of findings of a congressionally sponsored scientific report detailing the ecological and social status of the Sierra Nevada (the Sierra Nevada Ecosystem Project Report or "SNEP"). The Committee found numerous discrepancies between the SNEP Report and the Draft EIS despite the fact that they were being drafted simultaneously and shared many of the authors (i.e., federal agency scientists). Unfortunately, many of the Committee's findings and recommendations were ignored in drafting the next iteration of the EIS, and many SNEP findings still were ignored, misapplied, or maligned. For example, the Committee recommended that the Forest Service develop a spatially explicit analysis at the appropriate scale of the potential effects of road development associated with the alternatives on aquatic resources, hydrologic connectivity, refugia, roadless areas, and other ecosystem values, as well as cumulative effects analysis in relation to the existing road network (including non-Forest Service roads). No such analysis was developed for the Draft or Final EIS, and the Framework was finalized in 2001 still lacking a comprehensive approach to addressing forest road impacts on aquatic systems. (Preservation/Conservation Organization, Eugene, OR - #94.1.10240.F1)

#### **AND PROVIDE A DIRECT LINK BETWEEN THE SCIENCE USED AND THE MANAGEMENT IMPLEMENTED AS PART OF THE PROCESS RECORD**

We . . . feel that there is a disconnect between what the best available science indicates and the implementation of projects on the ground. It is often difficult to find little known papers produced from within the agency that seem to guide the management of the forests. Providing a direct link between the science used and the management implemented would be helpful. Offering these items as part of the process record could provide this linkage. Oftentimes there is conflicting science and the decisions about how a decision was reached are not clear. Though much of the general public may not want to know this kind of detail, it should be readily available for those who choose to inquire. We feel that the key to this question lies in communication. Scoping letters and decisions should provide some reference material and be clear about the process of decision-making. We also feel that this information should be available in digital form, either via the Forest Service websites, e-mail, or CD-ROM, but also in hard copy for those that do not have access to computers. (Preservation/Conservation Organization, Ellijay, GA - #518.3.20500.XX)

#### **191. Public Concern: The CEQ Task Force should require sufficient analysis to support conclusions.**

Just last year, the U.S. Army Corps of Engineers released a draft PEIS for its nationwide 404 wetlands permit program. 66 Fed. Reg. 39499 (July 31, 2001). In this draft, the Corps relies on mitigation to conclude that the permits will only [have] minimal effects on the environment. U.S. Army Corps of

Engineers, Draft Nationwide Permits Programmatic Environmental Impact Statement (July 2001), at 3-21 (“Compensatory mitigation is a critical part of the equation of achieving minimal impacts.”); PEIS, at 4-31 (“Substantial impact results from legal filling of the Nation’s waters under the Corps’ permit program. Compensatory mitigation is the most important element remaining in the Corps’ permit process as a means for reducing or eliminating cumulative impacts from permitted fill.”)

The Corps provided little analysis to support its conclusion. The Corps’ failure to support its mitigation assumptions and conclusions with substantial evidence violates well-established principles of administrative law. See, e.g., *Cement Kiln Recycling Coalition v. EPA*, 255 F.3d 855, 866 (D.C. Cir. 2001) remanded because agency had failed to demonstrate “relevant point with ‘substantial evidence—not mere assertions’”; *Edison Electric Inst. V. EPA*, 2 F.3d 438, 446 (D.C. Cir. 1993) (agency’s purported “justification on the record” rejected where it “consists of speculative factual assertions”); *United Distribution Cos v. FERC*, 88 F.3d 1105, 1187-88 (D.C. Cir. 1996) (“the law requires more than simple guesswork”).

Not only did the Corps fail to provide sufficient evidence to justify its conclusion, but the agency ignored evidence to the contrary. For example, the National Academy of Sciences recently concluded that the “goal of no net loss of wetlands is not being met for wetland functions by the mitigation program” and that “performance expectations in Section 404 permits have often been unclear, and compliance has often been assured nor attained.” National Research Council, *Compensating for Wetland Losses Under the Clean Water Act* (National Academy Press, Washington, D.C. 2001), at 2, 6. (Preservation/Conservation Organization, Washington, DC - #471.28-29.10240.XX)

When an agency determines that a scientific argument is sufficient, it must explain the basis for this determination. (Preservation/Conservation Organization, Durango, CO - #523.40.10240.XX)

## **192. Public Concern: The CEQ Task Force should evaluate the science used in EISs.**

### **INCLUDING THE TRACK RECORD OF THE SCIENCE AT ACTUAL MINE SITES**

The issues involved in reviewing a large mine project are complex and involve natural systems about which our current understanding is inexact, especially when making predictions into the hundreds or thousands of years. It is also very important to recognize that the predictions made in past NEPA documents of mine projects have lead much of the public to not trust the analysis itself.

One component which is clearly needed is an evaluation of the science used in an EIS, based not on just peer-review, but also by review of the track record of the science at actual mine sites. “Public confidence in the land management agencies is compromised if the public lacks the ability to track compliance with land use decisions.” (NRC, pg. 88) The NRC went on to state: “So far, the success of modeling long-term water quality and quantity impacts has been fragmented, and the concordance of predicted and actual outcomes has not been adequately reviewed.” (Preservation/Conservation Organization, Durango, CO - #523.35-36.10240.XX)

## **193. Public Concern: The CEQ Task Force should encourage agencies to develop consistent working relationships with both government and private researchers.**

We are not encouraged to interact with research on a regular bases. Even those of us that have forests near experimental and research forests often have not a clue about what goes on there. We need to develop more consistent working relationships with our research and state and private branches as well as local universities.

There is no time or funding for us to be able to stay abreast of current research. The public can sometimes be more familiar with research literature than we are. (Individual, Plymouth, NH - #13.7.10240.A3)

#### **194. Public Concern: The CEQ Task Force should advise agencies to include an accurate description of the existing environment.**

One of the most important aspects in any NEPA document is to adequately and accurately describe the affected environment such that impacts can be properly evaluated. . . . The recent WY PRB [Powder River Basin] CBM [Coal Bed Methane] DEIS provides some glaring examples of how this most basic requirement is poorly assessed and disclosed by agencies. For example, BLM failed to include baseline data for: characteristics of targeted aquifers (2-27); soils by affected areas (3-45); existing air quality conditions (3-54); species populations by inventoried habitat (3-96); stream habitat conditions and fish populations (3-103); black-tailed prairie dog colonies (3-122); depth of existing water wells in the Basin (4-12); and abandoned oil and gas wells (to assess aquifer communication) (4-29). These are just a few of the categories—another stark example is lack of cultural and historical surveys for 90% of the Basin—that render the subsequent impact analyses in the DEIS defective.

Importantly, 40 C.F.R. [section] 1502.15 requires agencies to “describe the environment of the areas to be affected or created by the alternatives under consideration.” Establishment of baseline conditions is a requirement of NEPA. In *Half Moon Bay Fisherman’s Marketing Ass’n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988), the Ninth Circuit stated that “without establishing baseline conditions there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA.” The court further held that, “The concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process.”

Accordingly, in the PRB CBM EIS, and most every other NEPA document, BLM has failed this basic duty and must work much better to provide this information in future NEPA documents so that environmental consequences can be satisfactorily assessed. (Preservation/Conservation Organization, Washington, DC - #475.22-23.10240.XX)

One disturbing trend in USFS NEPA documents in recent years has been the tendency to avoid assessing and disclosing the current condition of the environment potentially affected by a proposed action. Complex computer modeling is being substituted for inventory data in broad-scale planning for fire and fuels management, vegetation management, and wildlife habitat management. Unfortunately, modeling is only as good as its basic assumptions, and usually can provide only relative projections. For example, the Sierra Nevada Forest Plan Amendments EIS was able to tell the rankings of alternatives in relation to each other in terms of perpetuating old-forest characteristics, but it could not determine whether any of the EIS alternatives would provide enough old-forest habitat to sustain viable populations of California spotted owls. (Individual, Quincy, CA - #542.10.10240.XX)

#### **195. Public Concern: The CEQ Task Force should advise agencies not to overstate their analysis.**

The unfortunate lesson learned by Bureau of Land Management appears to be the agency now intentionally overstating the number of wells studied in a document to make its oil and gas NEPA documents have a longer shelf life. The ongoing Atlantic Rim 3,880 Coal Bed Methane (CBM) well project in south central Wyoming is a perfect example. In 2000, the Atlantic Rim project was scoped for 100 CBM wells. That proposal went no further and interestingly, in 2001, the project was “rescoped” for 3,880 wells—simply the entire project area divided by one well per 40 acres. Since that time, the Bureau of Land Management (Bureau of Land Management) has proceeded to piecemeal 10 separate plans of development for 200 total CBM wells in the interim. In each of the three separate Environmental Assessments for these PODs, (Plan of Development) we have raised the point that Bureau of Land Management, in each, should, under cumulative impacts, be analyzing the 3,880 wells it said it foresaw in the 2001 scoping notice. Bureau of Land Management, in turn, responds that there is no real likelihood that this number of wells is likely to occur. The problem? In actuality, perhaps the first scoping notice of 100 wells (in 2000) was closer in accuracy to what the Bureau of Land Management actually reasonably foresees than 3,880 wells. However, to protect itself from a Wyodak situation, Bureau of Land Management is proceeding with an EIS that will purportedly study 4,000 CBM wells and their impacts, when realistically, Bureau of Land Management is only predicting (and thereby

studying) a few hundred wells. Why? Bureau of Land Management is obviously trying to provide itself and industry cover by overstating the number of wells in case development takes off. In that way, the EIS stating (but not studying) 3,880 wells will have a longer NEPA shelf life. In the end, should that occur, Bureau of Land Management will have allowed a nearly 4,000 CBM well project to move forward when in fact it only studied the impacts of an expected few hundred wells. This would result in thousands of wells receiving approval without any comprehensive planning, analysis or impact assessment. That analysis is not likely to come in subsequent APD approvals as those NEPA documents will simply tier back to the larger “study,” that in fact never studied the bulk of the 4,000 wells in the first place. (Preservation/Conservation Organization, Washington, DC - #475.14-15.10310.XX)

## *Office of Management and Budget’s Guidelines*

### **196. Public Concern: The CEQ Task Force should consider the Office of Management and Budget’s guidelines regarding the quality of information.**

While evaluating the incoming information, the Task Force should take into consideration the Office of Management and Budget’s guidelines for ensuring and maximizing the “Quality, Objectivity, Utility, and Integrity of Information” disseminated to that office for their references to the Congress. (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.2.600.XX)

In a related topic, agencies are always expounding on the use of “best science,” especially when they are defending their NEPA documents. But sometimes the best science gets convoluted in NEPA documents as pointed out by Stevens in his careful review of recent court decision on misuse of science. His concerns are exemplified by the Office of Management and Budget as expressed in the article by Stevens. “The Office of Management and Budget (OMB) has recently issued new federal guidelines under the Information Quality Act, Public Law 106-554 (2000), to ensure that federal agencies disseminate and utilize better quality scientific data. 67 Fed. Reg. 369 (Jan. 3, 2002). By October 1, 2002 all federal agencies must issue their own guidelines or adopt those of OMB. Id. Among other points, the OMB Guidelines require the use of the “best available science” and sound statistical methods in developing data. Id. at 373. Under the Act, agencies must correct information that does not comply with the Guidelines, and an agency’s failure to do so could be challenged in court. See OMB Guidelines on Quality of Information Seen as Having Profound Impact on Agencies, DAILY ENVT. REP (BNA), Jan. 14, 2002; EPA Proposed Guidance on Data Quality Draws Fire From Industry, Advocacy Groups, DAILY ENVT. REP (BNA), June 24, 2002. This Act and the OMB Guidelines could be potentially significant in the effort to ensure the integrity of agency science.”

The NEPA Task Force must carefully evaluate the implications of data quality and use of science or other information in light of the OMB guidelines. (Other, Sacramento, CA - #509.15.10240.XX)

### **197. Public Concern: The CEQ Task Force should clarify that all information in all NEPA documents is subject the OMB’s guidelines.**

The NEPA Task Force should . . . consider the following legal and procedural reforms to the NEPA process:

The New Federal Information Quality Guidelines Apply to All Federal Agencies. . . . The new federal Information Quality Guidelines establish quality standards for all information used and disseminated by federal agencies. The NEPA Task Force should make it clear that all information included in all NEPA documents is subject to the new information quality standards. (Business, Washington, DC - #517.24.10200.XX)

EI and its members share a common interest in improving how the government collects, manages, uses and disseminates environmental, health, and safety information. EI therefore recommends that any information disseminated and used as part of the NEPA process comply with the “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies” published by the Office of Management and Budget (OMB) in the Federal Register

on Friday, September 28, 2001 at 66 Fed. Reg. 49718, updated on Thursday, January 3, 2002 at 67 Fed. Reg. 369, and corrected on February 22, 2002 at 67 Fed. Reg. 8452. These guidelines provide guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by Federal agencies. (Utility Industry, Washington, DC - #586.7.10240.XX)

## Peer Review

### 198. Public Concern: The CEQ Task Force should require peer review.

Peer review is needed for decisions, pre-decisions and notions that effect policy statements, understandings, standards, guidelines, objectives, and ideas that are used in agency NEPA documents.

. . . Federal agencies (e.g., the Forest Service!) have a way of polluting NEPA documents with all sorts of innuendos and claims. Many of these items have not been peer reviewed—yet the Forest Service uses them as if the ideas or notions are factual or they represent them as being the “best available science.” There are numerous unpublished decisions that lead up to the NEPA process. Most of these unpublished decisions are not formal agency decisions, therefore they cannot be approached using the appeal process. NEPA should be expanded to include unpublished decisions (assumptions, models, ideas), especially where they are important for the NEPA process. Here are some examples of statements or positions taken by the Forest Service that need peer review for the use of prescribed burning in the Ouachita NF of Arkansas and eastern Oklahoma. (Consider how the Forest Service could possibly combine good scientific concepts and good field observations and deductively arrive at these generalizations.) According to Ouachita NF sources, they believe that they must use prescribed burning:

- because forests depend upon fire,
- because forests are adapted to fire and, therefore, they must be burned,
- to restore forests,
- to keep forests healthy,
- to keep forest productive,
- to save diversity,
- to increase diversity,
- to keep the forest floor relatively free of litter,
- to help wildlife survive because they depend on sprouts produced by burning,
- to keep open areas open,
- to produce additional open areas for wildlife,
- to restore old growth because someone once described old growth as being open, and burning is the only way to do that,
- because some early travelers saw a lot of fire and smoke somewhere,
- because early native Americans burned somewhere,
- on the same site on a regular basis because early settlers and/or early native Americans burned somewhere periodically,
- to save the red-cockaded woodpecker from extinction because it is adapted to prescribed burning.
- because pines are adapted to fire,
- to convert energy in downed logs into nutrients [that] can be used by other plants,
- to prevent or reduce growth of undesirable native plant species.

The Ouachita NF applies several of these reasons in every NEPA document that calls for prescribed burning. These reasons do not represent site specific studies nor do they represent objective reasoning at the variety of sites where they apply prescribed burning. Instead, it is easily observed that prescribed burning is used in the Ouachita NF to severely damage the native tree species diversity in order to maximize production of one species of pine. What effects are caused by burning over 100,000 acres per year (since 1997) in a mixed-deciduous forest? What are the effects on the most diverse part of the

forest—the ground layer? What are the effects on soils and streams when sites are repeatedly burned AND the Ouachita region receives about 50 inches of rainfall each year? With so little research literature available for these determinations, how did the Forest Service arrive at the same conclusion many times—no significant impacts?

Unless NEPA is strengthened to force federal agencies to utilize peer review more effectively, citizens will have to continue appeals and to pursue litigation. Some parts of the country are more “needy” than others due to a low number of researchers and research literature and a relatively high number of politicians. (Individual, Nashville, TN - #513.17-18.10240.XX)

### **199. Public Concern: The CEQ Task Force should require review of significant projects by independent scientific panels.**

Requiring reviews of significant projects by independent scientific panels convened for such purposes should strengthen NEPA. Independent review of agency proposals would go a long way towards opening up bureaucracies that tend to ignore the wealth of information available to them. (Individual, Seattle, WA - #499.5.10220.XX)

## *Use of Data*

### **200. Public Concern: The CEQ Task Force should require use of current data.**

Too often agencies are relying on old out-dated information to justify new actions. For example, the BLM is relying on old—some as many as ten and twenty years old—resource management plans (RMPs) to justify coalbed methane development that was never addressed in those plans nor the environmental analysis that accompanied them. While some new development may be appropriate, the BLM must involve the public in a meaningful way to determine how much and in what manner it occurs. BLM should not rely on old data to circumvent this public process. (Preservation/Conservation Organization, Washington, DC - #469.8.10240.XX)

In an effort to expedite new energy exploration and production on public lands, federal agencies have relied on out-dated environmental analyses rather than updates to reflect new and increased levels of proposed development. For example, the BLM is relying on old—some as many as ten and twenty years old—resource management plans (RMPs) to justify coalbed methane development that was never addressed in those plans nor the environmental analyses that accompanied them. In the Powder River Basin, as well as elsewhere across the West, BLM is approving new CBM wells even in areas where the agency has announced its intention to amend the RMPs in order to have sound basis for energy decisions. Such approval of new projects before the old RMPs are updated through the required public process is inconsistent with the FLPMA, the BLM’s “organic act,” as well as NEPA.

The NEPA issues raised by this approach include jeopardizing the full range of alternatives in the amended RMP. Furthermore, the original documents fail to properly analyze CBM development. Such method of extracting energy supplies was not being actively used and therefore not considered at the time the old RMPs and their accompanying environmental analyses were completed. See Wyoming Outdoor Council, et al., 156 IBLA 347 (April 26, 2002). (Preservation/Conservation Organization, Washington, DC - #471.21.10240.XX)

### **201. Public Concern: The CEQ Task Force should require use of adequate site-specific data.**

“My data is as good as your data, and I don’t have any!” (Citizen comment to a Forest Service Ranger).

The above comment was originally made by a good friend of mine who lives near Oden, Arkansas. The comment is a pointed reminder that federal agencies are often “dataless” when it comes to the making of important [uninformed] decisions about the environment. What do we do in these cases? Well, I can tell you what the Ouachita NF does. They repeatedly claim, project after project, that there are “no significant impacts to the human environment.” It is like a chant that gets louder and more unbelievable at the same time. They make these claims without substantive site specific data and in the face of

substantial complaints from the public. Who can we blame for these dataless situations? The public, of course. It is the fault of the public that we have not brought about enough research over the last 200 years that would help to answer all of the questions that we are now asking. It is also the fault of the public that we have not elected the right government leaders that would have, in turn, created another forestry service that could have pulled together meaningful data and/or could help us conserve our national forests during our times of ignorance. Are we arguing over the lack of data? Or, are federal agencies and leaders making the claim that they have been given the inalienable right to alienate the public and to do whatever they want? (Individual, Nashville, TN - #513.13.10240.XX)

**202. Public Concern: The CEQ Task Force should recommend sampling or modeling when site-specific data is unavailable or difficult and costly to collect.**

In order to better facilitate decision-making in the NEPA process, NASF recommends sampling or modeling when site-specific data is unavailable or difficult and costly to collect. If specifically authorized in the NEPA procedures, appropriate use of sampling methods should meet the “hard look” standard established by the courts. Sampling, combined with professional judgment through observation and analysis by project interdisciplinary teams, followed by implementation and effectiveness monitoring, should result in enough information to sufficiently demonstrate the expected effects and the rationale for a reasonable decision. (Other, Washington, DC - #587.5.20140.A2)

**203. Public Concern: The CEQ Task Force should address data manipulation.**

We would like to address the issue of manipulating data: There appear to be instances that “predetermination” of processes can be accomplished by manipulating data to effect a desired outcome, known or unknown. This appearance, real or by perception, can impair the integrity of scientific environmental documents and the human dimension of the physical aspect necessary to peer reviewed documentation. Taking the above question to include the security context, key functions and characteristics of these systems should be reliant on secure or protected documents accessible for review so the actual means for manipulating data (falsely) after the fact, would entail the works of several collaborators. (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.14.20400.A4)

*Use of References*

**204. Public Concern: The CEQ Task Force should require all reference material to contain peer reviewed data.**

Referenced material in an EA/EIS should contain peer reviewed scientific, technical or statistical data pertaining to an issue in the EA/EIS. Reference material that is just someone else stating the same position as the EA/EIS without scientific, technical or statistical data does not serve any purpose. Also, the validity of data is suspect when the source is an individual which is a member of an organization that makes a living from filing lawsuits against the agencies. (Individual, Huachuca City, AZ - #372.4.10240.XX)

**205. Public Concern: The CEQ Task Force should require a list of references for each resource issue.**

Suggest that a list of reference material for each issue, i.e. timber management, mining, grazing, recreation that meet all the requirements of the Data Quality Act be assembled and made available for use by the agencies in preparing EA/EISs. These same documents could also be used in the review process. (Individual, Huachuca City, AZ - #372.31.10240.F1)

**206. Public Concern: The CEQ Task Force should require full, accurate bibliographic citations.**

NEPA documentation should be accompanied by full, accurate bibliographic citations in a generally accepted format. (Individual, Seattle, WA - #499.6.10230.XX)

## Accountability

### 207. Public Concern: The CEQ Task Force should require accountability for document information.

Accountability of the accuracy of draft documents should be a priority, thus saving everyone time and frustration. (Individual, Salem, MO - #425.3.10230.XX)

There really is no excuse for a federal agency to present blatantly incorrect or dated information in a NEPA document. If the information is truly incomplete or unavailable, then the agency should say so. 40 C.F.R. [Section] 1502.22. If information is dated, the agency should say that as well. The violation of NEPA occurs not when false information is given to the public per se, but when the false information is not properly buttressed with proper explanatory comments about the limits of such information. "NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." 40 C.F.R. [Section] 1500.1(b). (Preservation/Conservation Organization, Washington, DC - #465.9.10240.XX)

The CEQ guidelines (40 C.F.R. [section] 1502.24) state, "Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements." That requirement is only as good as the individual(s) carrying it out. However, without accountability, which includes due process, any formulation of regulations for Information Security will be of no value. The lynx debate or promulgation of rules at 36 C.F.R. 294 (Roadless Area Conservation) are two of several examples that are or will be settled in the Courts. Therein lies one problem that the Task Force must address.

During the Task Force consultation, one area of contention could be posed by the following question: Since CEQ have published guidelines at 40 C.F.R. [section] 1502.24, why was it determined for the Office of Budget and Management to duplicate for all agencies, the purposes, in part, set forth in [section] 1502.247 We venture that the [reason] revolves around the word "accountability" and its application to the word "integrity". (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.5.130.XX)

#### **SHOULD HOLD PERSONS SUBMITTING INFORMATION ACCOUNTABLE FOR THE LEGITIMACY OF THE INFORMATION**

Persons submitting information, representing it as scientific information, must be held accountable for the legitimacy of that information. There should be some type of Board Certification for persons claiming they have scientific information. That Certification should be withdrawn and further information disregarded by an author if it is found the information provided is made to advance a personal agenda. Decisions based on good science are not being made because the information submitted is not science, but rather personal opinions and wish lists. NEPA is being used as a tool to lock up land and lock out the public and it must be stopped. (Individual, Grants Pass, OR - #369.1.10240.F1)

#### **SHOULD HOLD FEDERAL AGENCIES TO THE SAME SCIENTIFIC STANDARDS TO WHICH SCIENTISTS IN NON-FEDERAL ROLES MUST ADHERE**

When federal agencies assess and validate information for their use in preparing proposals for federal land management, they should be held to the same scientific standards to which scientists in non-federal roles must adhere. This standard was described in *Daubert v. Merrell Dow Pharmaceutical*, 509 U.S. 579 (1993). In sum, the Supreme Court held in *Daubert* that in order to be admissible in court, scientific information: 1) must be useful to the court in understanding the testimony and the facts of the case; 2) must indicate whether the information at issue has been tested in the field; 3) whether the theory had been subject to peer review; 4) the rate of error of the theory; 5) the existence of standards controlling the theory's operation; and 6) general acceptance of the theory still played a role in the acceptability of

the information. Scientific theories or information that have been field-tested and peer reviewed are given more weight than non-field tested and non-peer reviewed data.

Frequently the USFS and BLM rely on theories and models for their conclusions, but do not provide the background information related to this data. Because the federal agencies carry Chevron deference in court in terms of this data, the public is prevented from ever analyzing whether or not the models, theories, and information are sound scientific practices, and are prevented from offering scientific information of their own for agency consideration.

All scientific information should be on equal footing. Application of the Daubert principles would level the playing field, and allow all applicable information to be available for public and agency inspection and interpretation. (Preservation/Conservation Organization, Vancouver, WA - #103.3.10240.A2)

#### **SHOULD REQUIRE THE DECISION MAKER TO CERTIFY THAT ALL INFORMATION IN THE DOCUMENT IS ACCURATE**

At the time of the publication of the draft document, the person responsible for the action should have to certify that all the information included in the document is accurate and true. Currently, information included in the document is often incorrect, and there is no way for a reader to verify information or get it corrected. There needs to be more accountability, and a way for documents to be certified as accurate. An email address must be provided, both in the Federal Register notice and the EA or EIS, for a contact person who can answer questions, provide additional information and receive comments. (Domestic Livestock Industry, Orick, CA - #125.2.10250.XX)

The person responsible for the preparation of the EA/EIS should have to certify that all the information included in the document is accurate and true. Currently, information included in the document is often incorrect, and there is no way for a reader to verify information or get it corrected. There needs to be more accountability, and a way for documents to be certified as accurate. Congress has just passed a law that CEOs of corporations have to certify the accuracy of their data. Why shouldn't government managers have to comply with the same standards? (Individual, Huachuca City, AZ - #372.7.10250.XX)

I . . . suggest that at the time of the draft document's publications, the person responsible for the action should certify that all information in the document is accurate and true. As it stands, the information is often incorrect and there is no source for the reader to verify information or have it corrected. Accountability should be the standard and there should be a process for all documents to be certified as accurate and true. They should also provide an email address both in the Federal Register notice and the EA or EIS, for a contact person to answer any and all questions, additional information or to receive comments. (Individual, Buellton, CA - #511.7.10200.XX)

#### **208. Public Concern: The CEQ Task Force should clarify the extent to which federal agencies that adopt a final EIS are responsible for ensuring that the EIS adequately supports the lead agency's decisions.**

Additional guidance from the Council on Environmental Quality would be useful to the Federal Aviation Administration and the Department of Defense in order to clarify the extent to which Federal agencies that adopt a final EIS under 40 Code of Federal Regulations 1506.3 are responsible for ensuring the EIS is adequate to support the decisions being made by the lead agency. Where the Federal Aviation Administration is adopting a Final EIS prepared by the Department of Defense, it is not clear whether the Federal Aviation Administration may limit its review to whether the EIS is adequate under NEPA and other applicable environmental laws to support the proposed Federal Aviation Administration action to designate special use airspace for military training activities, or whether Federal Aviation Administration should also consider the adequacy of the EIS to support the ground-based facilities being approved by Department of Defense. (Federal Aviation Administration, No Address - #534.14.30300.B3)

**209. Public Concern: The CEQ Task Force should require agencies to follow the federal policy on research misconduct.**

The regulation implementing the Federal Policy on Research Misconduct (Executive Office of the President's Office of Science and Technology, December 6, 2000) should be followed to assure the integrity of works used by federal agencies in decision-making. As provided in the final rule issued by the National Science Foundation (FR March 18, 2002, volume 67, number 52; 45 CFR Part 689), individuals and institutions conducting research funded by federal agencies must adhere to standards of conduct in order for their work to be acceptable. (Oil, Natural Gas, or Coal Industry, Casper, WY - #643.1.10240.XX)

**Determination of Need and Development/Use of Alternatives***Determination of Need and Alternatives General***210. Public Concern: The CEQ Task Force should address the determination of need.**

The greatest sham is the determination of need. There have been many agenda programs foisted upon us unsuspecting naturalist citizens creating the impression that the need is overwhelming. For instance, the 'four endangered fish', which in years prior the U.S. Fish and Wildlife poisoned deliberately on account of their being classified as trash fish (review RIP-RAPP). These fish want to live in Mexico; they do not want to live here. To force them to live here under the terms and conditions of the RIP-RAPP is equivalent to building a tropical greenhouse at the north Pole to reestablish the Corals and other warm tropical animals to live in an artificial environment. The Canada lynx is another species these agencies have abused to further control the human environment. (Individual, Yellow Jacket, CO - #72.5.10200.XX)

**211. Public Concern: The CEQ Task Force should encourage agencies to focus on issue identification and examination of projects and alternatives.**

The Forest Service must take more responsibility for achieving results rather than simply rigorously following procedures. In the new Forest Service Report, the agency says that it has changed from "protecting resources to policing policies." The Forest Service states that planning and assessment consume 40% of the total direct work at the national forest level and represents an expenditure of more than \$250 million per year. Often resource specialists and Interdisciplinary Teams are managing the process. Unwilling to accept their advisory role, these specialists make decisions on which resources get studied and how much effort and time the studies get. The Line Officers are too timid or unmotivated to take charge, this much effort and time is spent on "studies" rather than focusing on the fundamentals of NEPA such as issue identification, addressing those issues and examining the basic feasibility of the projects and alternatives. (Timber or Wood Products Industry, Ketchikan, AK - #524.9.10200.XX)

**212. Public Concern: The CEQ Task Force should streamline issue designation.**

We need government regulations to be rewritten to streamline issue designation and specifically support the ID Team. Concurrently, we need the courts to recognize and support a streamlined more direct process. (Special Use Permittee, Naches, WA - #71.2.10200.XX)

**213. Public Concern: The CEQ Task Force should require agencies to define the purpose and need of projects according to public benefit, not applicant intent.**

The Federal Agencies must define the purpose and need of projects from their full mandate to manage the public lands for the benefit of the public, not by the intent of the applicant. (Preservation/Conservation Organization, Durango, CO - #523.48.10200.XX)

**214. Public Concern: The CEQ Task Force should encourage agencies to involve the public when determining the purpose and need for most projects.**

I strongly believe that the public should be involved in determining the Purpose and Need for most projects. Many times, we get scoping comments that don't suggest alternative ways of accomplishing the Purpose and Need, they simply disagree with the need for the project. In the vast majority of cases, these comments are dismissed as "not being responsive to the Purpose and Need". Once again, the next time we hear of this objection is in court.

For example, lets say the Purpose and Need is to harvest timber to maintain the local community economic stability. We also say, that while we are in the bay area, we will complete the following as part of the timber contract:

- Correct drainage on the road.
- Hand pull noxious weeds
- Conduct wildlife surveys
- Remove several stream blockages for fish in the stream.
- Put several miles of unneeded road to bed.
- Reduce the sediment production from several abandoned mines.

As part of the scoping comments we receive, some members of the public ask for an alternative to be developed (and seriously considered for selection) which would only do the six restoration activities, without the timber sale. These comments are never acted upon, because they propose things that are "not responsive to the Purpose and Need".

The sort of behavior by the federal land management agencies must stop! This is why the public feels that they really aren't being listened to. (Government Employee/Union, Grangeville, ID - #44.31.10420.XX)

**215. Public Concern: The CEQ Task Force should not limit the analysis of purpose and need and development of alternatives.**

At the heart of NEPA are requirements that an agency explain the purpose and objectives of a project and consider all reasonable alternatives to such project. Streamlining advocates have proposed to limit the ability of agencies to carefully analyze the purpose and need of a project or to fully consider reasonable alternatives. However, it is only through the careful analysis of purpose, need and alternatives that an agency can ensure that it is making the correct decision for the environment and society, and therefore these proposals undermine the goals of NEPA. (Preservation/Conservation Organization, Chicago, IL - #87.23.10200.XX)

**216. Public Concern: The CEQ Task Force should caution agencies against making changes to the proposed action and alternatives late in the process.**

A major problem is project changes. Study after study clearly shows that the NEPA process is NOT the culprit in project delays. Substantial changes to the proposed action and alternatives late in the process cause analysts to revisit conclusions and contribute to public skepticism. (Individual, No Address - #223.3.10200.XX)

**217. Public Concern: The CEQ Task Force should consider what factors should guide alternative development.**

Special Concerns that should Guide Alternative Presentations.

- (1) Protection and recovery of threatened, endangered, sensitive and special plants and animals.
- (2) Protection of unique natural areas (Wilderness, ACEC, etc.)
- (3) Protection of controversial areas (Riparian, roadless, old growth, etc.)
- (4) Protection of areas of highest biological integrity (fire/fuel hazards, noxious weeds, watershed malfunction, soil stability, fish and wildlife problems) are non existent or minimal.

(5) Protection of cultural resources.

Information Needed to Evaluate Effects

(1) Thorough developed analysis of the “no action” alternative.

(2) Full description and analysis of multiple action alternatives.

(3) Effects of alternative treatments including information from monitoring of past treatments on ecological integrity, processes and functions. (Individual, Rogue River, OR - #382.24.10230.F1)

**218. Public Concern: The CEQ Task Force should sponsor a conference/workshop to address the identification of alternatives, and publish the results of the workshop as a guidance document.**

Clarification is needed on what is meant by and expected from the requirement to include “range of alternatives”, especially, but not exclusively for EAs. Earlier attempts at clarification have not resolved the issue. I suggest a CEQ sponsored conference/workshop on the identification and selection of alternatives for detailed analysis. The workshop would address identifying/developing, framing, and screening alternatives, and providing appropriate explanation of why other “possible alternatives”, that some might argue should be analyzed, have only been identified and considered, and subsequently dropped from detailed analysis. CEQ should publish the results of the workshop as a guidance document, or incorporate the results into a change to CEQ Regulations. Such an effort would facilitate the EA/EIS preparation process and should reduce some of the uncertainties that often lead to litigation. (Business, Fairfax, VA - #520.20.10230.XX)

**219. Public Concern: The CEQ Task Force should encourage agencies to engage stakeholders in developing alternatives.**

Effectively consider a wide variety of alternatives, as well as secondary, induced and cumulative impacts in project planning, design and review. The best process engages stakeholders in identifying partial build alternatives, travel demand management strategies, alternative investments, and other approaches to avoid or mitigate negative impacts. Build consensus for action by addressing broader stakeholder concerns, rather than imposing narrowly focused objectives on the community. Many delays, especially for controversial projects, arise when agencies have failed to effectively consider impacts on specific populations or neighborhoods, or the effects of transportation infrastructure projects on land use, travel behavior and public health. (Preservation/Conservation Organization, Washington, DC - #535.48.10230.XX)

**220. Public Concern: The CEQ Task Force should consider whether the analysis of alternatives, in its present form, inherently frustrates the process of reaching decisions.**

NEPA’s culture polarized decision-making and fails to support the development of good projects. Much of today’s concerns for streamlining of environmental permitting focus on the complexity of project permits and the tangled course of meeting their substantive and procedural preconditions. These are important problems. But we believe another issue deserves more attention than it has received. This is the question of whether “alternatives analysis,” in the shape it now takes in NEPA, creates a context for discussion and problem-solving that maximizes the polarization of opinion, the staking out of positions, and the exclusion of iteration and compromise in problem-solving. Is it possible that part of the frustration at delay and gridlock that now animates NEPA’s critics grows from the analytic mechanism of “alternatives” in which project examination now finds itself mired? We think CEQ should at least broach to behavioral scientists and students of decision-making the question whether the terms of engagement for NEPA “alternatives” analysis inherently frustrates the process of reaching decisions on project undertakings. (Washington State Department of Transportation, Olympia, WA - #551.3.10200.XX)

**221. Public Concern: The CEQ Task Force should address agencies' tendency to predetermine the outcome based on the alternatives they choose.**

My major concern deals with the selection of alternatives for study in environmental assessments and environmental impact statements. Current NEPA regs give significant discretion to lead agencies in designing the alternatives to be studied, and thereby allow agencies to pre-determine an outcome based on the alternatives they choose. For example, The US Forest Service in 1996 issued an EA for the East Gauley Mountain Timber Analysis (Monongahela National Forest in West Virginia) in which they established a NO Action alternative and three "timber harvest" alternatives that were so heavily stacked as to make a meaningful environmental analysis impossible. The public comment was restricted to options of 0 or 16, 17 or 18 million board feet. No opportunity was given for comment on a timber harvest level that would be substantially different from the 17 million board feet in their preferred alternative, nor was any environmental impact assessment conducted that established the need for this particular timber harvest level. (I would also note that subsequent legal action led to a negotiated alternative that was substantially lower than any of the options studied by the US Forest Service, but this legal action merely illustrates the failure of the NEPA process itself and further highlights my concerns).

The most egregious examples of selecting alternatives to pre-determine the outcome of the analysis routinely occur in the USDA. In several cases with which I am familiar, only the Action alternative and a No Action alternative are analyzed. This means that only the initially proposed action is studied, and no opportunity exists for consideration of less impacting alternatives. Agencies such as NCRS and APHIS are notorious for this practice. They argue that it is wasteful to conduct analyses of alternatives that have no meaningful chance of being implemented, but this argument is a self-fulfilling prophecy that precludes any meaningful possibility of identifying a less-impacting alternative.

Finally in many cases, public input identifies additional alternatives that clearly warrant further study, yet agencies resist such analyses. The Federal Highways Administration frequently adopts an alternative, even when public comment clearly identifies preferable and less impacting alternatives. The extreme example of this abuse with which I am familiar is in the EIS for the Corridor H highway in West Virginia. Not only did FHA refuse to seriously consider a less costly and less impacting compromise based on improving existing roads, they accepted analyses from the WV Dept. of Highways that mischaracterized public comment in favor of such an alternative as being in support of one of their previous alternatives. Please feel free to contact me for supporting documentation of these examples. I currently teach classes at West Virginia University on Environmental Impact Assessments, and use the NEPA process as the basis for this course. As such, I frequently review EISs and EAs and have emphasized mechanisms for improving environmental decision-making. It is always extremely disconcerting to have the clear intent of NEPA (to incorporate public comment and sound environmental analyses in agency decision-making) thwarted by agency staff who manipulate the process and pre-determine an outcome before any analyses or public comments are obtained. (Individual, Morgantown, WV - #65.1-2.10200.A1)

**222. Public Concern: The CEQ Task Force should direct agencies to initially analyze only the lead agency's proposed project; then, if needed, develop alternatives in response to the initial analysis.**

NEPA begins with an analysis of an array of project alternatives, and concludes with the selection of one alternative as the proposed project. We believe that this makes for a somewhat artificial analysis that may or may not result in the best project for the environment. We recommend that, instead, the NEPA analysis start with the project as proposed by the lead agency. In this scenario, it would only be after the impacts of the project have been analyzed, and the significant adverse impact identified, that alternative configurations or locations of the project that avoid or lessen the identified impacts are developed and considered. Ideally, at the [end] of this process an environmentally superior project is identified for lead agency consideration. We believe that this latter process will result in a more honest and meaningful analysis where the lead agency's preferred project and project objectives are compared against alternatives that have been developed in response to the initial analysis. (California Department of Food and Agriculture, Sacramento, CA - #566.2.10200.XX)

## Range of Alternatives

### 223. Public Concern: The CEQ Task Force should require consideration of an adequate range of alternatives.

As a general comment, the CAP has seen DOE use the NEPA process in a formulaic manner to justify decisions already made. In our experience, this type of abuse is more common at the site level. A typical strategy is to prominently highlight the preferred alternative and present inadequate alternatives as the only other options, instead of alternatives that are logical and reasonable. (Civic Group, Oak Ridge, TN - #88.2.10200.XX)

#### TO AVOID APPEALS

CEQ regulation requires agencies to adopt procedures to ensure that alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents. [Section] 1501.1(e). According to CEQ, the phrase “range of alternatives” includes “all reasonable alternatives,” and these “must be rigorously explored and objectively evaluated, as well as those other alternatives, which are eliminated from detailed study with a brief discussion of the reasons for eliminating them.” 46 Fed. Reg. 18026 (March 23, 1981). CEQ advises that what constitutes a reasonable range of alternatives “depends on the nature of the proposal and the facts in each case.” 46 Fed. Reg. at 18027. With such elliptical guidance from CEQ, it is a simple enough matter for a litigant to identify an unexamined alternative and allege that its omission was unlawful or belabor an alternative that was considered and allege that its consideration was inadequate. Absent regulatory guidance from CEQ, the mere allegation of such deficiencies is sufficient to avoid a motion to dismiss. When legal challenges are based in ideology—as many are—the generalized uncertainty that plagues the NEPA process facilitates the elevation of differences of philosophy into potential violations of law. (Other, Washington, DC - #506.9.10240.XX)

#### FOR MINING PROJECTS

The consideration of alternatives is “the heart of the environmental impact statement.” 40 C.F.R. [section] 1502.14 (1998). It is “absolutely essential to the NEPA process that the decisionmaker be provided with a detailed and careful analysis of the relative environmental merits and demerits of the proposed action and possible alternatives, a requirement that we have characterized as ‘the linchpin of the entire impact statement.’” *Natural Resources Defense Council v. Callaway*, 524 F.2d 79, 92 (2d Cir. 1975). Moreover, “The existence of a viable but unexamined alternative renders an environmental impact statement inadequate.” *Resources Ltd. v. Robertson*, 35 F.3d 1300, 1307 (9th Cir. 1993) (quoting *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519 (9th Cir. 1992)).

According to the CEQ:

In determining the scope of alternatives to be considered, the emphasis is on what is “reasonable” rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative.

An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. (Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations, 46 Fed. Reg. 18026, 18027 (March 23, 1981))

These statements by the CEQ and the courts make clear that the inclusion of alternatives in detailed analysis is a central component that can not be lightly handled.

Unfortunately, the practice of agencies in mining related EISs is other than the one expounded above. In the SOAPA [South Operations Area Project Amendment] FEIS . . . the BLM’s cursory dismissal of several alternatives is unsupported by any scientific evidence. BLM simply listed a few reasons why the alternatives were “technically infeasible” without providing any analysis. Such is the all too customary practice.

In the South Pipeline Project FEIS . . . the FEIS really only considered one approach: Cortez Gold Mining’s proposal.

The BLM perpetuated the illusion by adding an “Agency preferred alternative” to the FEIS, which again was simply the applicant’s plan combined with various mitigation and other requirements. During the process, the only alternative that received serious consideration was the one proposed by the company.

By doing so, the agencies misapprehend the whole idea of an EIS. NEPA cannot be satisfied by analyzing alternatives that are merely versions of each other. The point of NEPA’s alternatives analysis is to compare the environmental impacts to public lands of different approaches to public land use. (Preservation/Conservation Organization, Durango, CO - #523.41-42.10230.XX)

**224. Public Concern: The CEQ Task Force should require reasonable alternatives.**

The need to evaluate reasonable alternatives is central to NEPA; as such this need, and its broad application should be strengthened. (Preservation/Conservation Organization, Durango, CO - #523.46.10230.XX)

**225. Public Concern: The CEQ Task Force should advise agencies that NEPA does not require the analysis of every conceivable alternative.**

As one of the largest oil and gas exploration and production companies in the United States, Anadarko is committed to developing these resources in an environmentally sound manner. The NEPA process is a way to achieve this goal by allowing agencies to utilize their expertise to develop the best scientific information to assess and minimize the potential impacts to the environment. However, in recent years, federal agencies have moved away from using the process as intended and instead have tried to create documents that are litigation proof. This move away from gathering scientific evidence on which to base a decision and towards immunizing decisions from challenges has begun to erode the utility of the process. The process could be best improved by emphasizing that NEPA is a procedural statute intended to guide agencies in gathering information on which to base their decisions and is not meant to require production of documents that analyze every conceivable alternative in minute detail. (Oil, Natural Gas, or Coal Industry, No Address - #634.1.10110.XX)

**226. Public Concern: The CEQ Task Force should limit the number of alternatives.**

**BY COMBINING CLOSELY CONNECTED ACTIONS TO AVOID ANALYTICAL DIFFICULTIES**

The number of management alternatives considered in an analysis should be kept to a manageable number. Several national forests have tried to prepare environmental analyses that cover all site-specific actions that may occur in a specific watershed. Considering staffing and budget limitations, this approach may make sense in light of the scope of actions that agencies such as the USFS undertake across large landscapes. Unfortunately, attempting to connect disparate management actions (e.g., timber sales stream rehabilitation, trail building, and campground repair) can result in a nearly infinite number of potential alternatives, which makes understanding and analyzing the number of potential alternatives nearly impossible. The Pacific Northwest Regional Office of the USF has made some efforts to address these concerns by directing field offices to avoid such analyses and only combine closely connected actions to avoid analytical difficulties (Other, Washington, DC - #587.21.10200.F1)

**227. Public Concern: The CEQ Task Force should limit the number of required alternatives to two.**

Within NEPA, land managers proposing a project must also propose alternative projects. The alternative projects must undergo the same level of study and preparation as the proposed project. Because NEPA fails to define how many alternative projects must be studied, land managers (in an effort to head off potential appeals and litigation) must research and prepare an excessive number of alternative projects covering all plausible management options.

Recommendation: Modify NEPA, to limit the number of alternative projects land managers must prepare to no more than two. (Timber or Wood Products Industry, Concord, NH - #24.2.10200.XX)

Modify NEPA, to limit the number of alternative projects land managers must prepare to no more than two. (Individual, Winslow, ME - #126.2.10200.XX)

**228. Public Concern: The CEQ Task Force should encourage agencies to consider a range of outcomes, as opposed to specific outcomes or fixed levels of outcomes.**

An EIS should consider a range of outcomes as opposed to choosing single or specific outcomes or fixed levels of outcomes. If and when the agencies use “science” rather than their interpretation of “science” they will observe that management practices available for grazing strategies, logging and mining activities have been tested over time and are based on research results.

Environmental assessments must include natural variations in climate, rainfall, snow, geologic and geographic areas, and natural variations. An EIS should not assume that “natural” means no human has ever encountered the ground or used a resource. Science doesn’t support this concept and adaptive management strategies have not been developed using such an absurd notion. (Domestic Livestock Industry, La Grande, OR - #496.28.10200.D2)

*No Action Alternative*

**229. Public Concern: The CEQ Task Force should address the appropriate use of the No Action Alternative.**

Proper use of the “no action alternative” is another issue that needs to be addressed in all NEPA documents, including EAs and EISs. No action means no change, or current management, as making a change to the permitted action would be taking an action. Often, in grazing renewal EAs for example, agencies use the no action alternative to mean no grazing, or not renewing the permit. This is not only misleading to the public trying to analyze the document, but it does not meet either the intent or the letter of the law. (Domestic Livestock Industry, Albuquerque, NM - #80.6.10200.XX)

**230. Public Concern: The CEQ Task Force should define the No Action Alternative as the status quo.**

The “no action alternative” needs to be clearly defined as the status quo. NEPA was generally intended to apply to new projects or new federal activities. Courts and agencies have required NEPA analyses also be conducted for ongoing activities, such as renewal of federal permits. For example, the agencies have said federal livestock grazing permits must undergo NEPA analysis prior to renewal.

The action agencies are required to consider a “no action alternative” as part of their NEPA analysis. The alternative is supposed to be the status quo—what happens if nothing different is done. It is meant to serve as a baseline upon which other alternatives may be considered and compared. For new projects, the “no action alternative” is the state of affairs if a permit were not granted or the action did not take place. That is clear.

For ongoing projects or for permit renewals, however, the situation is different. The “status quo” in these cases is the condition as if the permit were ongoing or if the action were permitted to continue on its present terms. In the case of grazing permits, environmental conditions are reviewed every year to some degree as the agency determines appropriate stocking rates. Yet this is not the way agencies have interpreted the “no action alternative”.

Agencies construe the “no action alternative” to be the non-renewal of a permit or the discontinuance of the particular action. This is not the status quo. Non-renewal of permits, for example, can result in significant changes in environmental conditions from the conditions that existed while the permit was in operation. As such, it is not a true baseline, as the “no action alternative” was intended to be. The impacts from non-renewal of a permit or discontinuance of an activity need to be considered separately.

The “no action alternative” needs to be clarified to mean the true environmental baseline upon which different alternatives can be measured. For permit renewals or ongoing activities, the only true baseline is the condition as if the permit or activity were continued. (Agriculture Industry, Boise, ID - #464.12-13.10200.XX)

### **231. Public Concern: The CEQ Task Force should require adequate analysis of the No Action Alternative.**

For decades, scare tactics, systematically employed by project promoters (including the BOR [Bureau of Reclamation]) have been carefully orchestrated to see to it that paranoia runs deep into the hearts of senior water rights holders and citizens within Four Corners communities. The proper application of the NEPA in the case of the A-LP [Animas-LaPlata project] would have effectively discredited those tactics and dispelled those fears. This, unfortunately, has not been the case.

The 2000 A-LP EIS is woefully inadequate because the No Action Alternative was not rigorously explored or objectively evaluated, and the public was not afforded an opportunity to scrutinize the action in question. Instead, the No Action Alternative [must] be raised as the standard against which all other alternatives to the proposed action are weighed. Satisfactory analysis of a No Action Alternative provides a reliable benchmark, enabling decision makers to compare the magnitude of environmental effects of the various action alternatives. (Individual, Farmington, NM - #91.7.10200.XX)

In the case of the A-LP EIS . . . the BOR/Ute co-lead treated the No Action Alternative dismissively, stubbornly avoiding any serious exploration of possible outcomes should the Colorado Ute tribes choose to either renegotiate or litigate their claims to reserved Winters doctrine rights from the Animas and LaPlata rivers. The BOR and the Utes have steadfastly refused to examine the No Action Alternative except to say that it would force the Utes to go into court to satisfy their claims. The No Action Alternative has been shunned like the plague on the grounds that if the project were not built just as the Utes have insisted, huge legal costs would be incurred in the process of litigating the tribe's water rights claims. Conveniently, the "hugeness" of these costs has never been described in relationship to the magnitude of the costs of the project itself—costs which now stand at over \$400 million, with every assurance (based on cost overruns on past reclamation projects) that the price tag will ultimately exceed \$1 billion. And, while they have been more than willing to engage in a reckless and arbitrary projection of multiple hypothetical scenarios (dude ranches, golf courses and casinos) for the mother lode of Ute water allocated in their "Preferred Alternative", the BOR/Ute co-leadership has deemed it impossible to even predict the various potential outcomes of a litigation of the Ute claims. (Individual, Farmington, NM - #91.8.10200.XX)

The agencies fail every time to honestly study the No action category, their agendas don't allow them to leave things alone . . . and their lack of scientific knowledge leaves them unable to recognize that sometimes no action is the best action to take.

The agencies must be required to look at real options, not phony ones. No action is never studied, and the alternatives are never reality based but hypothetical deep thought lies that really have no business in the decision making process. (Individual, Pioche, NV - #340.1.10200.E1)

## **NEPA Documentation**

### **Summary**

This section includes the following topics: NEPA Documentation General, Quality of Documents, Number of Documents, Application of Documents, Time and Expense of Document Preparation, Required Information in Documents, New Information and Supplemental Documentation, Relation Between Different NEPA Documents, Specific NEPA Documents, Document Language and Formatting, and Examples.

**NEPA Documentation General** – One general comment regarding NEPA documentation which is especially common, and appears within a number of contexts, is that the Task Force should address the increasing emphasis on documentation. According to one mining industry representative, for example, "NEPA regulations have been modified many times over this period with each modification requiring more data and thus compounding the documentation of each

successive NEPA decision. Categorical exclusions are no longer allowed on mineral exploration activities. Correspondingly, the documentation for environmental impact statements and environmental analysis has gone from a few pages to a few hundred pages.”

Beyond that, other general comments regarding NEPA documentation cover a number of varied points. Respondents ask the Task Force to “focus on the internal aspects of the EIS process (e.g., intra-agency reviews), rather than making changes to the required steps in the external review process or to the extant requirements of NEPA documents;” to clarify that NEPA documents should be understood as a report of the planning process; to encourage creation of more concise joint NEPA documents; to reduce the number of specialists required to contribute to a NEPA document; to address the fear of NEPA documents becoming too quickly outdated; to require agencies to complete NEPA documents before making decisions; to clarify that land and resource management plans are not decision documents, and that decisions regarding proposed activities should be limited to site-specific actions; and to address the current limitations of the federal register NOI and document filing requirements for interagency coordination and public involvement.

People also ask that documents be subject to greater public scrutiny. Some ask that all documentation be available on the Internet, and express concern that “keeping all comments and research documentation in a repository for review in Washington or another location gives the impression that the agency is intentionally restricting access to critical data . . . .” Finally, some ask the Task Force to address agencies’ tendency to delay or withdraw NEPA documents without explanation.

**Quality of Documents** – A number of respondents ask the Task Force to ensure adequate document preparation. Some complain that government agencies publish inadequate documents. One individual writes, “I have . . . led the development of several environmental impact statements and environmental assessments. The major problem I’ve experienced is not the affected public blocking proposed projects, it is usually Civil Servants or the contractor(s) who put documents on the street riddled with deficiencies. These poorly done NEPA documents create a lot of uncertainty and controversy resulting in a loss of trust in the agency and the process.” According to some, it is generally private contractors who put out inadequate documents. One civic group asserts, “In our experience, there are many more examples of poor documents than good ones. NEPA documents have become noticeably poorer in quality since DOE took responsibility for their production from the national laboratories and contracted this task to outside contractors, generally chosen for being the lowest bidders instead of the most technically competent.”

**Number of Documents** – Some ask the Task Force to reduce the number of NEPA documents. One wood products industry representative writes, “It is my understanding that approximately 100 Draft or Final Environmental Impact Statements (EISs), 5,200 Environmental Assessments (EAs), and 9,800 Categorical Exclusions (CEs) are produced annually by the Forest Service to comply with the NEPA process. There is an incredibly high cost associated with this effort, both in terms of wasted federal manpower and in the losses associated with extremely long process delays. Changes need to be made to significantly reduce the amount of EISs, EAs and CE and/or significantly reduce the amount of effort needed to create them.” Respondents likewise ask that agencies be encouraged to combine environmental reviews required by multiple regulatory acts into a single document. Others suggest that the Task Force should quantify the actual number of EAs, FONSI, and EISs created annually, the number of EISs challenged in

court, and the number that are upheld in order to see how well the NEPA process is currently working.

**Application of Documents** – Most respondents who comment on the application of NEPA documents ask the Task Force to clarify or limit the application of EAs and EISs. Some say that EISs should be used for large-scale projects; others say both EAs and EISs should be used for large-scale projects, including the use of EAs for large-scale highway projects. On the other hand, some argue that geographically broad EISs increase the risk of legal challenges.

Other suggestions include requiring EAs for long-standing resource management projects; requiring EAs to consider activities on adjacent lands; minimizing the need for EA analysis for projects in already developed sites; and addressing the trend to require states receiving grant monies to prepare an EA for actions appropriate for categorical exclusions. Additionally, some ask the Task Force to eliminate the requirement to prepare NEPA documents for forest plan revisions or amendments.

**Time and Expense of Document Preparation** – An especially common request is that the Task Force address the time and expense of NEPA document preparation. In a comment typical of many, one special use permittee writes, “Crystal Mountain released our new Master Development to the public in October of 1998 after 2 1/2 years of planning and \$750,000 of expense. Public scoping meetings were then held and almost 3 years later in August of 2001 the FS finally released the DEIS at an expense of 2.5 million dollars. The DEIS is over six inches thick and weighs more than 12 pounds, talk about information overload! It is estimated that the FEIS (projected cost \$700,000) may be released by October of 2002, four years after the Master Development Plan was presented to the public. The FS anticipates that the document will be appealed by a local Indian Tribe or conservation group upon issuing the Record of Decision. Given the elapsed time it is taking to work this document through the various agencies, address comments and eventually gain approval, perhaps we should start a new master development plan now so that we are not out-of-date.” Numerous writers state, in consequence, that “CEQ should provide rules and guidance to set general time limits for NEPA document preparation either by category of document (e.g., programmatic EIS, project EIS, programmatic EA, project EA, tiered EA, etc.) or by type of action.”

**Required Information in Documents** – Comments regarding the required information in documents parallel those regarding the required level of analysis in general. Respondents ask the Task Force to clarify the level of analysis needed in all NEPA documents. Some ask the Task Force to address the requirement that all data be included in the document and to simplify documents by requiring only the current analysis. Others ask the Task Force to require the inclusion of specific information in all NEPA documents, such as adequate supporting analysis; identification of the historic, current, and desired future conditions; identification of high risk, compromised, and relevant areas; identification of all relevant activities and management actions; and the results of biological assessments and opinions.

**New Information and Supplemental Documentation** – Numerous respondents express concern over the need to consider new information. Some ask the Task Force to narrow the definition of new information; to impose a time limit on consideration of new information; and to advise agencies to consider new information only when it points to data flaws or risks to public health.

Many ask the Task Force to specifically define “new information” that necessitates a supplemental EIS. According to one recreation organization, “The Forest Service is increasingly requiring resorts to prepare SEISs in situations where they are not legally required. The result is again delays in the NEPA process and increased expenditures on the part of the resort and the agency—not improved decision making.” Some suggest that CEQ regulations be amended to include a reliability threshold for new information, “so that agencies are not continually forced to consume time and resources reviewing unreliable or unimportant information, and so that courts cannot interminably delay projects or programs to force an agency to do so;” and a stop action threshold to define when an agency must halt action while further documentation is being prepared.

A number of people also ask the Task Force to eliminate the requirement for a supplemental EA. Notes one wood products representative, “We urge the CEQ to bar supplemental EAs. If the new information does not reveal the possibility of environmental harm of sufficient severity to make a Finding of No Significant Impact unlikely, further NEPA analysis would be make-work.” Others insist, however, that there is presently no requirement for a supplemental EA, and that the Task Force should clarify that fact.

Finally, a few respondents ask the Task Force to ensure that any controversies requiring further documentation relate to scientific and biological disagreements, not philosophical disagreements. As one person puts it, “The mere fact that there are those opposed to the project should not be the basis for determining that a controversy exists and further documentation is needed.”

**Relation Between Different NEPA Documents** – Many respondents offer comment regarding the relation between different NEPA documents, in particular EAs and EISs. Quite a few, for example, express frustration that agencies are increasingly requiring EISs for projects which previously only required EAs. Likewise, some charge that there is a growing trend to make EAs more like EISs. In consequence, a number of respondents ask the Task Force to provide clearer guidance on whether an EA or EIS is necessary for a given project; to distinguish both the procedural and analysis requirements for EAs and EISs; and to develop new requirements for EAs that differ in organization and contents from the requirements for EISs.

Several respondents also ask the Task Force to clarify that the purpose of an EA is to determine whether an EIS is needed. One respondent writes, “By law, an agency is to prepare an EA for the purpose of determining whether it needs to prepare an EIS. However, the current reality is that an agency predetermines whether its ultimate analysis document will be an EA or an EIS. Essentially, an EA is treated as a “mini-EIS” rather than an objective inquiry into whether a proposed action would likely result in a significant impact to the human environment. Anecdotal evidence: I have never seen a situation in which an agency prepared an EA, determined that the proposed action would likely result in a significant impact, and subsequently prepared an EIS. It has long been a foregone conclusion that when an agency prepares an EA the result will be a finding of no significant impact.” Respondents ask further that the Task Force require an EIS when an EA would serve as a functional EIS, and to clarify that EAs should not be used when EISs are clearly required.

On the other hand, some maintain that the Task Force should apply the same rules to EAs as to EISs, and should require EAs to be organized like EISs. Notes one respondent, “Since EAs play the vital role of determining whether an EIS is required, the same rules in preparing an EIS should apply to an EA. Otherwise, the real impacts of a proposed project will not be revealed to

the public if further analysis is needed.” Thus, remarks another, “Environmental assessments should be organized like an Environmental Impact Statement, with chapters on the project description, purpose and need, affected environment, alternatives, and environmental consequences as well as the Finding of No Significant Impact where that is the result.”

Finally, a few respondents comment regarding the relation between EAs and FONSI. According to some, the Task Force should define the required content of a FONSI and require it to be incorporated into the supporting EA. Others suggest using FONSI instead of EAs.

**Specific NEPA Documents - Federal Register NOIs** – Several respondents ask that any federal register notice to prepare an EA or EIS include a full description of the proposed action “in simple, easy to understand language.”

**Specific NEPA Documents - EAs** – General comments relative to EAs consist in requests that the Task Force provide clearer guidance on the preparation of EAs; simplify the requirements for EAs; clarify that EA requirements should result in shorter documents; and allow lead agencies to decide how best to prepare EAs for individual projects. Some, however, believe that CEQ regulations currently afford adequate flexibility regarding EAs.

Some ask the Task Force to clarify that preparation of an EA is a judicial review requirement, not a NEPA requirement. According to one respondent, “The EA is a function of judicial review. NEPA does not require the preparation of an EA. Indeed, the 1971 CEQ Guidelines issued by Judge Train contain no reference to an environmental assessment. 36 Fed. Reg. 7724 (April 23, 1971). The statute notwithstanding, a 1993 CEQ survey estimated that about 50,000 EAs were being prepared annually.” Others ask the Task Force to revise CEQ regulations to appropriately restrict judicial review of EAs “so that they may return to their intended role as ‘concise public documents’ that ‘briefly’ determine whether a project may proceed through a Finding of No Significant Impact or whether an EIS is necessary.”

Some respondents offer advice on the content of EAs. According to one federal agency, the Task Force should expand the scope of the EA to address legal responsibilities. A few suggest requiring EAs to include maps and figures. Several, however, ask the Task Force to clarify guidance regarding the evaluation of alternatives in EAs—when they are necessary and the level of detail needed. One individual explains, “Under the current CEQ Regulations, there is great uncertainty as to whether alternatives are or are not required in an EA, and when they are—the degree to which they must be evaluated. The problem stems from the somewhat cryptic reference found in section 1508.9, which states that an EA must discuss alternatives ‘as required by section 102(2)(E) . . . .’ Section 102(2)(E) of NEPA provides ‘study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.’ Unfortunately, in more than 30 years of NEPA guidance and practice, nobody has provided a clear explanation of what that section means for EA practice.” According to some, agencies should consider alternatives in EAs only when there are unresolved conflicts.

An additional topic of comment relative to EAs is public involvement. Some advocate that the Task Force should require minimum public notice and review requirements for EAs. Notes one individual, “There is currently no established minimum for what constitutes adequate public notice and availability of an Environmental Assessment. The practice varies widely, and some documents receive either very ineffective notice, or no notice at all. Thus, the public often has very limited opportunities to learn about proposed federal actions, and to provide their views.”

Others, however, “question whether any public comment is required for EAs, particularly when it’s not required for EISs by NEPA or for EAs by CEQ’s rules. Indeed, CEQ’s regulations simply direct the agency proposing the action to include the public ‘to the extent practicable’ during EA preparation. 40 C.F.R [section] 1501.4(b).” These respondents ask the Task Force to clarify that “EAs need only be made available to the public but not to public comment as it is not currently required for EISs by NEPA or for EAs by CEQ’s rules.”

Finally, some respondents advocate eliminating the requirement to produce EAs altogether. One respondent explains, “The 50,000 EAs prepared each year for proposed actions without significant effect on the quality of the human environment are not required by NEPA. The statute requires no study at all of proposals that do not have significant environmental effects. The EA requirement [was] imposed in the CEQ regulations. Agency EAs are beginning to resemble EISs in size, preparation time, and cost. CEQ could eliminate the EA entirely, or replace it with a simple process for documenting a finding of no significance. While this change might lead to an increase in the number of EISs, the savings in eliminating EA preparation costs and moving non-significant projects promptly forward could dwarf the increased costs of preparing additional EISs. This change would also have the beneficial effect of concentrating environmental analysis resources on those projects most in need of detailed study. Environmental groups might find this attractive because more truly ‘significant’ actions would be elevated in an EIS.”

**Specific NEPA Documents - EISs** – Respondents who address their remarks specifically to EISs express concern over the content of EISs and the number of EISs required for a given project. Some respondents ask the Task Force to set clear boundaries “as to what really needs to be examined in developing the EIS.” Others stress that “the mere ‘ability’ of an agency to manage a resource or take an unspecified range of potential actions does not constitute a resource or an impact, either positive or negative, and should not be a consideration.”

Several respondents ask the Task Force to address agencies’ trend to require multiple EISs. One recreational organization observes, “An unfortunate trend is the requirement of a second or even third EIS by the agency. Loon Mountain in New Hampshire, Mount Ashland ski area in Oregon, and White Pass ski area in Washington have all been subject to multiple EISs for the same project. Multiple EISs are required at times in attempts to avoid challenges to the original NEPA analysis, or because the initial EIS process took so long that the analysis underlying it can no longer be considered current. The result is seemingly endless and expensive analysis—not necessarily the sound decision-making intended by NEPA.”

Finally, some respondents assert that the requirement to produce an EIS is being abused, while others advocate eliminating the requirement altogether. One individual explains, “The portion of NEPA which requires an Environmental Impact Statement has been abused. An EIS is required for ‘major federal actions significantly affecting the quality of the human environment.’ The process of performing an EIS has become commonplace and instigated by rabid preservationists for even such non-actions as small gold suction dredges in the western states. It comes at a great cost to the tax payers. It is a process which should only be performed when it is a ‘major’ federal action and not used as a tool to lock up land from legitimate users as it is presently being used by such agencies as the U.S. Forest Service.” Another individual asserts, “There is an overwhelming need to overhaul the National Environmental Policy Act. For too long advocacy groups such as Earthjustice, Sierra Club and numerous others, have placed road blocks to progress of the human race. Thousands of jobs, and businesses, have been lost to the environmental movement. A parasite industry has risen out of the movement (note the advertisements in any phone book

under ‘Environmental’). Key elements of the new plan must include the elimination of an environmental impact statement . . . .”

**Specific NEPA Documents - FONSI**s – Most comment specific to FONSI consists in requests for clearer guidance regarding their preparation. Respondents ask the Task Force to provide guidance on the content of FONSI; clarify the level of analysis required to support a FONSI; clarify when a FONSI is sufficient; and set criteria for the “convincing statement of reasons” why no EIS is required which the Ninth Circuit Court requires of a FONSI. Some also request that the Task Force soften requirements for a FONSI inasmuch as “the agency can’t prove anything ecologically beyond a shadow of a doubt. They can only do things based on what they know at the time.”

**Document Language and Formatting** – Several respondents ask the Task Force to encourage the use of more accessible language in NEPA documents. One individual laments, “I . . . find any reports produced to meet NEPA standards are difficult to understand, full of abbreviations and jargon, and sometimes worded so as to be very misleading. I urge you to set standards so that the language is more accessible to the public, so that they can be better informed and more active participants in their government.”

Beyond that, respondents ask the Task force to standardize the definitions, structure, and data presentation in NEPA documents; to separate the “affected environment” and “environmental consequences” sections in NEPA documents; to revise the EIS format with screening worksheets; to standardize EAs with respect to length and number of alternatives; to encourage use of a checklist format for EAs; and to provide consistent guidelines on format and content for EAs and FONSI.

**Examples** – A few respondents say the Task Force should only consider examples of best practices from EAs or EISs that have been appealed or litigated. Explains one respondent, “Using documents that have not been evaluated under the rigors of administrative appeals and/or lawsuits will be very misleading. Consider the years and experience of developing NEPA documents without appeal or litigation compared to those developed under the threat or crucible of appeals and lawsuits.”

## NEPA Documentation General

### **232. Public Concern: The CEQ Task Force should address the increasing emphasis on documentation.**

NEPA regulations have been modified many times over this period with each modification requiring more data and thus compounding the documentation of each successive NEPA decision. Categorical exclusions are no longer allowed on mineral exploration activities. Correspondingly, the documentation for environmental impact statements and environmental analysis has gone from a few pages to a few hundred pages. (Mining Industry, Viburnum, MO - #638.1.10200.XX)

### **233. Public Concern: The CEQ Task Force should focus on the internal aspects of the NEPA process regarding document preparation.**

Although there are many examples of successful EAs/FONSI, we have identified . . . common problems with EA/FONSI practice and offer recommendations to improve each. While not all projects experience all of these problems, they are all too common throughout the federal government.

Pre-determining that an EIS will not be necessary, then trying to justify such conclusion after-the-fact.

Summary of the problem—Too many times, agency staff will decide, before preparing an EA, that they do not plan to prepare an EIS. Perhaps the primary reason this occurs is that most agencies have created such a complex, internal process for preparing an EIS that they want to avoid going through it. Stated differently, the procedural difference between an EIS and an EA/FONSI is often so great that the EA/FONSI becomes an attractive option, regardless of the level of impact that might occur from a proposed action. When this happens, data and analysis in the EA is often manipulated to justify the conclusion that there are no significant effects, despite the fact that such effects would, indeed, occur. This is one of the most difficult problems to fix because it often requires changes to the internal EIS preparation and review process as well as changes in staff attitudes toward EIS preparation.

Recommended solution—To the extent that CEQ focuses its efforts on “streamlining” NEPA, it should focus on the internal aspects of the EIS process (e.g., intra-agency reviews), rather than making changes to the required steps in the external review process or to the extant requirements of NEPA documents. By reducing the internal procedural differences between an EIS and an EA, agencies may be more likely to prepare the legally correct document, rather than pursue the path of least resistance. (NEPA Professional or Association - Private Sector, No Address - #530.4.10230.XX)

### **234. Public Concern: The CEQ Task Force should clarify that NEPA documents should be understood as a report of the planning process.**

Implementing regulations [Footnote 3: “Code of Federal Regulations 40:1500”] address in detail the characteristics of Environmental Documents prepared in compliance with NEPA. Individual agencies have followed the CEQ rules with additional information about the nature of the Environmental Document. [Footnote 4: “For example, Department of Navy Rules at Code of Federal Regulations 32:775”] These rules implement the basic NEPA requirement for a Statement for a particular class of proposed actions. [Footnote 5: “National Environmental Policy Act, Section 102(c)”] Thus, many action proponents see the Environmental Document as a compliance requirement that once achieved allows the project to go ahead. We ask on the other hand: what is the best process to follow that results in effective and efficient Environmental Documents that support excellence in decisionmaking.

The Environmental Document may be understood as a report of a process. It reports the substance of previously conducted environmental planning. The document and subsequent agency approvals culminate a planning process. When the environmental planning process is fully conducted, preparation of the report summarizing that process is relatively easy. (Individual, Bainbridge Island, WA - #467.1.10230.XX)

### **235. Public Concern: The CEQ Task Force should encourage creation of more concise joint NEPA documents.**

The California Environmental Quality Act (CEQA) and NEPA allow for the preparation of joint NEPA/CEQA environmental impact statements/reports. Often these documents are unwieldy in their volume. From our experience, these large documents are not necessary and are due, in part, to the difference in approach that CEQA and NEPA take to the analysis of impacts. CEQA requires an analysis that is broad in scope, but not always in as much detail as the analysis required by NEPA. On the other hand, NEPA requires depth in its analysis, but with a narrower scope. Therefore, a joint document is often both great in depth and breadth. We recommend that greater flexibility be imparted to the NEPA analysis process in order enable better resonance between the depth and breadth required by federal and state analytic processes. (California Department of Food and Agriculture, Sacramento, CA - #566.3.10230.XX)

### **236. Public Concern: The CEQ Task Force should reduce the number of specialists required to contribute to a NEPA document.**

An example of the need to streamline is the expansion project at White Pass. An area adjacent to White Pass was removed from Wilderness for the express reason of ski area development. The United States Congress removed this area from Wilderness for ski area development. Yet following an EA and two EISs we find ourselves writing a third EIS, and at no point has the true reason for the opposition been addressed or analyzed. The initial opponents of White Pass’ action are not environmentalists but rather

backcountry skiers who do not want to share the area with lift served skiers. Yet during analysis every specialist under the sun with his or her volumes of regulations was brought into the project. The noted exception is a social discussion with weight both in the document and in the courts. The exceptional number of specialists required to contribute to a document not only costs time and money but allows for a greater chance of a procedural mistake, which is what has happened to White Pass over the course of this project. (Special Use Permittee, Naches, WA - #71.3.10200.XX)

**237. Public Concern: The CEQ Task Force should address the fear of NEPA documents becoming too quickly outdated.**

[One] problem . . . concerns BLM's fear of NEPA documents becoming too quickly Outdated. BLM recently learned . . . in the Powder River Basin Wyodak CBM study, for example, that studying the cumulative impacts of 5,000 CBM [Coal Bed Methane] wells proved problematic when quick private and state development "used up" the allotted for (or studied) 5,000 wells. BLM then did the seemingly unthinkable—authorizing 2,500 additional federal wells in the area in hastened fashion finding, unbelievably, that these CBM wells and their impacts would not significantly affect the human environment. (Preservation/Conservation Organization, Washington, DC - #475.13.10240.XX)

**238. Public Concern: The CEQ Task Force should require agencies to complete NEPA documents before making decisions.**

I have a general thought which gives concern to many people who follow NEPA actions. On 9 July 2000 Judge Andrew Kleinfeld of the U.S. 9th Circuit court of Appeals wrote an opinion which could be the death knell for the environmental impact statement as we have know it for the last thirty years.

Judge Kleinfeld wrote a sharply worded dissent in *Metcalf v. Daley*, a case which turned on whether agencies of the Commerce Department authorized a resumption of gray whale harvesting off the coast of Washington without properly complying with NEPA. The URL for the complete text of the decision on the Web is: <http://caselaw.findlaw.com/cgi-bin/getcase.pl?court=9th&navby=case&no=9836135>

I suggest that the task force study this case if you are not familiar with it. The arguments in this case raise the question, at least, of whether the original theory of impact assessment has been stood completely on its head by the way we have actually come to use it.

I believe we used to think of impact assessment as something that could rationally be expected to take place BEFORE a decisional commitment was made. Judge Kleinfeld abandons this rational expectation for the view that one only goes to the time and trouble of doing an impact assessment (whether an EA, or an EA and an EIS) after one is basically persuaded that the decision should be made.

We did once believe, didn't we, that assessments should precede choice and that they could and should, in a basic sense, shape it? Or did I miss the death of . . . rational expectation? (Individual, Oak Ridge, TN - #362.1.10200.XX)

**239. Public Concern: The CEQ Task Force should clarify that land and resource management plans are not decision documents, and that decisions regarding proposed activities should be limited to site-specific actions.**

Most of the controversy centered around federal agency Land and Resource Management Plans results from the fact that the agencies attempt to evaluate the effects of proposed activities over very large landscapes, when the public's perspective often focuses on the effects of site-specific activities. Therefore, we recommend that federal land and resource management planning documents should not be considered decision documents, and that decisions related to proposed activities be limited to site-specific actions. (Recreational/Conservation Organization, Washington, DC - #89.33.10200.F1)

**240. Public Concern: The CEQ Task Force should address the current limitations of the Federal Register Notice of Intent and document filing requirements for interagency coordination and public involvement.**

We need to address the current limitations of the formal Federal Register NOI and document filing requirements with respect to interagency coordination and public involvement. These practices are

nothing more than a formality and add little to the process. (Federal Highway Administration, Washington, DC - #658.30.10410.XX)

**241. Public Concern: The CEQ Task Force should require EAs and EISs to be subject to greater public scrutiny.**

My suggestions for “modernizing” NEPA would include: . . . subjecting Environmental Assessments as well as environmental Impact Statements to greater, not less, public scrutiny, fully utilizing the press, the Internet, and all other technological means as they become available . . . (Preservation/Conservation Organization, South Thomaston, ME - #550.2.10200.XX)

**242. Public Concern: The CEQ Task Force should require all documentation to be available on the Internet.**

Requiring all documentation to be available on the world wide web via internet should strengthen NEPA. Datasets for agency decisions should be made available for public use. (Preservation/Conservation Organization, Madison, WI - #553.6.10230.XX)

**243. Public Concern: The CEQ Task Force should address the concern that centralized documentation repositories are an intentional means to restrict access to critical data.**

Keeping all comments and research documentation in a repository for review in Washington or another location gives the impression that the agency is intentionally restricting access to critical data, and forcing citizens to expend large sums of money on travel and lodging to review stacks of documents. (Agriculture Industry, Santa Fe, NM - #466.10.10440.A1)

**244. Public Concern: The CEQ Task Force should address agencies’ tendency to delay or withdraw NEPA documents without explanation.**

For many DOE projects at the site level, the preparation or anticipated release of draft NEPA documents is announced and then frequently delayed indefinitely or withdrawn without explanation. (Civic Group, Oak Ridge, TN - #88.2.10200.XX)

## Quality of Documents

**245. Public Concern: The CEQ Task Force should ensure adequate document preparation.**

While reviewing documents we sometimes find that small projects or projects being contemplated by entities not experienced in environmental document preparation are inadequate, often times totally missing areas of major concern to the Department.

[RE: NEPA and CEQA] Native American Tribes and School Districts often do not know or believe they have to do anything, the Department is sometimes asked to assist.

In some cases, the Corps of Engineers, Fish and Game, the Bureau of Indian Affairs and other groups have not required any environmental analysis or have certified incomplete environmental documents, allowing projects to be constructed prior to adequate environmental review. If the Department or any other agency says anything, the project could be stopped (many agencies may feel reluctant to do this). There seems to be no apparent penalty for the project proponent or lead agency. (California Department of Transportation, Sacramento, CA - #660.6.10230.XX)

Since 1989, I have been involved in a variety of NEPA activities to include developing national and international policies for implementing NEPA for both Department of Defense and Commercial Space operations. I have also led the development of several environmental impact statements and environmental assessments. The major problem I’ve experienced is not the affected public blocking

proposed projects, it is usually Civil Servants or the contractor(s) who put documents on the street riddled with deficiencies. These poorly done NEPA documents create a lot of uncertainty and controversy resulting in a loss of trust in the agency and the process. (Individual, Saint Paul, MN - #347.1.10230.XX)

There is NOTHING wrong with the format, what is wrong is the laziness of the federal workers who prepare the shoddy documents we review right now.

The contracted ones have the same ridiculous flaws, they have the same goals, to do what the agency wants no matter how bad it is for the resource or the community, and their is a failure to write a clean, compliant document. (Individual, Pioche, NV - #343.1.10230.F1)

#### **246. Public Concern: The CEQ Task Force should recognize that the quality of documents reflects the degree of NEPA compliance.**

To initiate the NEPA process the action proponent must develop several fundamental concepts. The concepts, including the proposed action along with underlying needs and anticipated purposes are presented in the first two chapters of the Environmental Document. The effectiveness of the introductory logic presented in the Environmental Document is an important aspect of its success. For example, the root cause for failure to consider appropriate alternatives could be an incomplete development of the proposed action, a lack of understanding of the actual need for the proposed action, or failure to recognize one or more significant environmental issues.

Over the years, the community has focused on the acceptable Environmental Document and its preparation as a defensive measure. The reason for this is simple. When we have a good document, we can do our project. In doing so the community has been skewed toward the side of excellence in document production rather than excellence in decision making. [Footnote 6: "See Code of Federal Regulations 40:1500.1(c)"] Rather than a means to a decision, the document is viewed as a compliance permit. Instead of an assessment and comparison of environmental effects, it is viewed as an environmental preservation device. Sometimes, the resulting document can appear not as a report summarizing thoughtful planning of the proponent, but a pro-forma ticket. Unfortunately, many forget or do not understand that the document is only as good as the underlying procedural compliance. Because the NEPA process is itself the compliance feature, conducting that process will result in acceptable Environmental Documents. (Individual, Bainbridge Island, WA - #467.2.10200.XX)

#### **247. Public Concern: The CEQ Task Force should address the poor quality of NEPA documents produced by contractors.**

In our experience, there are many more examples of poor documents than good ones. NEPA documents have become noticeably poorer in quality since DOE took responsibility for their production from the national laboratories and contracted this task to outside contractors, generally chosen for being the lowest bidders instead of the most technically competent. (Civic Group, Oak Ridge, TN - #88.1.70200.XX)

#### **248. Public Concern: The CEQ Task Force should address the deficiencies in the Bureau of Land Management project documents.**

Deficiencies I have seen in BLM NEPA documents at the Project Level:

##### a. Project Objectives

(1) Project objectives often identify a desired future condition combined with methodology for achieving it. Desired future condition should be specified in the objectives, but not the methodology for achieving it. This is developed in the Alternatives.

(2) Need to develop issues and indicators for all project objectives. This is rarely done.

##### b. Alternatives

There is a need for a comprehensive range of fully developed and consistently described alternatives.

(1) Alternatives given often fail to demonstrate a wide range of options.

(2) BLM does not have a “Preferred Alternative” but sometimes data given in the appendices only pertain to one alternative i.e., (the Silviculture Prescription/Marketing Guidelines). Appendix information should be complete for all alternatives.

c. Failure to make a distinction between indicators of project implementation and ecological effect.

(1) Indicators used to evaluate environmental consequences are often generalized rather than site specific.

(2) Indicators used to evaluate environmental consequences must integrate proposed actions with site specific information [and] should be complete for all alternatives.

d. Inconsistencies between narrative and tabular descriptions in appendices as well as in the main body of the document.

e. Cumulative Effects Issue.

Failure to address this issue and the issue of significance.

(1) Histories of past management on the federal and private lands are often generalized or ignored. We are told that clear cutting on private industrial lands has reduced large parts of a watershed to early seral development. However, no historical data is given for units on public land to be treated.

(2) Large landscape level management projects are developed with a FONSI without addressing critical significant effects this might cause by the project’s size alone.

There is a need for an environmental consequences evaluation to discuss both the effects and their significance.

f. Technical Problems

(1) Information is usually not complete in the document. Critical information for evaluation is often left out. The public must then go back and ask for the missing information. This wastes valuable time when deadlines are imminent. Example: In one EA, stand treatment recommendations for one of the alternatives was left out completely.

(2) Separate Appendices are needed for soils and fuels treatments with site specific information.

(3) Public Opinion Ignored—often the ROD is out within a day or two of the end of the EA/EIS comment period. While this may be legal, the public efforts which are often considerable are in reality left out of the decision making process. (Individual, Rogue River, OR - #382.27.10230.F1)

## Number of Documents

### **249. Public Concern: The CEQ Task Force should reduce the number of NEPA documents.**

It is my understanding that approximately 100 Draft or Final Environmental Impact Statements (EISs), 5,200 Environmental Assessments (EAs), and 9,800 Categorical Exclusions (CEs) are produced annually by the Forest Service to comply with the NEPA process. There is an incredibly high cost associated with this effort, both in terms of wasted federal manpower and in the losses associated with extremely long process delays. Changes need to be made to significantly reduce the amount of EISs, EAs and CE and/or significantly reduce the amount of effort needed to create them.

Recommendations:

To reduce the amount of Environmental Impact Statements, categorize forestland into a few, large management types, write a generic EIS for several possible management activities on each management type, and refer to these existing EISs for all future activities. Writing specific EISs for every activity on every piece of ground is sheer folly. (Timber or Wood Products Industry, Princeton, ID - #400.2.10200.XX)

### **250. Public Concern: The CEQ Task Force should encourage agencies to combine environmental reviews required by multiple regulatory acts into a single document.**

Difficulty of integrating NEPA with other statutory mandates (ESA, NFMA).

Agencies must comply not only with NEPA but also with their authorizing statutes and other environmental laws. The interplay between NEPA and other environmental laws often complicates and slows down the decision-making process. For example, the preparation of a Habitat Conservation Plan (“HCP”) under the Endangered Species Act requires preparation of an EA or EIS, which repeats ninety percent of the content of the HCP. Although landowners are now encouraged by agencies to combine the two documents, challenges would be prevented if a regulation endorsed the practice of combining environmental reviews into a single document. (Timber or Wood Products Industry, Portland, OR - #454.46.10520.XX)

**251. Public Concern: The CEQ Task Force should quantify the number of EAs, FONSI, and EISs created annually, the number of EISs challenged in court, and the number that are upheld.**

**TO SEE HOW WELL NEPA IS CURRENTLY WORKING**

In order to make the NEPA process more efficient and effective, CEQ and the public need to better understand just how it is working now. In particular, it would be useful for CEQ to survey federal agencies to determine how many EISs are completed annually and how many are challenged in court, as well as how many are upheld. In addition to EISs and litigation, it is equally important to quantify the number of environmental assessments (EAs) together with findings of no significant impacts (FONSI) each agency has completed annually. Such quantification will provide an objective assessment of how many EISs are done in comparison to EAs/FONSI and how many NEPA decisions are actually challenged in court. In many cases, the decisions that end up in court are those in which the agency short circuits the process rather than uses it effectively to involve the affected public. (Preservation/Conservation Organization, Washington, DC - #471.12.10200.XX)

## Application of Documents

**252. Public Concern: The CEQ Task Force should clarify that NEPA documents ought to address resources, public concerns, desired future conditions, and management strategies.**

In our opinion, planning documents should:

1. Determine extent, type and condition of resources associated with specific land units;
2. Identify public issues surrounding the management of those resources;
3. Describe the public’s desired future condition of those resources; and
4. Evaluate an array of alternative management strategies proposed to achieve the desired future conditions. (Recreational/Conservation Organization, Washington, DC - #89.33.10200.F1)

**253. Public Concern: The CEQ Task Force should encourage use of EISs for large-scale plans.**

Based on our experiences with CALFED and other programmatic documents, we feel the Task Force should provide additional guidance and encouragement to agencies to prepare environmental impact statements on broad-scale plans and programs (NEPA Professional or Association - Private Sector, No Address - #530.3.10200.XX)

**254. Public Concern: The CEQ Task Force should encourage use of EAs and EISs only for large-scale projects.**

The NEPA process has become inflated over time. The detailed aspects of NEPA process such as environmental assessments and environmental impact statements should be limited to large-scale projects that have a substantial footprint and cost to the taxpayer. Proper vetting of such ideas can eliminate controversy and legal challenges. (State of Tennessee, No Address - #543.7.10230.XX)

**255. Public Concern: The CEQ Task Force should encourage use of EAs for large-scale highway projects.**

AASHTO supports the usage of environmental assessments (“EAs”) as a tool for managing the NEPA process for large-scale highway projects. (American Association of State Highway and Transportation Officials, Washington, DC - #591.13.10200.XX)

**256. Public Concern: The CEQ Task Force should consider that geographically broad EISs increase the risk of legal challenges.**

Geographically broad EISs increase risks of failure.

During the Clinton Administration agencies sometimes prepared a single geographically immense environmental impact statement to justify policy changes over vast areas of public land in the west. For example, environmental impact statements for the Interior Columbia Basin Ecosystem Management Project, the Sierra Nevada Framework Plan, and the Forest Service roadless area rule all were completed in December 2000 after years of effort and millions of dollars of cost. The scope of an EIS defines the risk associated with a legal challenge to the EIS. Environmental groups favor larger EISs and graphical expansive cumulative effects analysis because the large-area EISs provide a ready vehicle for halting projects over a wide geographic area. In contrast, if a flaw is found with a smaller project environmental document, invalidation of the document only stops the single project. (Timber or Wood Products Industry, Portland, OR - #454.48.10200.XX)

**257. Public Concern: The CEQ Task Force should restrict the use of EAs to activities that threaten endangered species.**

Environmental Assessments should be either eliminated or restricted to activities where there is a significant threat to threatened and endangered species and sensitive plants and animals. Risk to these species from management activities should be assigned by generic management categories over broad geographic areas. Writing assessments for specific management activities over small geographic areas should be eliminated. (Timber or Wood Products Industry, Princeton, ID - #400.3.10230.XX)

**258. Public Concern: The CEQ Task Force should direct that EAs consider activities on adjacent lands.**

Environmental assessments have proved to be a useful step, although they must also take into account activities on adjacent lands that may have a cumulative effect with the proposed action. (Preservation/Conservation Organization, Boise, ID - #570.4.10230.XX)

**259. Public Concern: The CEQ Task Force should minimize the need for CE or EA analysis for projects in already developed sites.**

We believe NEPA should acknowledge the character of developed sites—whether ski resorts, campgrounds, or other capital-intensive activities—that will remain in a given locale for many decades. These are major land-use commitments that will remain for many decades, where maintenance and some change will continue indefinitely. In these cases—especially within a managed and frequently disturbed area, such as the already developed portion of a special use permit boundary—extra latitude should be provided in NEPA guidelines to minimize the need for CE or EA analysis. More thorough analysis would be needed only when projects propose disturbing significant areas of undeveloped land, or where the scale of a project could have an appreciable effect on the character of a resort. (Special Use Permittee, Skykomish, WA - #76.3.10240.XX)

**260. Public Concern: The CEQ Task Force should not require EAs for long-standing resource management projects.**

EAs should not be required for resource management projects of long standing. Gradual management changes resulting from applying adaptive management strategies should not trigger the need for an EA. The need to produce an EA may actually serve to stifle development of better resource management.

The trigger for environmental analysis should be limited to major changes in management or resource use. (Michigan Department of Natural Resources, Lansing, MI - #563.14.10230.XX)

**261. Public Concern: The CEQ Task Force should address the trend to require states receiving grant monies to prepare an EA for actions appropriate for categorical exclusions.**

It is our observation that federal agencies are increasingly likely to require states receiving federal grant monies to prepare an EA for actions that are appropriately CATEXed. This is particularly true if there is any opposition to a state project proposed for federal funding. The mere fact that there are those opposed to a project (e.g., managed hunting) cannot continue to be the basis for requiring an EA or EIS. The threshold for determining controversy needs to be based on scientific inconsistencies, not philosophical disagreement.

The fact that an EA was intended to be a concise document whose main purpose was to determine if an EIS was warranted has become lost. Federal agencies often use an EA as their main planning tool; this is not the case with most states. This leads to a tendency to require federal grant recipients to prepare an EA for proposed actions that are properly CATEXed. (Michigan Department of Natural Resources, Lansing, MI - #563.13.10230.XX)

**262. Public Concern: The CEQ Task Force should eliminate the requirement to prepare NEPA documents for forest plan revisions or amendments.**

We recommend the Forest Service Planning regulations be changed to eliminate the requirement to prepare NEPA documents for Forest Plan revisions or amendments. (Timber or Wood Products Industry, Ketchikan, AK - #524.2.10200.XX)

## **Time and Expense of Document Preparation**

**263. Public Concern: The CEQ Task Force should address the time and expense of NEPA document preparation.**

Filing of an NOI to prepare an environmental impact statement has taken entirely too long. This may simply be an agency problem and not necessarily associated with CEQ or the regulations. As an example within the U.S. Forest Service, filing of NOIs for salvage timber sales or restoration of burned areas has taken more than six months. Field personnel state that they have to develop very explicit proposals with details that explain to the public exactly what the agency is proposing, or the NOI will not clear through Washington staff or their Office of General Council review. Lengthy delays in producing a simple Federal Register NOI is symptomatic of a bigger problem. Federal agencies are trying to develop bulletproof documents in each and every step of the process to withstand the ultimate legal challenges they know will halt or delay implementing projects. The logic from the NOI down the line to FEIS and ROD is to make sure that everything in the NEPA documents meet every word in the CEQ Regs or agency guidelines, or you will be sued and lose. (Other, Sacramento, CA - #509.18.10200.XX)

Crystal Mountain released our new Master Development to the public in October of 1998 after 2 1/2 years of planning and \$750,000 of expense. Public scoping meetings were then held and almost 3 years later in August of 2001 the FS finally released the DEIS at an expense of 2.5 million dollars. The DEIS is over six inches thick and weighs more than 12 pounds, talk about information overload!

It is estimated that the FEIS (projected cost \$700,000) may be released by October of 2002, four years after the Master Development Plan was presented to the public. The FS anticipates that the document will be appealed by a local Indian Tribe or conservation group upon issuing the Record of Decision.

Given the elapsed time it is taking to work this document through the various agencies, address comments and eventually gain approval, perhaps we should start a new master development plan now so that we are not out-of-date. (Special Use Permittee, Enumclaw, WA - #74.2.10200.XX)

Many NEPA documents consist of essentially repeating the language from other NEPA documents as well as making the same decision determined in the other documents; yet for commercial proposed actions, the development of most of the NEPA documents initiate the study from scratch and result in excessive delays in the project or excessive document costs to the commercial sector. These actions, many times, result in the commercial venture not being done as well as the businesses failing or moving out of the area.

The CEQ regulations provide for tiering and incorporation by reference and many Presidential administrations have strongly urged the agencies to reduce and streamline their paperwork; however, the commercial EISs and EAs continue to take more time and be more costly and bulky. (Charles Childers, State Representative, State of Wyoming, Cody, WY - #656.4.10230.XX)

Due to the ever increasing complexity of writing EAs, CM felt it necessary to work with a consultant who specializes in such document writing. In 1997 and 1998 we submitted three EAs to the U.S. Forest Service (FS) for a cost of \$310,000. One EA alone cost \$204,000 that only contained two alternatives (action and no action). Even though these documents are written by a highly qualified firm in NEPA writing, the FS feels compelled to review and word-smith these documents prior to them going to press (of course that costs additional time and money).

At times the FS will make the document so tight we almost had problems changing from an approved four passenger chairlift to a six passenger chairlift with the same capacity of people per hour. Rather than use words such as “approximately, almost or nearly” the FS will require that the exact number (which might not be precisely known at the time) be used. (Special Use Permittee, Enumclaw, WA - #74.1.10200.XX)

The Environmental Assessment (EA) serves an important conceptual role in the NEPA process. Unfortunately, many factors, including agency practice and court decisions, have allowed the EA to become far too unwieldy and far less useful than originally intended. In many cases, the EA is no longer distinguishable from an EIS. As a conceptual matter, it makes little sense for a determination of whether an impact is “significant” or not to be as involved and intensive as the analysis of impacts which are “significant”. It is proper for agencies to document their decision that a given action will not have significant impacts, but this documentation should be limited in scope and detail and should rely on other documents and records freely. (Utility Industry, Birmingham, AL - #584.14.10230.XX)

## **264. Public Concern: The CEQ Task Force should set time limits for NEPA document preparation.**

CEQ should provide rules and guidance to set general time limits for NEPA document preparation either by category of document (e.g., programmatic EIS, project EIS, programmatic EA, project EA, tiered EA, etc.) or by type of action. (Timber or Wood Products Industry, Coeur d’Alene, ID - #446.14.10230.XX)

CEQ should provide rules and guidance to set general time limits for NEPA document preparation either by category of document (e.g. programmatic EIS, project EIS, programmatic EA, project EA, tiered EA, etc.) or by type of action. (Timber or Wood Products Industry, Deer River, MN - #377.10.10230.XX)

CEQ should provide rules and guidance to set general time limits for NEPA document preparation either by category of document (e.g. programmatic EIS, project EIS, programmatic EA, project EA, tiered EA, etc.) or by type of action. Such guidance should suggest more specific time limits if an action involves the removal of a natural resource such as timber that would be subject to deterioration and lose its overall quality and value. Those time limits should be set on a more regional basis where natural conditions would dictate the amount of time a resource could stay on the ground before it was deemed useless. (Timber or Wood Products Industry, Cleveland, TX - #402.5.10230.XX)

### ACCORDING TO CATEGORIES OF ACTIONS

CEQ should provide rules and guidance to set general time limits for NEPA document preparation either by category of document (e.g., programmatic EIS, project EIS, programmatic EA, project EA, tiered EA, etc.) or by type of action. (Other, Sacramento, CA - #509.10.10230.XX)

Time Limits. The CEQ has consciously chosen not to set general time limits for NEPA document preparation either by category of document (e.g., programmatic EIS, project EIS, programmatic EA, project EA, tiered EA, etc.) or by type of action (similar perhaps to the Environmental Protection Agency's delineation of actions covered by general permits versus actions requiring individual permits under the Clean Water Act). 40 C.F.R. 1501.8 (first introductory sentence). And, CEQ has given permission to the other agencies to establish time frames only for "individual actions." 40 C.F.R. 1501.7(b)(2), 1501.8. To set time frames for NEPA documentation for categories of actions would not necessarily be the Herculean task it might first appear, since over two-thirds of all EISs are prepared by just four agencies—Forest Service, Bureau of Land Management, Department of Transportation, and Army Corps of Engineers—with a relatively discrete number of action categories. The National Environmental Policy Act - The Study of Its Effectiveness After 25 Years, CEQ (Jan. 1977). Should the CEQ choose to set deadlines by types of NEPA documents, as a potential model it could look to the deadlines established by the Fish and Wildlife Service and National Marine Fisheries Service for processing different types of habitat conservation plans/incidental take permit applications in their Habitat Conservation Planning Handbook (Nov. 1996), pp. 1-10 through 1-14. (Timber or Wood Products Industry, Washington, DC - #507.25.10230.XX)

### **265. Public Concern: The CEQ Task Force should address the open-ended consultation processes.**

#### **WITH A GOAL OF EITHER SETTING MANDATORY TIME PERIODS OR ISSUING GUIDANCE ON CONDITIONAL FONSI'S AND ROD'S**

During the last decade, several environmental statutes have been enacted and revised procedures/regulations issued regarding consultations and their relationship to the preparation and finalization of NEPA documentation. Many of these consultation processes are open ended in regard to the timely completion of NEPA documentation. Major projects are delayed, and additional, unplanned resources must be expended to maintain expertise and continuity until such processes are completed. While some consultation processes have worked well, such as those with State Historical Preservation Officers, others have not. Recommend CEQ and its Task Force address open-ended consultation processes with a goal of either setting mandatory time periods or issuing guidance on conditional Findings of No Significant Impacts and Records of Decision. (United States Navy, Washington, DC - #568.30.10200.F1)

## Required Information in Documents

### **266. Public Concern: The CEQ Task Force should clarify the level of analysis needed in all documents.**

One of the biggest problems with NEPA decisions is the time it takes the Agencies to complete the document and make a decision. In most cases this takes years and the outcome is uncertain throughout the process. The NEPA process needs to be streamlined and the documents required for the analysis (whether the decision document is an EIS, EA or CE) clearly identified. The evolution of NEPA documentation has placed more and more information in the documents and increased analysis time substantially. The process needs to be simplified and developed in such a way that the government will prevail in court and be able to process decisions more quickly. The detail of analysis needs to be better defined and supported by CEQ. (NEPA Professional or Association - Private Sector, Rolla, MO - #625.5.10230.XX)

**267. Public Concern: The CEQ Task Force should address the requirement that all data be included in the document.**

Data must physically be included in the environmental document or it will not be considered part of the administrative record.

Recent decisions in the Ninth Circuit have held that an agency cannot rely on data and analysis that is in an agency file but is not in the environmental document. *Blue Mountain Biodiversity Project v. Blackwood*, 161 F.3d 1208 (9th Cir. 1998). This will cause environmental documents to balloon even larger as agencies try to ensure that every relevant page of information is physically within the EIS or EA. (Timber or Wood Products Industry, Portland, OR - #454.45.10230.XX)

**268. Public Concern: The CEQ Task Force should simplify NEPA documents by including only the current analysis.**

NEPA documents could . . . be simplified by including only the current analyses in the document. It is onerous to require inclusion of all relevant analyses (i.e., resource specialist reports or other analyses) in EAs and EISs. Not only does this add to the length of the document, but is often impossible for writers and editors to include all relevant information while still writing a concise document as required by CEQ regulations. (Other, Washington, DC - #587.22.10230.F1)

**269. Public Concern: The CEQ Task Force should require the inclusion of specific information in all NEPA documents.**

The following information should be a part of all NEPA documents:

a. Information Needed to Support the analysis.

- (1) Identification of the historic, current, and desired future conditions on the landscape in question.
- (2) Identification of practices and activities that produced the shift from historic to current conditions (if such occurred).
- (3) Identification of practices and activities inhibiting natural recovery of impacted lands.
- (4) Location and extent of high risk areas in need of special consideration (such as urban interfaces) when designing and evaluating effects of fire/fuels hazard reduction options.
- (5) Location and extent of areas currently suffering a loss of watershed function, soil instability or a reduced capacity to support fish and wildlife.
- (6) Location of areas treated in the past to address management concerns that are the focus of the document in question.
- (7) Completion of biological assessments and biological opinions in a timely manner so as to allow disclosure of the results in the document. (Individual, Rogue River, OR - #382.24.10230.F1)

## **New Information and Supplemental Documentation**

**270. Public Concern: The CEQ Task Force should clarify that NEPA review is to be based on existing information.**

It is . . . important for CEQ to clarify that NEPA reviews must be performed based on existing information. It is unfair and inappropriate for resource agencies, for example, to ransom their cooperation and approval for additional research. (Utility Industry, Birmingham, AL - #584.4.10200.XX)

**271. Public Concern: The CEQ Task Force should impose a time limit on consideration of new information.**

The Montana Mining Association believes there are benefits in the NEPA, however, certain improvements can be made in its implementation. The NEPA must provide a time limit on new

information relating to a project in order to limit the analysis paralysis. (Mining Industry, Helena, MT - #541.4.10200.XX)

**272. Public Concern: The CEQ Task Force should narrow the definition of new information.**

Narrow the definition of “new information”, which would require a supplemental NEPA document. Avoid unreasonable interruptions of projects, or their planning, because of some so-called “new” information that anyone could allege to be important to the outcome. (Timber or Wood Products Industry, Salem, OR - #558.7.10200.XX)

**273. Public Concern: The CEQ Task Force should address the need to continually analyze new information.**

The continuing duty to supplement environmental documents for “new information” both during and after the original NEPA process slows the process and disrupts implementation of approved actions.

In this Age of Information new scientific studies and research reports on a vast range of subjects are completed daily, sometimes by objective scientists and sometimes advocacy groups posing as independent researchers. The courts have continually ratcheted up agency duties to address this torrent of information both during and after an initial NEPA decision-making process.

Given that it takes years to prepare an EIS, and agencies must repeatedly backtrack to incorporate new information into the environmental analysis before the EIS is completed. *Seattle Audubon Society v. Espy*, 998 F.2d 699 (9th Cir, 1993) (rejecting agency programmatic EIS based on failure to adequately consider new information that arose in final stages of EIS preparation).

After an EIS is complete, the CEQ regulations require a supplement to the EIS when there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. 40 C.F.R. 1502.9. The courts have held that there is a “continuing” duty to respond to new information to determine if a supplemental EIS is required. *Idaho Sporting Congress v Alexander*, 222 F 3d 562, 566 (9th Cir. 2000). When the new information addresses a wide-ranging wildlife species such as the salmon or goshawk, supplements to hundreds of environmental documents can be required. Supplementation has also been extended to EAs, even though there is no regulatory requirement for such supplementation. (Timber or Wood Products Industry, Portland, OR - #454.39.10240.XX)

**274. Public Concern: The CEQ Task Force should advise agencies to consider new information only when it points to data flaws or risks to public health.**

When NEPA actions have been agreed to by stakeholders and federal agencies, parties should discourage new or ‘late-comer’ mandates by federal agencies except in cases of new information on data flaws or risks to public health. (Regional/Other Government Agency, Sacramento, CA - #657.4.30500.XX)

**275. Public Concern: The CEQ Task Force should ensure that controversies requiring further documentation relate to scientific and biological disagreements, not philosophical disagreements.**

The mere fact that there are those opposed to the project should not be the basis for determining that a controversy exists and further documentation is needed. The federal agency must assure that controversies relate to scientific and biological disagreements rather than merely philosophical disagreements. (Other, Washington, DC - #506.47.10240.XX)

**276. Public Concern: The CEQ Task Force should define “new information” that necessitates a supplemental EIS.**

The definition of “new information” requiring supplemental EIS should be clarified . . . (Multiple Use or Land Rights Organization, Waynesville, NC - #444.14.10230.XX)

The Forest Service is increasingly requiring resorts to prepare SEISs in situations where they are not legally required. The result is again delays in the NEPA process and increased expenditures on the part of the resort and the agency—not improved decision making. For example, environmental groups have demanded SEISs in circumstances where a species is proposed for listing, or a road building suspension is put in place. The courts have repeatedly held that these types of actions, which do not result in on-the-ground changes or “new information” that was not already addressed in the EIS, do not trigger an SEIS. Ironically, SEISs are also required because delays in the initial NEPA process are so pronounced that project opponents can claim that the original analysis is stale. (Recreational Organization, No Address - #19.5.10200.A1)

The continuing duty to supplement environmental documents for “new information” both during and after the original NEPA process slows the process and disrupts implementation of approved actions.

After an EIS is complete, the CEQ regulations require a supplement to the EIS when there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. The courts have held that there is a “continuing” duty to respond to new information to determine if a supplemental EIS is required. . . . CEQ should tighten the definition of “new information” that requires a supplemental EIS . . . . (Timber or Wood Products Industry, Coeur d’Alene, ID - #446.19.10230.XX)

#### **BY MEANS OF A RELIABILITY THRESHOLD**

Tighten the definition of “new information” that requires a supplemental EIS, and define the circumstances when an ongoing project or program must be halted until a supplemental EIS is completed.

The “new information” which triggers the need for a supplemental EIS should be more narrowly defined so that an agency is not required to incur the substantial cost and delay of preparing a supplemental EIS unless the need for supplemental study is clearly established and the value of the study outweighs its cost. The CEQ Regulations should be amended to create a two-step process for agencies to decide whether to prepare a supplemental EIS for an ongoing project or program.

First, the regulations should establish a reliability threshold for new information, so that agencies are not continually forced to consume time and resources reviewing unreliable or unimportant information, and so that courts cannot interminably delay projects or programs to force an agency to do so. The regulations should state that an agency is not required to consider the need for a supplemental EIS unless a study or report containing new information is based on science that meets the standard for reliability articulated by the Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* 509 U.S. 579 (1993).

Where new information meets the Daubert reliability standard, the regulations should require an agency to prepare a supplemental EIS on a project or program only if the agency makes three findings: (1) the new information presents clear evidence that the project or program is likely to have materially more harmful effects on the environment than disclosed in the original EIS for the project or program; 2) the agency lacks the authority to modify the project or program to substantially mitigate for the newly-disclosed effects unless it prepares a supplemental EIS; and 3) the value of the supplemental EIS is likely to exceed the cost of preparing the document. (Timber or Wood Products Industry, Portland, OR - #454.57-58.10230.XX)

Create a two-step process for agencies to decide whether supplemental NEPA is required: 1)define a reliability threshold; and 2)define a stop action threshold.

A reliability threshold would demand four findings prior to a Supplemental EIS: a) peer-reviewed and/or professionally-accepted science basis for the new information; b) materially greater harm to the environment; c) agency lacks authority to modify/mitigate the new harm; and d) outcome benefit/value exceeds the cost of the delay and preparation of the Supplemental NEPA. (Timber or Wood Products Industry, Salem, OR - #558.7.10200.XX)

#### **BY MEANS OF A STOP ACTION THRESHOLD**

The regulations should provide that when an agency decides a supplemental EIS should be prepared on an ongoing project or program, the agency must halt an activity that is part of the project or program

until the supplemental EIS is completed only if the agency finds: 1) the activity is likely to cause serious and irreparable environmental harm before the supplemental EIS is completed; and 2) it would not be more cost effective to mitigate any such harm through other means. The regulations should provide that only specific activities meeting these two criteria shall be halted, and other ongoing portions of a project or program may continue to the discretion of the agency. (Timber or Wood Products Industry, Portland, OR - #454.57-58.10230.XX)

A stop action threshold would demand three findings prior to halting the action during documentation: a) irreparable harm before Supplemental NEPA done; b) alternative means to mitigate the new harm would be more cost-effective; and c) only the affected portions of the project must be halted during Supplemental NEPA completion. (Timber or Wood Products Industry, Salem, OR - #558.7.10200.XX)

### **277. Public Concern: The CEQ Task Force should eliminate the requirement for a supplemental EA.**

If the EA is not eliminated, eliminate the requirement for a supplemental EA.

If the EA is not eliminated, the CEQ could decide that supplements to EAs are not required. The CEQ regulations require supplements to EISs but are silent on whether supplemental EAs are required. Even though supplemental EAs are not specifically required by the regulations, agencies have prepared supplements to EAs. Because EAs are not required by the statute and EA supplements are not required by the regulations, it makes sense to clarify that there is no requirements for a supplemental EA. (Timber or Wood Products Industry, Portland, OR - #454.59.10200.XX)

We urge the CEQ to bar supplemental EAs. If the new information does not reveal the possibility of environmental harm of sufficient severity to make a Finding of No Significant Impact unlikely, further NEPA analysis would be make-work. (Timber or Wood Products Industry, Washington, DC - #507.24.10200.XX)

### **278. Public Concern: The CEQ Task Force should clarify that there is no requirement for a supplemental EA.**

Supplementation has also been extended to EAs even though there is no regulatory requirement for such supplementation. Even though supplemental EAs are not specifically required by the regulations, agencies have prepared supplements to EAs. Because EAs are not required by the statute and EA supplements are not required by the regulations, it makes sense to clarify that there is no requirement for a supplemental EA. (Timber or Wood Products Industry, Coeur d'Alene, ID - #446.19.10230.XX)

## **Relation Between Different NEPA Documents**

### *EAs and EISs*

### **279. Public Concern: The CEQ Task Force should address agencies' trend to require EISs for projects which previously only required EAs.**

The USDA Forest Service is requiring environmental Impact statements in situations where only a couple of years ago an environmental assessment would have been more than adequate. Our project is a textbook example. The handful of projects outlined in the ALMR MDP should have been addressed with an environmental impact statement, our NEPA exercises has encountered increased costs, delays to implementation of critically important projects, and increased costs for the USDA Forest Service. I understand that in some instances an environmental impact statement helps reduce the likelihood that opposition groups will challenge the document. Although this approach may bring the desired result in limited circumstances, it is an inefficient and costly precedent in the long term and it was absolutely absurd in the instances of our MDP. At ALMR, we worked diligently to craft a very tight purpose and need statement. We tried to help place the USDA Forest Service in a position whereby they could issue a

defensible decision, based on our purpose and need statement, and our conservative approach to require an environmental impact statement was a disservice to ALMR, and has significantly compromised our organization's ability to implement programs and improvements that will improve the overall quality of our ski area. This is disheartening. (Special Use Permittee, North Powder, OR - #107.3.10200.XX)

The U.S. Forest Service is requiring Environmental Impact Statements (EISs) in situations where only a couple of years ago an Environmental Assessment (EA) would have sufficed. For example, the agency recently required an EIS for Anthony Lakes ski area in Oregon for the installation of one new chair lift and an increase in "skiers at one time" (SAOT) from 600 to 1200. The result of this trend is increased costs and delays for ski area project proponents, and increased costs for the agency as well. In some instances, the Forest Service is recommending that an EIS be completed to reduce the chances that opposition groups will challenge the document. Although this approach may bring the desired result in some circumstances, it is an inefficient and costly precedent in the long term. The tendency to "jump" to an EIS to avoid opposition is a perfect example of the "process predicament" described in the Forest Service's June 2002 report on analysis paralysis. (Recreational Organization, No Address - #19.1.10200.A1)

The USDA Forest Service is requiring environmental impact statements (EISs) in situations where an environmental assessment (EA) should suffice. The federal government uses the EIS process to inoculate itself from legal challenges. While it is agreed that in limited circumstances an EIS does help reduce the likelihood that opposition groups will challenge certain tenets of the document, the costs associated with an EIS are much greater than the costs associated with an EA—both for the federal government and the special use permit holder.

The recent EIS required of Anthony Lakes Mountain Resort (ALMR) is a textbook example of this EA tentativeness. The handful of projects that constitute the ALMR Master Development Plan should have been reviewed via the environmental assessment process. By requiring an EIS, the NEPA exercise for ALMR was significantly more costly, and resulted in delays for critically important projects like sewage treatment infrastructure. Thus far, four summer construction seasons have been lost to the NEPA process. The elevated NEPA costs were absorbed by the unit of the USDA Forest Service that administers ALMR's special use permit, and by the owners of ALMR. The decision to require an EIS was a disservice to ALMR. The overall cost of the NEPA process—both the overall commitment of financial resources and the opportunity costs—has compromised ALMR's ability to implement programs and facility improvements. This has a direct affect on the recreational experience afforded members of the public, and the ability for ALMR to sustain operations in a very competitive marketplace. (Special Use Permittee, Hood River, OR - #528.2.10200.XX)

## **280. Public Concern: The CEQ Task Force should address the trend to make EAs more like EISs.**

Enormous time and energy must be expended to demonstrate that an EIS is not required for a project.

An EIS must be prepared when an agency finds that a major federal action may significantly affect the quality of the human environment. Because preparing an EIS is a costly and slow process, agencies seek to avoid a "significance" finding by downplaying environmental impacts, scaling back the project or increasing mitigation measures. At the same time, EAs have become more and more like an EIS in size, scope and cost. As a practical matter, a project supported by an EIS receives more deference from the courts than a project supported by an EA. If the burden of preparing an EIS were made more manageable, agencies might find it more efficient to prepare an EIS for a project rather than risk a court rejecting its EA and FONSI. (Timber or Wood Products Industry, Portland, OR - #454.37.10200.XX)

## **281. Public Concern: The CEQ Task Force should provide guidance on whether an EA or EIS is necessary.**

The decision on whether an EA or a full blown EIS is required needs to be made in a timely fashion. . . . The factors to be considered in making the EA v. EIS decision do not provide adequate guidance and

agencies make that decision differently, often taking more time than is warranted. (Utility Industry, Washington, DC - #586.8.10230.XX)

CEQ and the action agencies should better define and delineate when an Environmental Analysis is sufficient and when an Environmental Impact statement is required. A significant problem with the way NEPA has been administered is the lack of clear understanding as to when an Environmental Analysis (EA) is sufficient, and when a more detailed Environmental Impact Statement (EIS) is required. This issue has probably engendered the bulk of NEPA litigation over the years [and] leads to agency inefficiency in responding to NEPA requirements.

CEQ and the Task Force could reduce much of this uncertainty and inefficiency by sharpening the distinction between when EAs are sufficient, and when an EIS is required.

CEQ should sharpen the definition of “major federal actions significantly affecting the quality of the human environment” to provide better guidance on this critical issue. More importantly, a clearer sharper definition would provide greater certainty to agency personnel who have to perform the NEPA work. A bright line distinction might not always be possible, but greater clarity will provide better guidance to agency personnel.

Greater certainty in determining when an environmental assessment is sufficient will also reduce the amount of litigation. That will save both time and money for both the agency and the applicant. (Business, Washington, DC - #403.11.10200.XX)

## **282. Public Concern: The CEQ Task Force should clarify that EAs should be used to determine whether an EIS is needed.**

Agencies are no longer acting pursuant to NEPA and CEQ regulations in their use of EAs. By law, an agency is to prepare an EA for the purpose of determining whether it needs to prepare an EIS. However, the current reality is that an agency predetermines whether its ultimate analysis document will be an EA or an EIS. Essentially, an EA is treated as a “mini-EIS” rather than an objective inquiry into whether a proposed action would likely result in a significant impact to the human environment. Anecdotal evidence: I have never seen a situation in which an agency prepared an EA, determined that the proposed action would likely result in a significant impact, and subsequently prepared an EIS. It has long been a foregone conclusion that when an agency prepares an EA the result will be a finding of no significant impact. (Other, Seattle, WA - #213.12.70210.F1)

## **283. Public Concern: The CEQ Task Force should distinguish the procedural requirements for EAs and EISs.**

EAs have been subjected to more than just excessive paperwork; they also have become immersed in excessive procedures. Again, as with the contents, so with procedures, EAs have become EIS wannabes. The procedures for public participation are a prime example of procedural excess. NEPA section 102(2)(C) does not even require public participation for or comments on EISs. Indeed, all the law requires is that “copies of such statement (notably, not a draft EIS) and the comments and views of appropriate Federal, State, and local agencies which are authorized to develop and enforce environmental standards, shall be made available . . . to the public,” citing the Administrative Procedure Act provision for how the public is to be notified of the document’s existence and provided document copies. Lately, the Forest Service, an agency with considerable NEPA experience, frequently has been duplicating the CEQ regulatory (not statutory) public participation procedures for EISs in processing EAs—including scoping sessions, comments on draft EAs, and post-EA comments, with written agency responses (see *League of Wilderness Defenders v. Forsgren*, 184 F. Supp. 2d 1058 (D. Ore. 2002)). This makes the Ea procedurally all but identical to the EIS (with procedure self-imposed by the Executive Branch—by regulation of a White House agency for EISs and by idiosyncratic decisions of individual line agency officials for EAs) . . . and prolongs the process considerably. The value of such procedural excess appears minimal. (For example, the Forest Service was still sued and still lost in *League of Wilderness Defenders*; the opponents were not mollified or convinced otherwise by the extra public comment, and the judge was not impressed at all by the agency’s self-inflicted, heightened public participation opportunities.) (Timber or Wood Products Industry, Washington, DC - #507.19.10230.XX)

**284. Public Concern: The CEQ Task Force should distinguish the analysis requirements for EAs and EISs.**

Clear “depth of analysis” distinctions should be made in the development of EAs and EISs. (Multiple Use or Land Rights Organization, Waynesville, NC - #444.8.10230.XX)

Rules and guidance should contain explicit statements that certain analyses are appropriate only for EISs and are not to be conducted for or included in EAs. (Timber or Wood Products Industry, Coeur d’Alene, ID - #446.11.10230.XX)

**285. Public Concern: The CEQ Task Force should develop new requirements for EAs that differ in organization and contents from the requirements for EISs.**

CEQ should develop new requirement for EAs that differ fundamentally in organization and contents from the requirements for EISs (rather than simply repeat the requirements of an EIS for an EA qualified only by the increasingly meaningless wording “brief discussions of,” 40 C.F.R. 1501.4 (b)). (Timber or Wood Products Industry, Coeur d’Alene, ID - #446.10.10230.XX)

**286. Public Concern: The CEQ Task Force should require an EIS when an EA would serve as a functional EIS.**

Delay is . . . reduced, and environmental benefits simultaneously gained, when federal agencies prepare an E.I.S. when an environmental assessment (EA) is long, complicated, controversial, or otherwise is serving as a functional EIS . . . See, e.g., *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1211-12 (9th Cir. 1998). An agency that purposely subverts the NEPA process not only deserves no sympathy, but should also be disciplined. (Preservation/Conservation Organization, Washington, DC - #465.8.10230.XX)

**287. Public Concern: The CEQ Task Force should not require an EIS rather than an EA based on effects on employment.**

Positive social impacts such as creation of jobs must not be a basis for requiring an EIS rather than an EA. Follow-on effects such as jobs in other areas must not be a basis for requiring an EIS rather than an EA. Off-site effects such as government jobs or facilities must not be a basis for requiring an EIS rather than an EA. (Mining Industry, Anchorage, AK - #645.4.10200.XX)

**288. Public Concern: The CEQ Task Force should apply the same rules to EAs as to EISs.**

Please accept the following suggestions for improving, not weakening, the NEPA process:

Require that all CEQ rules that apply to EISs, also apply to EAs. Since EAs play the vital role of determining whether an EIS is required, the same rules in preparing an EIS should apply to an EA. Otherwise, the real impacts of a proposed project will not be revealed to the public if further analysis is needed. (Other, Republic, WA - #577.15.10230.XX)

Require that all CEQ rules that apply to the EIS, also apply to the EA. Since the EA plays the vital role of determining whether an EIS is required, it seems logical that the same rules in preparing an EIS should apply to preparing an EA. Otherwise agencies hide the impacts in an EA by not conducting the analysis. (Preservation/Conservation Organization, Weldon, CA - #473.9.10200.XX)

**289. Public Concern: The CEQ Task Force should require EAs to be organized like EISs.**

Environmental assessments should be organized like an Environmental Impact Statement, with chapters on the project description, purpose and need, affected environment, alternatives, and environmental consequences as well as the Finding of No Significant Impact where that is the result. (Where it isn’t, the

agency will typically prepare an EIS rather than publish the EA.) (Individual, Washington, DC - #503.6.10230.F1)

## **290. Public Concern: The CEQ Task Force should clarify that EAs should not be used when EISs are clearly required.**

I find myself continually reminding federal agencies of the CEQ regulations and guidelines that pertain to the NEPA process. I find agencies developing environmental assessments (EAs) when environmental impact statements are clearly required. I often see voluminous environmental assessments, when environmental impact statements are called for in the CEQ regulations and guidelines. Inadequate tiering of decisions and supporting documentation occurs despite the regulations and guidance from CEQ; consequently, the documents and decision-making process becomes muddled. (Individual, Las Vegas, NV - #359.6.70110.XX)

## **291. Public Concern: The CEQ Task Force should advise USDA APHIS to develop a new implementing regulation revising 7 CFR Section 372.5 to eliminate the presumption that an EA will suffice rather than an EIS.**

With respect to GMO [genetically modified organisms] and invasive species issues, the Federal agencies involved—primarily the USDA’s Animal and Plant Health Inspection Service—have been allowed to engage in what can only be characterized as “EIS avoidance.” One glaring illustration: APHIS has approved dozens of GM crop proposals based only on thin EAs. Today, more than 30 million acres of GM crops exist, serious genetic contamination sources have been allowed literally to take root across the country, and significant environmental and associated economic impacts have come to pass—all without preparation of a single programmatic or crop-specific EIS. The Task Force should make recommendations aimed at correcting EIS avoidance strategies by APHIS, and by other agencies where it exists, as it violates Congress’s intent in adopting the statute.

As the Task Force is aware, NEPA requires all Federal agencies to prepare an EIS regarding all “major federal actions significantly affecting the quality of the human environment . . .” [Footnote 1: “42 USC [Section] 4332(C).”] The CEQ, which oversees NEPA implementation by Federal agencies, has adopted regulations listing factors for determining the potential “significance” of an action’s effects. Those factors most applicable to novel GMO proposals, for example, include:

- the degree to which the effects on the quality of the human environment are likely to be highly controversial,
- the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks,
- the degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration. [Footnote 2: “40 CFR [Section] 1508.27(b)(2)(4)(5)(6)(9). The Supreme Court has held that the CEQ regulations are entitled to substantial deference. *Andrus v. Sierra Club*, 442 U.S. 347, 348 (1979); *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 372 (1989).”]

According to Court decisions, the “presence of one or more of these factors should result in an agency decision to prepare an EIS. [Footnote 3: “*Public Service Co. of Colo. v. Andrus*, 825 F. Supp. 1483, 1495 (D. Idaho 1993).”] The presence in GMO proposals of scientific controversy, unique risks, potential irreversibility and their precedent-setting nature plainly establish the potential for “significant” impacts, mandating a decision under NEPA to prepare a full EIS. Yet APHIS has done none, opting for largely boilerplate EAs instead, this despite the fact that the full EIS process is very constructive as it fleshes out alternative actions, increases interdisciplinary and interagency advice, and provides opportunities for public and expert input.

The Task Force needn’t take just our word for this; the National Academy of Sciences (NAS), following a thorough review, recently concluded with respect to APHIS’s EAs on proposals for permission to commercialize (deregulate) GM crops:

Finding 5.12: APHIS (environmental) assessments of petitions for deregulation are largely based on environmental effects considered at small spatial scales. Potential effects from scale-up associated with commercialization are rarely considered.

Finding 7.13: Currently APHIS environmental assessments focus on the simplest ecological scales, even though the history of environmental impacts associated with conventional breeding points to the importance of large-scale effects, as seen in the impacts of Green Revolution cultivars. [Footnote 4: “National Research Council/National Academy of Sciences. 2002. Environmental Effects of Transgenic Plants: The Scope and Adequacy of Regulation. Washington, DC, at p. 189 and 252.”]

These findings by independent scientific experts represent a stunning indictment of APHIS’s NEPA work, indicating the agency is using “quick and dirty” EAs focused on limited spatial and ecological scales instead of full EISs in which “potential effects from scale-up associated with commercialization” are fully considered. Many other commenters have criticized the comprehensiveness of APHIS EAs. The major environmental impacts of many biotech crops are just being ignored under NEPA. This is completely unacceptable and the NEPA Task Force should come right out and say so, otherwise it will be aiding and abetting further EIS avoidance.

This avoidance phenomenon is rooted in APHIS’s own NEPA regulation, 7CFR [Section] 372.5(b)(4)(b), which provides . . . :

372.5 Classification of actions . . . (b) Actions normally requiring environmental assessments but not necessarily environmental impact statements. This class of APHIS actions may involve the agency as a whole or an entire program, but generally is related to a more discrete program component and is characterized by its limited scope (particular sites, species, or activities) and potential effect (impacting relatively few environmental values or systems) . . . Actions in this class include: . . . (4) Approvals and issuance of permits for proposals involving genetically engineered or nonindigenous species, except for actions that are categorically excluded, as provided in paragraph (c) of this section.

The provision that an EA normally will suffice rather than a full EIS amounts to a presumption that the impacts of a GM or non-native species release will not be “significant” and that a Finding of No Significant Impact should result. Sec. 372.5 is absurd when applied to broad APHIS actions like deregulating and allowing the nationwide commercialization of a fertile, possibly weedy, GM crop that will cover millions of acres, or a potential invasive species (see the kudzu disaster, introduced by USDA, for illustration). 7 CFR [Section] 372.5(b)(4)(b) blithely presumes that the effects of these novel introductions—which plainly may pose potentially significant impacts—will “impact relatively few environmental values or systems.” This built-in presumption in favor of EAs for these actions contravenes the purpose of NEPA and contravenes the CEQ regulations by minimizing the analytical requirements.

The well-known Starlink corn fiasco illustrates this EIS-avoidance phenomenon. This GM corn product was approved only for cattle feed due to human allergenicity risks, but the grain was then massively diverted by farmers and distributors into the human food supply. Huge swaths of non-GM corn fields were contaminated with it. It amounted to a national crop segregation failure crisis leading to widespread food product recalls, several credible cases of allergic reactions to a genetically engineered protein (Cry9c) inserted into the corn, roughly one billion dollars in costs to the crop’s manufacturer, Aventis, and significant other monetary damages at all levels of the grain industry.

This entire costly fiasco could have been avoided had APHIS not engaged in EIS avoidance. Plainly the risks of segregation failure existed at the time APHIS approved the product, which on the whole amounted to “potentially significant impacts” under NEPA. But, due to APHIS’s blind adherence to its defective NEPA regulation, discussed above, the agency only required an EA, which failed to look in-depth at the foreseeable risks of Starlink segregation failure. An EIS, with associated scoping and expert analysis, would have opened the proposal up to more outside public and scientific scrutiny and helped to alleviate APHIS’s pro-GM bias. The potential for crop segregation failure and resulting contamination impacts would have been looked at in advance, and likely mitigated through appropriate precautionary measures. In the end, APHIS’s NEPA avoidance strategy was penny wise and pound foolish.

Recommendation: Advise USDA APHIS to promulgate a new implementing regulation revising 7 CFR [Section] 372.5 to eliminate the presumption that an EA normally will suffice rather than a full EIS in order to analyze the release of a new GM crop or other non-native species. (Other, Washington, DC - #476.1-5.10200.XX)

## *EAs and FONSI*

### **292. Public Concern: The CEQ Task Force should define the required content of a FONSI and require it to be incorporated into the supporting EA.**

If the EA is not eliminated, define the required content of a FONSI, and require it to be incorporated into the supporting EA.

If the EA is not eliminated, then it is important to strengthen the sufficiency of EAs by explicitly supporting the more abbreviated analysis they contain. The FONSI contains the conclusion of no significant impact, but the analysis and reasons for the conclusion are usually detailed in the EA. The reasons and analysis often are omitted from the FONSI. CEQ should clarify what it considers as an adequate FONSI. CEQ should also require that the EA and FONSI be included in the same document, rather than separately, so that the analysis and reasons in the EA are clearly linked to the FONSI. (Timber or Wood Products Industry, Portland, OR - #454.56.10200.XX)

We believe the FONSI—when it is not a stand-alone document without an underlying EA—should be integrated into the EA, thereby eliminating a sequential procedure and presumably providing the textual context and justification for the “Finding.” (Timber or Wood Products Industry, Washington, DC - #507.21.10230.XX)

### **293. Public Concern: The CEQ Task Force should consider using FONSI instead of EAs.**

Does NEPA actually require Environmental Assessments (EAs) when a Finding of No Significant Impact (FONSI) looking at the impacts of the proposed agency action, and not to alternatives to the action, could be used instead? (Multiple Use or Land Rights Organization, Waynesville, NC - #444.6.10200.XX)

## **Specific NEPA Documents**

### *Federal Register Notice*

### **294. Public Concern: The CEQ Task Force should require any Federal Register notice to prepare an EA or EIS to include a full description of the proposed action.**

NEPA needs to require that the publication of any action, whether EA or EIS, in the Federal Register include a full description of the proposed action. The title within the Federal Register should also clearly identify the action. (Domestic Livestock Industry, Albuquerque, NM - #80.3.10200.XX)

NEPA needs to be modified to require that the publication of any action, whether FONSI, EA or EIS, in the Federal Register or in the legal notices section of a newspaper of circulation in the project region that includes a full description of the proposed action in simple, easy to understand language. (Agriculture Industry, Santa Fe, NM - #466.5.10230.XX)

## *EAs*

### **295. Public Concern: The CEQ Task Force should provide guidance on the preparation of EAs.**

EA Preparation: EPA feels that EA preparation should be more regulated in order to avoid potentially damaging projects. CEQ should provide guidance to determine the appropriate level of analysis and public involvement for a project. CEQ should also provide guidance regarding the preparation of EAs.

Agencies might also consider a periodic public notification of the EAs being completed. (United States Environmental Protection Agency, No Address - #299.38.70100.F1)

We question whether NEPA requires the preparation of EAs. We recognize that a mechanism must be in place to determine whether an agency action is a “major Federal action significantly affecting the quality of the human environment” and thus requires preparation of an EIS under NEPA 102 (2) (C). At most, that mechanism could be a FONSI that looks solely at the impacts of the proposed agency action, and not to alternatives to the action.

If CEQ determines that EAs should be maintained as a NEPA compliance tool, then the following are recommended:

- New simplified requirements for the contents of project EAs should be developed by CEQ to ensure that EAs are not, as they now agree, “detailed statements” which are required only for EISs on major Federal actions under 102 (2) (C).
- CEQ should develop new requirements for EAs that differ fundamentally in organization and content from the requirements for EISs (rather than simply repeat the requirements of an EIS for an EA, qualified only by the increasingly meaningless wording “brief discussions of, “ 40 C.F.R. 1508.9 (b).
- Rules and guidance should contain explicit statements that certain analyses are appropriate only for EISs and are not to be conducted for or included in the EAs. (Timber or Wood Products Industry, Deer River, MN - #377.7.10230.XX)

EA formats are not uniform. Different governmental entities use different formats and have different informational requirements in their EA processes. Some governmental agencies have developed regulations for the conduct of the NEPA process and others have developed policies, all of which are interpretations of the same public law. Some agencies require an EA to basically comply with EIS requirements, which is probably contrary to the public law. EA formats should be standardized. (Cherokee Nation Department of Natural Resources, Tahlequah, OK - #406.3.10200.F1)

The NEPA regulations and the CEQ guidance documents and memoranda that have been issued to date have largely focused on the EIS preparation process. Considering the increased use of EAs by the Board and other Federal agencies, additional CEQ guidance on appropriate EA analyses and documentation and the role and extent of public involvement in EA preparation would be valuable to the Board. (Surface Transportation Board, No Address - #519.30.10200.XX)

### **296. Public Concern: The CEQ Task Force should simplify the requirements for EAs.**

New simplified requirements for the contents of project EAs should be developed by CEQ to ensure that EAs are not, as they now are, “detailed statements” which are required only for EISs on major Federal actions under 102 (2) (C). (Timber or Wood Products Industry, Coeur d’Alene, ID - #446.9.10230.XX)

### **297. Public Concern: The CEQ Task Force should clarify that EA requirements should result in shorter documents.**

EA requirements should result in shorter documents in general. (Federal Highway Administration, Wyoming Division, Cheyenne, WY - #83.11.10230.E2)

### **298. Public Concern: The CEQ Task Force should allow lead agencies to decide how best to prepare EAs for individual projects.**

While AASHTO recognizes that there is broad variation among EAs, both across and within agencies; AASHTO emphasizes that in many cases the variation in the documents—in terms of organization and content—reflects underlying differences in the projects being studied. While the dissemination of best practices and guidance is desirable, it is equally important to preserve discretion for individual lead

agencies to decide how best to prepare EAs for individual projects. (American Association of State Highway and Transportation Officials, Washington, DC - #591.13.10200.XX)

**299. Public Concern: The CEQ Task Force should consider that CEQ regulations currently afford adequate flexibility regarding EAs.**

Regarding your question about the appropriate utility of and structure of format for environmental assessment documents, we believe that CEQ's NEPA implementing regulations afford agencies adequate flexibility regarding the appropriate content and format of environmental assessments. (United States Department of Energy, Washington, DC - #536.31.10230.XX)

**300. Public Concern: The CEQ Task Force should clarify that preparation of an EA is a judicial review requirement, not a NEPA requirement.**

The EA is a function of judicial review. NEPA does not require the preparation of an EA. Indeed, the 1971 CEQ Guidelines issued by Judge Train contain no reference to an environmental assessment. 36 Fed. Reg. 7724 (April 23, 1971). The statute notwithstanding, a 1993 CEQ survey estimated that about 50,000 EAs were being prepared annually. 1997 Effectiveness Study, 19. Instead of statutory requirement, the EA is a judicial review requirement, an early NEPA case having held that GSA was required to "affirmatively develop a reviewable environmental record." *Hanly v. Mitchell*, 460 F.2d (640, 647 (2d Cir.), cert. denied, 409 U.S. 990 (1972)). (Other, Washington, DC - #506.10-11.10230.XX)

**301. Public Concern: The CEQ Task Force should revise CEQ regulations to appropriately restrict judicial review of EAs.**

**SO THAT THEY MAY FULFILL THEIR INTENDED ROLE AS "CONCISE PUBLIC DOCUMENTS" THAT "BRIEFLY" DETERMINE THAT EITHER A FONSI OR AN EIS WILL BE THE NEXT STEP**

A number of issues exist concerning organization of Environmental Assessments ("EAs"). Many of the CEQ Regulations appear, on their face, to refer specifically to EISs. For instance, 40 C.F.R. section 1502.24 states "agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements." Based on this language, some courts have refused to extend the provisions of section 1502.24 to EAs. However, other courts have extended these requirements to EAs and have invalidated decisions based, at least in part, on findings that the EA failed to satisfy the requirements of section 1502.24. See, e.g., *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1150 (9th Cir. 1998). A similar area of possible confusion involves the range of alternative required of an EA (40 C.F.R. [section] 1502.14 again arguably refers to EIS requirements).

Reviewing courts have subjected EAs to increasingly stricter scrutiny. The result has been the production of EAs that are functionally and physically indistinguishable from EISs. Given this reality, there is little reason for an agency to ever produce an EA, because the selection of an EA creates a potential basis for procedural challenge without any predictable slackening of review standards. The Task Force should investigate a way to revise the CEQ Regulations to appropriately restrict judicial review of EAs so that they may return to their intended role as "concise public documents" that "briefly" determine whether a project may proceed through a Finding of No Significant Impact or whether an EIS is necessary. (Recreational Organization, Boise, ID - #90.18.70400.X)

**302. Public Concern: The CEQ Task Force should expand the scope of the EA to address legal responsibilities.**

Validation of the EA/FONSI as a mechanism to address projects proposals and satisfy the NEPA process. The EA should be treated as much more than a determination of whether or not an EIS must be prepared: CEQ should recognize its usefulness in addressing other legal responsibilities as well. This change would go a long way to close the gap that exists between EIS and the categorical exclusion determination. (Federal Highway Administration, Washington, DC - #658.27.10230.XX)

**303. Public Concern: The CEQ Task Force should require EAs to include maps and figures.**

Supporting documents such as maps and figures are often lacking [in EAs]. (Preservation/Conservation Organization, Boise, ID - #570.4.10230.XX)

**304. Public Concern: The CEQ Task Force should clarify guidance on the evaluation of alternatives in EAs.**

Although there are many examples of successful EAs/FONSIs, we have identified . . . common problems with EA/FONSI practice and offer recommendations to improve each. While not all projects experience all of these problems, they are all too common throughout the federal government.

Lack of clarity over when alternatives must be evaluated in an environmental assessment.

Summary of problem—Under the current CEQ Regulations, there is great uncertainty as to whether alternatives are or are not required in an EA, and when they are—the degree to which they must be evaluated. The problem stems from the somewhat cryptic reference found in section 1508.9, which states that an EA must discuss alternatives “as required by section 102(2)(E) . . .” Section 102(2)(E) of NEPA provides “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” Unfortunately, in more than 30 years of NEPA guidance and practice, nobody has provided a clear explanation of what that section means for EA practice.

Recommended solution—Provide clear and specific advice as to when and how alternatives must be evaluated in the context of an EA and the level of detail by which those alternatives must be studied for the EA to be considered adequate. (NEPA Professional or Association - Private Sector, No Address - #530.12.10230.XX)

**SHOULD ADVISE AGENCIES TO CONSIDER ALTERNATIVES IN EA'S ONLY WHEN THERE ARE UNRESOLVED CONFLICTS**

EAs have become lengthy and expensive analyses. Gone are the days of a two alternative (Action/No Action) EA. For example, Breckenridge Resort in Colorado and Crystal Mountain in Washington prepared EAs that cost the resorts over a quarter of million dollars, respectively. The Forest Service should develop and consider alternatives in EAs only when there are unresolved conflicts, consistent with [section] 102(2)(e). Agencies implementing NEPA need to keep in mind that CEQ's regulations define an EA as a “concise” document which “briefly provide(s) sufficient evidence and analysis for determining whether to prepare an environmental impact statement.” 40 CFR [section] 1508.9. (Recreational Organization, No Address - #19.2.70100.A1)

**305. Public Concern: The CEQ Task Force should require minimum scoping efforts for EAs.**

Although there are many examples of successful EAs/FONSIs, we have identified . . . common problems with EA/FONSI practice and offer recommendations to improve each. While not all projects experience all of these problems, they are all too common throughout the federal government.

Insufficient scoping for Environmental Assessments.

Summary of problem—Due to the lack of CEQ guidance regarding scoping for Environmental Assessments, agency practice varies widely. In some cases, no scoping occurs when an EA is prepared, whereas in other cases, scoping similar to that for an EIS occurs. When inadequate scoping occurs, other agencies and the public are limited in their ability to influence the scope and content of an EA. One apparent reason for the lack of scoping in the EA process is that the scoping section of the CEQ regulations (Sec. 1501.7) only refers to scoping during EIS preparation.

Recommended solution—Provide required minimum scoping efforts that must be achieved for EA preparation for different types of proposals. Update the CEQ “Scoping Guidance” to emphasize the use of scoping for the preparation of an EA and to reflect current technology and methods. (NEPA Professional or Association - Private Sector, No Address - #530.9.10200.XX)

### **306. Public Concern: The CEQ Task Force should establish a minimum public notice and review requirement for EAs.**

Although there are many examples of successful Environmental Assessments/Findings of No Significant Impact's, we have identified . . . common problems with EA/Finding of No Significant Impact practice and offer recommendations to improve each. While not all projects experience all of these problems, they are all too common throughout the federal government.

Insufficient and inconsistent public notice and review of environmental assessments.

Summary of problem—As with the issue of “scoping,” there is currently no established minimum for what constitutes adequate public notice and availability of an Environmental Assessment. The practice varies widely, and some documents received either very ineffective notice, or no notice at all. Thus, the public often has very limited opportunities to learn about proposed federal actions, and to provide their views.

Recommended solution—Provide a required minimum public notice and review requirement for environmental assessments. Provide for notification in newspapers of general circulation, as well as guidance to the use of the internet. (NEPA Professional or Association - Private Sector, No Address - #530.10.10410.XX)

We are strongly opposed to CEQ's current NEPA regulations that urge, but do not require agencies to circulate draft environmental assessments for public comment. 40 CFR 1501.4 (b). Currently, agencies are allowed to prepare environmental assessments internally and then issue a Finding of No Significant Impact (FONSI) without any public input whatsoever. Because the decision as to whether a plan, proposal or project would have a significant adverse impact on the environment is the basic issue in preparing an environmental assessment, public notice and comment is critical in this process.

Without a clear requirement from CEQ, public notice and comment on environmental assessments are not consistent even within the same agency. For example, the Corps of Engineers will issue a draft environmental assessment for public review and comment on Corps sponsored projects for the disposal of dredged or fill material. However, applications for Corps permits for the disposal of dredged or fill material from private applications do not trigger any public review and comment on draft environmental assessments. (Preservation/Conservation Organization, Seattle, WA - #363.3.10420.XX)

### **307. Public Concern: The CEQ Task Force should clarify that EAs need only be made available to the public; public comment is not required.**

EAs have been subjected to more than just excessive paperwork; they also have become immersed in excessive procedures. We question whether any public comment is required for EAs, particularly when it's not required for EISs by NEPA or for EAs by CEQ's rules. Indeed, CEQ's regulations simply direct the agency proposing the action to include the public “to the extent practicable” during EA preparation. 40 C.F.R [section] 1501.4(b).

CEQ should provide rules and guidance that EAs need only be made available to the public. (Other, Sacramento, CA - #509.8.10230.XX)

The CEQ should provide rules and guidelines that EAs need only be made available to the public but not to public comment as it is not currently required for EISs by NEPA or for EAs by CEQ's rules. (Timber or Wood Products Industry, Cleveland, TX - #402.13.10230.XX)

Define that EAs be made available to the public; but that public input is explicitly not required. (Timber or Wood Products Industry, Salem, OR - #558.10.10200.XX)

**308. Public Concern: The CEQ Task Force should require agencies to make EAs public via the Internet.**

Revise Regulations to stipulate that all EAs are to be made public via the Internet in a timely manner (in order to reduce delay and costs). (NEPA Professional or Association - Private Sector, Washington, DC - #450.8.10230.XX)

**309. Public Concern: The CEQ Task Force should eliminate the requirement to produce EAs.**

The 50,000 EAs prepared each year for proposed actions without significant effect on the quality of the human environment are not required by NEPA. The statute requires no study at all of proposals that do not have significant environmental effects. The EA requirement has imposed in the CEQ regulations. Agency EAs are beginning to resemble EISs in size, preparation time and cost. CEQ could eliminate the EA entirely, or replace it with a simple process for documenting a finding of no significance. While this change might lead to an increase in the number of EISs, the savings in eliminating EA preparation costs and moving non-significant projects promptly forward could dwarf the increased costs of preparing additional EISs. This change would also have the beneficial effect of concentrating environmental analysis resources on those projects most in need of detailed study. Environmental groups might find this attractive because more truly “significant” actions would be elevated in an EIS. (Timber or Wood Products Industry, Portland, OR - #454.50.10200.XX)

Environmental Assessments. We question whether NEPA requires the preparation of EAs. We recognize that a mechanism must be in place to determine whether an agency action is a “major Federal action significantly affecting the quality of the human environment” and thus requires preparation of an EIS under NEPA section 102(2)(C). At most, that mechanism could be a FONSI that looks solely at the impacts of the proposed agency action, and not to alternatives to the action. If a programmatic EIS is prepared, it could incorporate a general FONSI for all or a class of projects under the program.

We are aware that CEQ and the courts under the “hard look” doctrine have grounded the EA requirement in NEPA section 102(2)(E). See, e.g., 40 C.F.R. section 1508.10. However, all that clause requires is that the agency “study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative use of available resources.” Unlike NEPA section 102(2)(C), that clause does not require “a detailed statement” or analysis of the environmental impacts of the proposal (notably, even section 102(2)(C) does not require analysis of the environmental impacts of the alternatives to the proposed Federal action). As previously noted, if a program has been analyzed in a programmatic EIS, then that programmatic EIS could include—“study, develop, and describe”—generic alternatives to all projects under the program that do not constitute “major Federal actions significantly affecting the quality of the human environment”—thus discharging any agency obligations under section 102(2)(E) and the need to prepare project EAs. (Timber or Wood Products Industry, Washington, DC - #507.16.10230.XX)

**310. Public Concern: The CEQ Task Force should examine the Office of Inspector General’s review of the Forest Service’s use of EAs.**

In order to grasp the magnitude of the use of EAs, the USDA Forest Service is an excellent example since they represents the largest producer of EAs in the federal government. The USFS writes about 4,000 to 5,000 environmental assessments annually. Approximately one-half are associated with timber sales. The Office of Inspector General completed a comprehensive review of their use by the USFS in 1999. Their entire report is appended to our comments and should be reviewed by the NEPA Task Force. All of the conclusions reflect a review of agency performance against basic CEQ regulations and the ability of USFS in their attempts to comply with CEQ regulations. The conclusions in this report are especially insightful given that the office of Inspector General simply evaluates the agency performance against their own government regulations and agency rules. Careful evaluation by the NEPA Task Force of their report will provide valuable insight into actual performance problems in developing environmental documents. The OIG report and conclusions support the need for change in regulations or agency performance, or perhaps both. (Other, Sacramento, CA - #509.9.10230.XX)

## EISs

### 311. Public Concern: The CEQ Task Force should review the track record of EISs.

#### TO SEE WHAT WORKS BEST

My suggestions for “modernizing” NEPA would include: . . . reviewing the actual track record of individual Environmental Impact Statements to determine what worked best and what did not in assessing risks and predicting impacts (then applying these lessons) . . . (Preservation/Conservation Organization, South Thomaston, ME - #550.2.10200.XX)

### 312. Public Concern: The CEQ Task Force should set boundaries regarding what needs to be evaluated in EISs.

We encourage the NEPA Task Force to look for ways to make sure that activity done to satisfy NEPA (such as an EIS) are focused and do what is required by NEPA—not beyond. For example, a very practical matter when developing an EIS is the scope of what is examined in the EIS. Agencies need to set boundaries as to what really needs to be examined in developing the EIS. The EIS has several purposes, among which primary ones are to:

1. Determine the environmental impact of the proposed actions.
2. Determine the adverse environmental effects which cannot be avoided should the proposal be implemented.
3. Examine environmental impacts of the alternatives to the proposed actions.
4. Look at the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity.

Thus the purpose of the EIS is not to fully research out and study every issue that arises; instead it is to develop environmental information that can be incorporated into the decision-making. The purpose of NEPA is to incorporate environmental considerations into the decision-making process. There is no requirement within NEPA that every environmental problem be totally resolved. Nor does NEPA require that consideration for the environment be the primary factor in the agency decision-making process. NEPA does require that environmental impacts be considered in the decision making process. Thus, for the example being described (preparing an EIS), the scoping process for the product should define what needs to be examined. The decision making process, not environmental studies should be the driver and focus of the studies and work. (Mining Industry, No Address - #531.3.10230.XX)

### 313. Public Concern: The CEQ Task Force should clarify that the intent of an EIS is to analyze actions that will *adversely* affect the human environment.

We direct your attention to the NEPA direction that requires an EIS for any “major Federal action significantly affecting the quality of the human environment.” The courts, federal agencies and interested publics have interpreted this clause to include virtually any proposed action. Moreover, it should be recognized that a decision to not implement a management action, especially in disturbance dependent systems, could have far reaching implications for some or all natural resources within the planning unit. The above groups also have interpreted “significantly affecting the quality” to include those activities that “improve the quality of the human environment.” It needs to be clarified that the intent of an EIS requirement is for actions that will “adversely” affect the human environment. (Recreational/Conservation Organization, Washington, DC - #89.35.10100.F1)

### 314. Public Concern: The CEQ Task Force should consider that management flexibility, in and of itself, is not a resource or an action and has no place in EISs.

New regulations should seek to erase a pro-management bias that creeps into many impact statements. Invariably, managerial flexibility is presented as an asset in impact statements, even in projects whose stated purpose is to correct past managerial errors, particularly in the case of the USDA Forest Service. Management flexibility, in and of itself, is not a resource or an action, and has no place in impact

statements, unless agencies are to get into the business of second-guessing their own decisions ahead of time. The mere “ability” of an agency to manage a resource or take an unspecified range of potential actions does not constitute a resource or an impact, either positive or negative, and should not be a consideration. (Individual, Logan, UT - #383.7.10200.XX)

### **315. Public Concern: The CEQ Task Force should address agencies’ trend to require multiple EISs.**

An unfortunate trend is the requirement of a second or even third EIS by the agency. Loon Mountain in New Hampshire, Mount Ashland ski area in Oregon, and White Pass ski area in Washington have all been subject to multiple EISs for the same project. Multiple EISs are required at times in attempts to avoid challenges to the original NEPA analysis, or because the initial EIS process took so long that the analysis underlying it can no longer be considered current. The result is seemingly endless and expensive analysis—not necessarily the sound decision-making intended by NEPA. (Recreational Organization, No Address - #19.6.10200.A1)

#### **INCLUDING THE EFFECT OF MULTIPLE EIS’S ON THE LENGTH OF THE NEPA PROCESS**

[There is a current trend to require] a second (or even third) EIS for the same project. Mt. Ashland Ski Area (in Oregon) and White Pass Ski Area (in Washington) have been subject to multiple EISs.

Multiple EISs have been required in an attempt to avoid challenges to the original NEPA analysis (e.g., White Pass), or because the initial EIS process took so long that the analysis underlying it can no longer be considered current (e.g., Mr. Ashland). The result is seemingly endless and expensive NEPA analysis—not the sound decision-making intended by the authors of the Act. At Mt. Ashland, the ongoing NEPA process has been so unpredictable that it has seriously compromised the operator’s efforts at strategic business planning, contributing to further erosion of the ski area’s competitive position. During Mt. Ashland’s NEPA process, a nearby ski area on private lands has pursued resort development that has significantly impacted the marketplace’s overall assessment of the Mt. Ashland ski facility. (Special Use Permittee, Hood River, OR - #528.3.10230.XX)

### **316. Public Concern: The CEQ Task Force should address agency abuse of the EIS requirement.**

The portion of NEPA which requires an Environmental Impact Statement has been abused. An EIS is required for “major Federal actions significantly affecting the quality of the human environment”. The process of performing an EIS has become commonplace and instigated by rabid preservationists for even such non-actions as small gold suction dredges in the western states. It comes at a great cost to the tax payers. It is a process which should only be performed when it is a “major” federal action and not used as a tool to lock up land from legitimate users as it is presently being used by such agencies as the U.S. Forest Service. (Individual, Grants Pass, OR - #368.1.10230.F1)

### **317. Public Concern: The CEQ Task Force should eliminate the requirement to produce EISs.**

There is an overwhelming need to overhaul the National Environmental Policy Act. For too long advocacy groups such as Earthjustice, Sierra Club and numerous others, have placed road blocks to progress of the human race. Thousands of jobs, and businesses, have been lost to the environmental movement. A parasite industry has risen out of the movement (note the advertisements in any phone book under “Environmental”). Key elements of the new plan must include the elimination of an environmental impact statement . . . (Individual, Paradise, TX - #149.1.10240.F1)

## FONSI/s

### **318. Public Concern: The CEQ Task Force should provide guidance on the content of FONSI/s.**

CEQ should set criteria for the “convincing statement of reasons” why no EIS is required that the Ninth Circuit requires of a FONSI. The preset CEQ guidance “briefly describing the reasons why an action will not have a significant effect on the human environment and for which an [EIS] will not be prepared” is apparently insufficient for at least some courts. 40 C.F.R. 1508.13.

CEQ should provide complete direction on the full contents of FONSI/s. (Timber or Wood Products Industry, Deer River, MN - #377.9.10230.XX)

CEQ define complete direction for the contents of a FONSI. (Timber or Wood Products Industry, Salem, OR - #558.10.10200.XX)

CEQ should provide complete direction on the full content of FONSI/s. Although CEQ has not been shy about prescribing the contents of EISs and EAs, it has been strangely silent on what FONSI/s should contain. (Timber or Wood Products Industry, Washington, DC - #507.21.10230.XX)

### **319. Public Concern: The CEQ Task Force should clarify the level of analysis required to support a FONSI.**

Although there are many examples of successful EAs/FONSI/s, we have identified . . . common problems with EA/FONSI practice and offer recommendations to improve each. While not all projects experience all of these problems, they are all too common throughout the federal government.

Conclusions in FONSI not supported by the evidence in the EA.

Summary of problem—In too many EA/FONSI situations, the agency’s conclusions as to the non-significance of impacts are not supported by the evidence (e.g., data, studies, analysis) in the EA.

Recommended solution—Provide clear guidance on the nature and extent of analytical information that is necessary to support a FONSI. Provide good examples of the link between an EA and a FONSI. (NEPA Professional or Association - Private Sector, No Address - #530.5.10240.XX)

### **320. Public Concern: The CEQ Task Force should clarify when a FONSI is sufficient.**

Clearly define criterion for why an EIS or EA is unnecessary—and when a FONSI would be sufficient. (Timber or Wood Products Industry, Salem, OR - #558.10.10200.XX)

### **321. Public Concern: The CEQ Task Force should soften requirements for a FONSI.**

Rules for a Finding of No Significance need to be softened. Arguments over research prevail. The agency can’t prove anything ecologically beyond a shadow of a doubt. They can only do things based on what they know at the time. (Individual, Cortez, CO - #379.5.10200.XX)

### **322. Public Concern: The CEQ Task Force should explain how an agency can justify a FONSI for an individual proposal, when that proposal contributes to an effect that is already cumulatively significant.**

Explain how an agency can justify preparing a FONSI for an individual proposal, when that proposal contributes to an effect that is already cumulatively significant. (NEPA Professional or Association - Private Sector, No Address - #530.13.10240.XX)

**323. Public Concern: The CEQ Task Force should set criteria for the “convincing statement of reasons” why no EIS is required which the Ninth Circuit Court requires of a FONSI.**

CEQ . . . should set criteria for the “convincing statement of reasons” why no EIS is required that the Ninth Circuit requires of a FONSI. The present CEQ guidance—“briefly describing the reasons why an action . . . will not have a significant effect on the human environment and for which an [EIS] will not be prepared”—is apparently insufficient for at least some courts. 40 C.F.R. 1508.13. (Timber or Wood Products Industry, Coeur d’Alene, ID - #446.13.10230.XX)

## Document Language and Formatting

**324. Public Concern: The CEQ Task Force should encourage more accessible language in NEPA documents.**

I . . . find any reports produced to meet NEPA standards are difficult to understand, full of abbreviations and jargon, and sometimes worded so as to be very misleading. I urge you to set standards so that the language is more accessible to the public, so that they can be better informed and more active participants in their government. (Individual, Minneapolis, MN - #595.11.10230.XX)

NEPA has betrayed the ideals of public involvement. Despite the large investment in NEPA “public involvement” activities, many believe that NEPA has come to represent the antithesis of true public engagement in either assessment or decision-making. NEPA documents today are largely written (in unreadable language) for two constituencies: federal district court judges and federal agency permit-writers. Analysis is expert-ized to the point of complete opaqueness. Summarization and explication are eschewed for fear of undermining “legal sufficiency”. Issues for and of the real world environment are neglected in the quest to address sub-headings in an artificial legal environment, consisting of the Code of Federal Regulations and its voluminous and very prescriptive agency guidance. Public involvement activities frequently become exercises in packaging strategies that actually distance and alienate rather than incorporate meaningful public discussion. Perhaps neither the expert consultants who now write the documents nor the permit writers who grade and debate them actually trust or value public viewpoints on issues so complicated, or obscure. (Washington State Department of Transportation, WA - #551.2.10400.XX)

**325. Public Concern: The CEQ Task Force should standardize the definitions in NEPA documents.**

A concerted effort must be made to standardize the definitions inherent in each type of environmental case documentation and how each interacting agency approaches related case analyses. It is likely that paperwork can be halved if proper attention is made to eliminating redundancy and in “de-Dilbertizing” the NEPA system wherever possible. (Government Employee/Union, Bowie, MD - #17.4.10200.XX)

**326. Public Concern: The CEQ Task Force should standardize structure and data presentation in NEPA documents.**

It would be extremely useful to establish protocols or standardized procedures for presenting certain types of technical information. As NEPA documents have become significantly heavier and more complex, they are exponentially [less] “user friendly” to the public. When we receive a “state of the art” multi-volume EIS it is apparent the team creating the document has expended many hours organizing and compiling the information and issues in a fashion unique to the subject at issue. This makes the document difficult and time-consuming to digest, because one must first understand the format designed by the individual team prior to even attempting to understand the issues or analysis. Some form of standardization in structure and data presentation could be very useful for NEPA producers and consumers. (Recreational Organization, Boise, ID - #90.5.70120.A3)

**327. Public Concern: The CEQ Task Force should direct agencies to separate the “affected environment” and “environmental consequences” sections in NEPA documents.**

An increasing number of environmental analyses are combining the “affected environment” and “environmental consequences” sections in their NEPA documents. The result is a loss of clear attention to the current condition and whether the analysis of the management situation is accurate. (Individual, Quincy, CA - #542.11.10230.XX)

**328. Public Concern: The CEQ Task Force should revise the EIS format with screening worksheets.**

WisDOT has used a set of forms called the Environmental Evaluation Screening Worksheets or just Screening Worksheets. These sheets contain items that require completion and result in the worksheets becoming the Environmental Assessment. We have used these forms for over 25 years. They have been used to communicate with every resource agency and have been tested in court. These forms hold the promise of consistency and brevity in that the same items are in the same location without extraneous issues and concerns included. We are now piloting their use for EISs. Overall, the EIS format needs to be more flexible and repetition reduced. (Wisconsin Department of Transportation, Madison, WI - #214.24.70500.F1)

**329. Public Concern: The CEQ Task Force should give specific guidance to standardize EAs.**

**REGARDING LENGTH AND NUMBER OF ALTERNATIVES**

One of the biggest issues that we believe the Task Force should address is environmental assessments (EAs). EAs have become almost as lengthy, time consuming, and expensive to prepare as a full-blown environmental impact statement. The Task Force should analyze methods by which to standardize the process. For example, page limits should be set and the number of alternatives that must be analyzed should be standardized. We believe that between three and five alternatives are the most that should be analyzed in an EA. The regulations implementing NEPA should also specifically allow for an EA to analyze the proposed action and a no action alternative. This should be provided for when all of the potential alternatives are really only minor variations of the proposed action, with no concomitant change in the potential impacts. The Task Force should recognize that the primary purpose of some projects is simply for the purpose of gathering scientific information needed to assess the potential impacts and scope of future projects. Such projects should not require exhaustive analysis as, by their very nature, they pose minimal impacts to the environment, and their purpose is to enable decision-makers to obtain information for future analysis. (Oil, Natural Gas, or Coal Industry, No Address - #634.6.10230.XX)

**330. Public Concern: The CEQ Task Force should encourage use of a checklist format for EAs.**

EAs should simply be structured to 1) describe the project, 2) list mitigation that will be used to reduce impacts, and 3) provide information on why the parameters being addressed will not result in a significant impact on the environment. For most projects, a checklist format could be used. It does not need to follow the format of an EIS, especially for the majority of land use projects with little actual environmental impact. (Oil, Natural Gas, or Coal Industry, Denver, CO - #598.26.10230.XX)

**331. Public Concern: The CEQ Task Force should provide consistent guidelines on format and content for EAs and FONSI.**

Although there are many examples of successful EAs/FONSIs, we have identified . . . common problems with EA/FONSI practice and offer recommendations to improve each. While not all projects experience all of these problems, they are all too common throughout the federal government.

Lack of consistency in decision documents.

Summary of problem—Some agencies prepare decision documents (e.g., Record of Decision) and others do not, when they prepare an EA/FONSI. There is no consistency in this area of NEPA practice. One reason for this problem is that the CEQ regulations do not address the preparation of a decision document for an EA/FONSI.

Recommended solution—Provide for a consistent type of document and specify the contents of that document when an EA/FONSI is prepared. (NEPA Professional or Association - Private Sector, No Address - #530.16.10200.XX)

## Examples

### **332. Public Concern: The CEQ Task Force should only consider examples of best practices from EAs or EISs that have been appealed or litigated.**

The request for comments asked for examples of case studies for “best practices.” We strongly believe the Task Force must not consider examples offered by agencies or individuals resulting from EAs or EISs that have not been appealed or litigated. Using documents that have not been evaluated under the rigors of administrative appeals and/or lawsuits will be very misleading. Consider the years and experience of developing NEPA documents without appeal or litigation compared to those developed under the threat or crucible of appeals and lawsuits. (Other, Sacramento, CA - #509.17.340.XX)

## Staffing and Training

### Summary

This section includes the following topics: Staffing and Training General, Use of Private Contractors, and ID Teams.

**Staffing and Training General** – Many respondents believe that inadequacies exist in the area of federal agency staffing. Some assert that NEPA’s effectiveness is reduced by inadequate staffing of federal positions that handle NEPA. One individual maintains, “The reason NEPA is so slow is that federal land management employees are so overworked.” To address staffing inadequacies, respondents suggest that the Task Force encourage agencies to streamline internal procedures and manage personnel effectively, and to institute a performance based advancement and rewards system.

A number of respondents advise the Task Force to encourage agencies to hire qualified scientists and managers who will devote themselves to sound management practices. Some suggest that a consistent position description for NEPA specialists should be established so that NEPA specialists are identical with every agency. Respondents also call for agencies to give authority and responsibility to people for decisionmaking as related to their field of expertise. One individual remarks, “It is imperative to give authority and responsibility to people for decision making as related to their field of study. The individual must hold a degree/degrees from accredited universities. I could go into great detail but just think of our world if people making decisions were educated for the subjects they are making decisions for.” At the same time, some question agency reliance on in-house expert opinions. One preservation/conservation organization insists that “where an agency relies on its own expert opinions, it must also provide the underlying data for that opinion.”

Finally, Many recommend that the Task Force should encourage NEPA training for all agency personnel. One individual advises, “There should be more rigorous training of personnel throughout the agency structure on the NEPA CEQ regulations and guidelines. The training could be done in a classroom setting, or through the use of interactive computer materials. The

training should be done periodically and personnel should be able to show their supervisors when they last received training on the NEPA process, regulations and guidance.”

**Use of Private Contractors** – Respondents disagree over the advisability of using private contractors. Some remark that “as both the federal and state sectors reduce their work forces there is a risk that resource agencies will be caught short-handed and without an adequate number of experts/professionals to review projects,” and therefore advise the Task Force to encourage the use of experts and professionals from the private sector, including local experts. Moreover, some argue, agencies should turn to private contractors to produce NEPA documents. One mining representative writes, “The time commitment of staff and the cost to do an EIS, and even some EAs, is so great that agencies are being drained of their resources and are unable to accomplish their basic jobs. Similarly, the lack of staff and funding due to NEPA work is often so great that other projects are not allowed to go through the NEPA process. Recommendation: Use of qualified and knowledgeable third party contractors should become a standard practice for agencies.”

Others, however, disagree and state that the Task Force should discourage the use of private contractors. One individual observes that “there are some tasks which the private sector can do but which they should not. Private companies’ primary focus is profit, and therefore their objective will be to accomplish the task at minimum standards at the least cost. This does not guarantee an adequate or satisfactory product, even with minimum standards in place.” Moreover, some argue, the use of consultants “raises questions about potential conflicts of interest, for in many cases the consultants, although retained by the agency, are paid by the applicant and the applicant therefore retains at least a perceived role in directing the consultant.”

**ID Teams** – A number of respondents ask the Task Force to encourage better management of ID teams and higher qualifications for ID team members. To that end, some say the Task Force should require adequate leadership training for ID teams; others say it should encourage agencies to improve the makeup, training, and expertise of staff teams who work on the NEPA issues of ski areas.

Additionally, some comment that ID teams would work together more productively if they could at least achieve a basic agreement regarding project goals and objectives. One government employee writes, “Most ID teams are composed of people with a wide range of values and ethics that reflect America. There are conservatives and liberals, Republicans and Democrats, etc. etc. I see this as a positive thing, since it injects checks and balances into the process. However, I have also seen this bring the NEPA process to a standstill for weeks and even months. . . . [When there is] fundamental disagreement about the project goals and objectives, is there any surprise that the NEPA process is sometimes inefficient?”

## Staffing and Training General

### 333. Public Concern: The CEQ Task Force should address the need for adequate staffing.

An area affecting the effectiveness of NEPA is a function of staffing. With an administration in place, such as the one in place now, federal staff positions for handling NEPA keep diminishing. In the late 90s of exceptional growth, the number of projects went sky high (all with fast track schedules), yet the number of staff able to handle the projects went down. In these current slower times, I suspect NEPA will not be so much of an issue. Similarly, the wages paid to federal and state staff are so low that many

are forced into early retirement and the turnover rate is very high. In California for example, the average years of experience for senior NEPA specialists in state government is five years; FIVE YEARS. This is further hampered by the lack of project continuity due to turnover. (Individual, No Address - #223.2.10250.XX)

**334. Public Concern: The CEQ Task Force should recognize that the reason the NEPA process is slow is because land management employees are overworked.**

The reason NEPA is so slow is that federal land management employees are so overworked. Forests take on an inordinate amount of work, reduce staff regularly, have one person doing the job three people used to do and change priorities every time the political winds blow. Congressional directives that require extensive data collection and input (like the Wildlife “Godzilla” report, the recording and mapping of every fence, culvert and piece of equipment over \$500.00, etc.) are more to blame. The process is not the problem!

NEPA works when it’s done right. It is a valuable tool for ensuring public trust and credibility of the agency. It helps employees operate interdisciplinary. It protects the environment from damage. It helps determine the best investment and mitigation. (Other, Helena, MT - #412.2.10250.XX)

**335. Public Concern: The CEQ Task Force should encourage agencies to streamline internal procedures and manage personnel effectively.**

The Forest Service should also streamline its internal procedures and manage its own personnel effectively to avoid unnecessary delays. (Timber or Wood Products Industry, Ketchikan, AK - #524.4.10200.XX)

**336. Public Concern: The CEQ Task Force should encourage agencies to institute a performance based advancement and rewards system.**

To not have a performance based advancement and rewards system is to deny the efforts and motivation of any staff. With the same consideration of performance rewards given to volunteer groups and reward of Employees that foster and educate public to cooperate and participate in the care/use and progressive remediation of Federal Lands the system will have fewer setbacks and create more efficient monetary investments as well as abate employment and vacancy problems. (Individual, Johnson City, TN - #631.20.10250.XX)

**337. Public Concern: The CEQ Task Force should address the wise use of agency resources and personnel for low-impact projects.**

Certain adjustments should be made to better use agency resources and personnel in cases of minimal impact to the public lands. As an example, it seems nonsensical to require an agency to dedicate six months of staff time and resources to first analyze and finally make a decision between installing a gate or a cattle guard on an existing road. (Oil, Natural Gas, or Coal Industry, No Address - #634.7.10200.XX)

**338. Public Concern: The CEQ Task Force should encourage agencies to hire qualified scientists and managers.**

Agendas take precedent over facts, impacts, NEPA or any other factor.

All agencies need a general house cleaning to hire real scientists, not political junk scientists, and managers not litigators, people with clear devotion to sound real management practices not their green religion. (Individual, Pioche, NV - #339.4.10240.D4)

**339. Public Concern: The CEQ Task Force should encourage agencies to allow hired experts to do their jobs as NEPA specialists.**

Let your hired experts do their jobs as NEPA Specialists. They know the law, understand what is required, and how to go about doing their work effectively. (Individual, Washington, DC - #60.1.10250.F1)

**340. Public Concern: The CEQ Task Force should develop a consistent position description for NEPA specialists.**

NEPA Specialists should be identical within every agency. Your programmatic review should look to setting a national standard for a position description for those working with NEPA. The federal employment GS system could be used to standardize tiered NEPA work. Specialists—such as hydrologists, geologists, and other “ologists”—could be hired to address those specific fields, but your NEPA people could provide oversight to ensure that work within a national standard was occurring. For instance, some one performing NEPA Specialist work should be able to leave one agency, such as the EPA, and get hired on at DOD [Department of Defense] and the work standards, methods, practices, and requirements would be identical. From agency to agency, all NEPA work needs to be performed the same way. (Individual, Washington, DC - #57.1.40600.C1)

**341. Public Concern: The CEQ Task Force should encourage agencies to fund more specialists at the project level.**

Getting specialist participation at the project is difficult. The documentation necessary to have a decision stand up to legal scrutiny requires solid specialist documentation. We aren't funded to have enough “ologists” on the districts, and the SO “ologists” are often too busy to devote the time necessary to provide specialist input at the project level. (Individual, Plymouth, NH - #13.6.10250.A3)

**342. Public Concern: The CEQ Task Force should encourage agencies to give authority and responsibility to people for decisionmaking as related to their field of expertise.**

I have a general comment that applies to all aspects of land management. It is imperative to give authority and responsibility to people for decision making as related to their field of study.. The individual must hold a degree/degrees from accredited Universities. I could go into great detail but just think of our world if people making decisions were educated for the subjects they are making decisions for. I, by education, am a Forester and was totally fed up with the policies that led up to the devastating fires we now have, AND am currently amused by the people making decisions to alleviate the problem. They want to cut and treat the forests like they are their garden. First problem is there is more fuel for fires growing in a day than we as people can remove in a year. That can be proven by a Forestry process called Mensuration. [Neither] politicians nor firefighters nor pilots can correctly lead others to solve the fire problems. Don't be fooled by a name of RANGER, many people that are called RANGER have no idea what is real in a management sense. Define a job classification, fill it with qualified people, and let them do their job. I wonder how long it would take to get to Mars if I was the team leader determining what we need to get there? (Individual, Capitan, NM - #250.1.10250.A1)

**343. Public Concern: The CEQ Task Force should address agency reliance on in-house expert opinions.**

In Idaho Sporting Congress, 137 F.3d 1146 (9th Cir. 1998), the court stated that where an agency relies on its own expert opinions, it must also provide the underlying data for that opinion. The court explained that a successful challenge to the [agency's conclusions] would entail challenging [the agency expert's] expertise and opinions, yet, this is the type of challenge we have found impermissible under arbitrary and capricious review. Greenpeace Action v. Franklin, 14 F.3d 1324, 1333 (9th Cir. 1992) (finding that an agency is entitled to rely on its own scientific opinion of data). As a result, allowing the Forest Service to rely on expert opinion without hard data either vitiates a plaintiff's ability to challenge an agency action or results in the courts second guessing an agency's scientific conclusions. As both of

these results are unacceptable, we conclude that NEPA requires that the public receive the underlying environmental data from which the Forest Service expert derived her opinion. In so finding, we note that NEPA's implementing regulations require agencies to "identify any methodologies used and make explicit reference by footnote to the scientific and other sources relied upon for conclusions" used in any EIS statement. 40 C.F.R. 1502.24.

Therefore, statements such as, "The calibrated model has been accepted by the BLM as a reasonable representation for observed baseline conditions in the study area" (Phoenix Project FEIS, Appendix C, Response 13-67), are not acceptable, although common. NEPA requires that "agencies shall insure the professional integrity, including scientific integrity, of the discussions and analysis in environmental impact statements." 40 CFR 1502.24.

Both NEPA and the APA require that an agency's determinations be supported by factual information in the decision. "The agency must explicate fully its course of inquiry, its analysis and its reasoning." *Dubois v. U.S. Department of Agriculture*, 102 F.3d 1273, 1287 (1st Cir. 1996). An agency decision must always have a rational basis that is both stated in the written decision and demonstrated in the administrative record accompanying the decision. *Kanawha and Hocking Coal and Coke Co.* The decision must be made in a "careful and systematic manner." The record must demonstrate a "reasoned analysis of the factors involved, made in due regard for the public interest." (Preservation/Conservation Organization, Durango, CO - #523.38-39.10240.XX)

#### **344. Public Concern: The CEQ Task Force should encourage agency personnel to represent agency decisions consistently.**

When a federal agency takes a position on an issue, all of the agency personnel should be fully informed of that decision and represent the agency and its position in a consistent manner. (Mark A. Semlek, Chairperson, Crook County Board of Commissioners, et al, Sundance, WY - #73.3.10250.XX)

#### **345. Public Concern: The CEQ Task Force should encourage agencies to hold employees accountable for their actions.**

Every employee that has encouraged a green law suit should reimburse the public for that law suit, every federal employee who has encouraged contractors to write outcome based documents rather than impartial reviews should be fired, every employee that has meddled at the local government level should be tried and fired, but since that has not even concerned the federal government yet, I don't expect anything now. (Individual, Pioche, NV - #343.2.10250.F1)

#### **346. Public Concern: The CEQ Task Force should encourage agencies to provide well trained editors and publishers to the districts.**

We are very good at being resource managers, we understand the land and how to use science to decide how to manage our resources. However, although most of our resource people and NEPA folks are not trained editors and publishers, we are expected to format and publish professional looking documents. As a district NEPA coordinator, I spend much of my time formatting, publishing, copying, and mailing NEPA documents. We need a well trained person on the district that can take over that end of the job. (Individual, Plymouth, NH - #13.5.10250.A3)

#### **347. Public Concern: The CEQ Task Force should encourage NEPA training for all agency personnel.**

There should be more rigorous training of personnel throughout the agency structure on the NEPA CEQ regulations and guidelines. The training could be done in a classroom setting, or through the use of interactive computer materials. The training should be done periodically and personnel should be able to show their supervisors when they last received training on the NEPA process, regulations and guidance. (Individual, Las Vegas, NV - #359.7.10250.XX)

Basic NEPA Understanding is Needed By Every Employee. The efficiency of the NEPA process could be improved a lot if more employees were trained in just NEPA basics. Recently, I was asked to write a

Decision Memo for a project that “must be implemented quickly”, because the funding for it would be taken back at the end of the FY. When I asked to see the effects analysis and the determination that the project would have no effects to extraordinary circumstances, I was told that there were none. When I asked who was on the ID team (so I could contact them and get their write-ups), I was told that a decision had been made that an ID team was not needed.

Needless to say, my response to this person was “No I won’t write a DM and neither should anybody else”.

My point here is that to a few people, the NEPA process is a needless exercise, relatively meaningless, and a hoop that must be jumped through, in order to get on with “real on the ground work”. (Government Employee/Union, Grangeville, ID - #44.33.10250.XX)

Encourage the Task Force to develop and administer training programs for Civil Servants involved in writing NEPA documents and senior level workshops for managers who approve such documents. (Individual, Saint Paul, MN - #347.2.10250.XX)

CEQ may also take a pro-active role in developing professional NEPA training courses that emphasize a balanced approach to decisionmaking. Workers knowledgeable in the balanced application of NEPA can help proponents through the regulatory maze. Unfortunately, many courses currently offered will focus only on document production and the characteristics of the good document. As discussed, planning for document production is an essential activity for effective and efficient documentation.

A common objective for NEPA training should address practical approaches to early planning. The CEQ could take a leadership role by promulgating balanced course objectives. Further, the CEQ could encourage agencies to seek professional NEPA training courses. A database of available courses would be helpful in this regard.

NEPA training normally does not emphasize the meaning of “significance”. In regards to EAs and the threshold of significance, practitioners are left to experience a sense of significance. CEQ could also take a leadership role by promulgating guidance to help practitioners identify significance thresholds. (Individual, Bainbridge Island, WA - #467.15.10250.XX)

Suggest that CEQ develop or endorse specific training on NEPA to include training on creating EAs and EISs that meet CEQ expectations. (United States Air Force, Washington, DC - #525.27.10250.XX)

## Use of Private Contractors

### **348. Public Concern: The CEQ Task Force should encourage the use of experts and professionals from the private sector.**

As both the federal and state sectors reduce their work forces there is a risk that resource agencies will be caught short-handed and without an adequate number of experts/professionals to review projects. In the Commonwealth of Pennsylvania we have such a growing problem. Our local US Army Corps of Engineers District anticipates retiring three senior level employees this year and losing two positions through budget caps. Our local US Fish and Wildlife Service office has only four people to review over 4,000 actions per year. As the agency responsible for protection of endangered and threatened species it will be extremely difficult for these four people to provide adequate, responsive protection.

On the other-hand, there are numerous private sector professionals with nationally or state recognized credentials capable of evaluating project sites and conducting project reviews.

I do not believe there is anything contained in NEPA that precludes and/or restricts a Federal agency from accepting, promoting or utilizing qualified third parties as part of the NEPA evaluation and review process. A Federal authority must make the ultimate NEPA determination but why can’t the Federal Agencies be encouraged to rely upon and utilize recognized third party experts/professionals?

As more senior level Federal and state workers retire, there is an ever increasing pool of qualified professionals to help improve the NEPA review process. This pool is well supported by private sector

professionals who also have documented experience and credentials. Why can't Federal agencies take advantage of this growing private sector resource?

I have talked to many public agencies, landowners and developers who are experiencing increasing project delays as a result of NEPA requirements in the various regulatory permit and grant programs. These public agencies and land owners/developers understand that resource agency staffs are being used to their limits.

With sincere concerns for the protections of the environmental and particularly threatened and endangered species habitat, they agree that some form of formal recognition for third-party experts and professionals is appropriate. Retaining a third-party professional to conduct the initial site screening and project reviews could take a major burden off of the federal resource agencies, thereby reducing project review time and potential project delays. Using third party experts/professionals would also free limited staffs so that they can concentrate on habitat protection and negotiating mitigation plans. (NEPA Professional or Association - Private Sector, Philadelphia, PA - #345.1-2.10250.XX)

NEPA should be clarified to allow Federal agencies to accept, promote and utilize recognized third party experts/professionals during the NEPA evaluation and review process. Reliance upon third party professionals should be encouraged at every Federal level from Findings Of No Effect, to Categorical Exclusions, to Environmental Impact Statements, and to the issuance of grants, permits and other authorizations. (NEPA Professional or Association - Private Sector, Philadelphia, PA - #345.4.10250.XX)

#### **INCLUDING LOCAL EXPERTS**

It is elemental to hire and utilize the resources at hand. Currently a Federal Employee is offered jobs and Contracts for local positions. This is a terrible and alienating practice as it is a disregard of the local expertise and dramatic available resources at hand. The Volunteers that are dedicated to working in public lands do it because they believe it is best for the public, the future and the prudent. This is becoming a thing of the past. It would be small effort to offer these resources the opportunity to be compensated for their efforts. If a fund were set up to hire local and expert help on a contract basis then it would be easy to find assistance for most projects and get them done rather than waiting for the budget (which is ever shrinking) to allow for the funds available. The importance of involving the public at large in any way cannot be overstated. (Individual, Johnson City, TN - #631.23.10410.XX)

#### **349. Public Concern: The CEQ Task Force should encourage the use of private contractors.**

The time commitment of staff and the cost to do an EIS, and even some EAs, is so great that agencies are being drained of their resources and are unable to accomplish their basic jobs. Similarly, the lack of staff and funding due to NEPA work is often so great that other projects are not allowed to go through the NEPA process.

Recommendation: Use of qualified and knowledgeable third party contractors should become a standard practice for agencies. (Mining Industry, Anchorage, AK - #645.11.10210.XX)

#### **350. Public Concern: The CEQ Task Force should encourage agencies to allow applicants and contractors to prepare Draft EAs and EISs.**

In light of limited federal agency personnel and budget resources, EEI supports allowing applicants to prepare draft environmental impact statements (EISs) in addition to the current practice of allowing applicants to prepare draft environmental assessments (EAs) and third party contractors to prepare draft EISs. 40 C.F.R. 1506.5. (Utility Industry, Washington, DC - #586.8.10230.XX)

#### **351. Public Concern: The CEQ Task Force should discourage the use of private contractors.**

You must ensure that the highest standards are maintained for all aspects of the NEPA process, and that will include not using private contracting for most elements. The FAIR Act notwithstanding, there are

some tasks which the private sector can do but which they should not. Private companies' primary focus is profit, and therefore their objective will be to accomplish the task at minimum standards at the least cost. This does not guarantee an adequate or satisfactory product, even with minimum standards in place. For one thing, private-sector employees are immersed in the culture of profit as the prime objective, which means they may be more likely to skimp or cut corners in their analysis or in their output. Government employees, on the other hand, though they are limited by budgets and cost considerations, are more able to focus on non-monetary results. In addition, as we have seen recently, not all companies are completely honest about their accounting practices and they may not be honest as well about their compliance with technical standards. Therefore each unit of each agency involved in actions that may impact the environment must maintain a group of specialists for evaluating effects and preparing environmental analyses.

The requirement of not hiring for-profit contractors goes for all elements in each stage of the NEPA process, whether it is the research, biological evaluations, monitoring, public participation, content analysis of public comment, documentation, or any other element. The government must continue to assume those tasks which may not be financially profitable but are inherently in the public interest. And certainly private corporations should never be charged with any aspect of their own environmental oversight. (Individual, No Address - #562.5.10250.XX)

#### **DUE TO POTENTIAL CONFLICTS OF INTEREST**

The current use of consultants raises questions about potential conflicts of interest, for in many cases the consultants, although retained by the agency, are paid by the applicant and the applicant therefore retains at least a perceived role in directing the consultant. For instance, most environmental impact statements prepared to support decisions to permit new mining operations or substantial modifications of existing operations are prepared by third parties selected by the agency and the applicant, and paid for by the applicant. However, the relationship does create the appearance, if not the fact, of a potential conflict of interest. (NRC, pg. 74)

There is indeed concern with this relationship, as the preparation of environmental review documents constitutes a major component of many consulting firms' business. Therefore, the degree to which they come to conclusions, and write documents, which successfully get projects permitted, regardless of the scientific validity or forthrightness of document writing involved, will increase the likelihood of their being retained for future work. There is arguably a 'captive industry' of environmental consultants, whose primary business is work paid for by industry, that allows the industry to proceed through the NEPA process as smoothly as possible. (Preservation/Conservation Organization, Durango, CO - #523.37.10240.XX)

#### **Conflict of Interests**

A major concern we have is dealing with conflicts of interests. This concern stems from the fact that many major EISs and Environmental Assessments are farmed out by Bureau of Land Management to industry, who then hires third-party contractors to prepare the NEPA documents. The CEQ regulations require that all such "contractors" shall "execute a disclosure statement prepared by the lead agency, specifying that they have no financial or other interest in the outcome of the project." 40 C.F.R. 1506.5(c).

Using the PRB (Powder River Basin) CBM (Coal Bed Methane) Draft EIS as yet another example, that DEIS was prepared by Greystone Environmental Consulting, with Applied Hydrologists for the produced water impacts. In 2000, industry formed an ad-hoc committee to select the contractor, headed by Western Gas Resources (a major CBM player in the Basin). WGR then told Bureau of Land Management that the group had selected Greystone and Bureau of Land Management gave that selection its approval. Demonstrating who was running the show, WGR, and not Bureau of Land Management, notified Greystone that it had been awarded the contract to write the EIS for 51,000 CBM wells.

The problem? Greystone was selected the primary contractor for the entire EIS. At the same time, according to its website, it "provides environmental services to support all oil and gas industry business units and all phases of oil and gas projects. We facilitate projects by ensuring all regulatory requirements are met and unnecessary obstacles are effectively avoided."

Regarding CBM, Greystone states that it “provides complete environmental permitting and compliance services for coal-bed methane development projects. On both government and/or fee ownership, we assist companies and agencies to plan each project in order to minimize environmental effects and related permit requirements and expedite acquisition of all necessary authorizations.”

This raises the obvious question: if Greystone’s financial interests are directly tied to contracting for the oil and gas industry, and particularly the CBM industry for specific projects, how can it legally meet the NEPA requirements of having “no financial interest in the outcome of the EIS,” when Greystone itself is the primary contractor for the EIS and subsequently, Greystone may end up doing consulting work for the operators awarded drilling permits as a result of the EIS (in addition to the fact that some of these operators actually chose Greystone to write the EIS for them)? In other words, if the EIS were to disclose impacts such that no federal CBM wells would be drilled in the Basin (or less than the full number requested by industry), then this would directly play into Greystone’s financial interests and make them less likely to be objective. As such, they have a direct financial stake in the outcome of the EIS process.

Unfortunately, Greystone is not alone. Applied Hydrology publicly states that for CBM companies in the Powder River Basin, it has “prepared comprehensive Water Management Plans in support of the Applications to Drill on Federal leases. These plans address how produced water will be handled during testing and production at CBM developments to mitigate impacts to stream channels and related structures.” (Applied Hydrology Associates Website). To allow it at the same time to craft portions of the EIS—while it is also working for industry that will benefit by the 39,000 new well approvals after the EIS is completed—seems an obvious conflict of interest. In addition, Applied Hydrology has consulted for Devon Energy and Production Company, and as of early 2002, Devon had over 1,600 CBM permits within the PRB EIS study area.

If Devon will receive additional federal wells on its existing leases as a result of the EIS, on which AHA is doing the consulting for water impacts, and then after the EIS is approved Devon provides consulting work to AHA, how can this company say with a straight face that it has no conflict of interest? Is it not in its, or Greystone’s interests, for that matter, to write the most industry-friendly EIS such that these third-party contractors will continue their existing business ties with these contractors and hire them to do post-EIS consulting work?

We ask CEQ to take a serious look at and provide recommendations concerning the conflict of interests prohibition. Obviously, any contractor that has contracted for and written a portion of the EIS itself, and is also consulting or contracting for industry that has an expectation to obtaining federal approval to do work after the EIS is completed (in this case, tens of thousands of CBM well approvals), has an obvious conflict of interest. In other words, these contractors, if also doing work for the very industry that is expected to do any portion of the resulting action approved by the EIS, have a direct financial stake in the outcome of the EIS process, as their consulting/contracting work for industry will be directly affected by the EIS they have contracted to write for Bureau of Land Management. (Preservation/Conservation Organization, Washington, DC - #475.44-46.10320.XX)

## ID Teams

### **352. Public Concern: The CEQ Task Force should encourage better leadership and management of the ID team by the project decision maker.**

The efficiency of the NEPA process could be improved by an order or magnitude with better leadership and management of the process by the local decision-maker. Way too often, an employee is told that they are the IDT leader for a project, to do the NEPA, find an ID team, and the date the decision must be signed. Thank you, goodbye!

The following are missing and could be written into the implementing regulations:

-Based on the preliminary issues, the decision-maker should choose the ID team, find out if they have time to do the work from their supervisor, assign roles and responsibilities to each team member, and a date the work is expected to be completed.

-Frequent monitoring of the team by the decision maker is essential. Not only for the IDT progress against the project timeline, but for the quality of their work.

-Being a member of an ID team just does not work if its done on an "I'll do it when I have time" mode. ID team meetings are missed. Analysis is late, which many times holds up the whole team, whose analysis is dependent on the other. ID team members must be assigned to the project full time. (Government Employee/Union, Grangeville, ID - #44.37.10250.XX)

### **353. Public Concern: The CEQ Task Force should require adequate leadership training for ID teams.**

#### **TO LESSEN THE TENDENCY TO PROMOTE PERSONAL AGENDAS**

Forest Service personnel involved in the NEPA process often use their personal no-growth, anti-recreation agendas to delay, and to attempt to derail, the NEPA process. Inter-disciplinary team ("IDT") members (which typically include Forest Service members and other agency staff) in many cases do not have the leadership training required to focus on the NEPA requirements (rather than personal agendas) and to disregard any personal views that they may have, [or] the required recreation/resort expertise or ability to separate personal and professional matters and to supervise and oversee the NEPA process in an objective and reasonable manner. As other agencies increase their role in the NEPA process, the need for better expertise on ski resort development will become more pronounced. This is an issue that, in WPSC's view, requires immediate attention. (Special Use Permittee, Eugene, OR - #461.8.10250.XX)

### **354. Public Concern: The CEQ Task Force should address the qualifications of ID team members.**

Recognize that the use of the phrase, Interdisciplinary Team, often ends up being applied to a Grossly Under-disciplinary Team. No offense meant to anyone.

Many Forest Service proposals, for example, have only the name of one biologist on the team, but there is little evidence that the person has the experience required to effectively evaluate real environmental concerns or impacts. Even though there are other biologists that may "review" the comments of the Team biologist, it doesn't mean that they have the needed experience as well. There are many types of biologists and most are not able to judge the quality of work of other biologists. Also, the most qualified contributors for federal proposals, in my opinion, are outside of the employment of federal agencies.

So, how do you make a Team of different individuals appear to be able to adequately "cover" all of the disciplines needed? The Forest Service a) has hiring/management practices that rewards loyalty (which limits lawful compliance and adaptation to public needs for environmental protection), b) hides employee qualifications (what is and what is not their special line of experience as it relates to their assigned tasks), c) hides "who does what, when" for various tasks, d) hides supervisor qualifications (who is supposed to be able to judge the quality of the work done by team members), and e) has never addressed public concerns about Interdisciplinary Team management. In discussing these items with [the] Public Affairs Officer on the Ouachita NF, she replied "if we hired them, then they are qualified." (Individual, Nashville, TN - #513.16.10250.XX)

### **355. Public Concern: The CEQ Task Force should encourage agreement between ID team members regarding project goals and objectives.**

IDT Members' Values and Ethics are Not the Same: Most ID teams are composed of people with a wide range of values and ethics that reflect America. There are conservatives and liberals, Republicans and Democrats, etc. etc. I see this as a positive thing, since it injects checks and balances into the process.

However, I have also seen this bring the NEPA process to a standstill for weeks and even months. Here's an example. Lets say the proposed action is to harvest 5 million board feet of timber, from 300 acres, with 3 miles of new logging road construction. One group from the ID team views this as a project which reduces flammable forest fuels, restores the historic tree species mix, and increases browse for deer and elk. The other part of the ID team views the same project as an unnecessary adverse impact on aquatic species, aesthetics, soils and water quality.

I have seen this happen on many occasions. Specialists begin playing the "gotcha" game by bringing forward irrefutable evidence, science, and data supporting their stance. With this much fundamental

disagreement about the project goals and objectives, is there any surprise that the NEPA process is sometimes inefficient? (Government Employee/Union, Grangeville, ID - #44.30.10250.XX)

### **356. Public Concern: The CEQ Task Force should encourage decision makers to define ID team members' writing responsibilities.**

Define Writing Responsibilities. Writing draft and final documents is an especially sticky issue, especially if the team knows that a writer-editor has been assigned to the project as part of the ID team. The writing responsibilities of each ID team member should be spelled out in writing by the decision-maker early in the process. This might include: specialist reports, field visit diaries and findings, certain draft and final EA/EIS chapters, sections of the decision document, etc., etc. (Government Employee/Union, Grangeville, ID - #44.36.10250.XX)

### **357. Public Concern: The CEQ Task Force should encourage agencies to improve the makeup, training, and expertise of staff teams working on ski area NEPA issues.**

The makeup, training, and expertise of staff teams working on ski area NEPA issues can be greatly improved. Inter-Disciplinary Team (IDT) members (including USFS and other agency staff) can use their personal no-growth, anti-recreation agendas to delay the NEPA process. As a result of these personal agendas, the agency that IDT members supposedly represent can have multiple voices. The "specialists" (e.g. biologists, hydrologists) on the team often make repeated and last minute calls for additional studies and analyses that further delay the process. IDT leaders are not provided the leadership training they need to steer the process. Overall, team members do not have the requisite recreation/resort expertise-particularly given the high rate of employee turnover and reassignment. As other agencies increase their role in the NEPA process, the need for better expertise on ski resort development and our unique issues becomes more pronounced. Training, directives, and shifts in resources are needed to address these staffing issues and improve the implementation of the NEPA process. (Recreational Organization, No Address - #19.12.10250.A1)

## **Decisionmaking Authority**

### **Summary**

This section includes the following topics: Decisionmaking Authority General, Role of Governments, Role of Agencies, Role of Interest Groups, and Role of Other Groups/The General Public.

**Role of Governments** – Some respondents encourage the Task Force to recognize the important role state governments play in NEPA planning processes, and the importance of NEPA planning processes to states. The state of Tennessee remarks that "NEPA has proved to be the most significant process available for state input to major federal agency decisions in Tennessee." One transportation representative requests that the Task Force encourage states to make a voluntary commitment to environmental stewardship by going "beyond the minimums required by law."

With respect to the role of elected officials in general, there is some disagreement. Some maintain that agencies should give more weight to elected officials when reaching final decisions, while others insist that agencies should not cater to local politicians.

**Role of Agencies** – Respondents suggest that the Task Force should define the key roles and responsibilities of agencies involved in the NEPA process. Others suggest that each federal land management agency should "develop an internal accountability process for responsible management and for ensuring designated program tasks are accomplished in an efficient, cost-effective and timely manner."

**Role of Interest Groups** – The role of interest groups is an issue of great concern to many respondents. Some advise agencies not to cater to special interests in general. One individual states simply, “Don’t let special interests or single issue organizations dictate poor policy in the face of common sense.” Beyond this concern over the role of interest groups in general, respondents speak specifically to the role of corporate interest groups and environmental interest groups.

Some express concern that corporate interests are exercising undue influence over the NEPA process. One individual remarks, “If regulations are to be altered, they should be simplified in such a way that there are fewer loopholes for certain ‘special interests.’ Easing regulations is exactly the opposite direction from where we should be heading as a nation. Let those who would seek to make money via the easing of regulations find another way to earn financial profit.” Others believe the Task Force should address the degree to which corporate and other special interests are allowed to dictate the terms of consultation.

Others express concern that environmental interests are using NEPA to drag out the process and delay action. One wood products industry representative writes, “It is increasingly common for entities opposed to the original mission of the National Forests—the provision of timber to various classes of wood users—to take advantage of NEPA to drag out the process of analysis and decision making to such a point that little is ever accomplished.” Some assert that environmental interest groups have it as their goal to eliminate multiple uses on public lands, and urge the Task Force to prevent that from happening.

**Role of Other Groups/The General Public** – Respondents commenting on the role of other groups in decisionmaking suggest that “the only way NEPA analysis can be strengthened is to get it out of agency hands and into unbiased, non-agency hands.” Some suggest that the Task Force should grant decisionmaking authority to scientists and conservationists. A few comment on the role private citizens should play—some offer that NEPA should clearly state the important roles that citizens have in the NEPA process, while others maintain that citizens should never be considered as special or competing interests.

## Decisionmaking Authority General

### 358. Public Concern: The CEQ Task Force should encourage the CEQ and agencies to regain control over defining the requirements of NEPA.

#### RATHER THAN ALLOWING THE COURTS CONTROL

CEQ and the action agencies must regain control over defining the scope and requirements of NEPA analyses. One of the major problems with the NEPA process is it is being run by the courts in a piecemeal and a case-by-case basis. The statutory provisions of NEPA are very broad, with plenty of room for agency interpretation. Instead of taking advantage of this opportunity, the agencies have let court decisions from different parts of the country dictate the process on a piecemeal basis. The result is an uncertain process in which agency personnel doing NEPA work are not sure what the requirements are. As a result, agencies often do much more analysis than is necessary, or spend more time trying to insulate their work from judicial attack. They become mired in the process. The Forest Service estimates that planning and assessment consumes 40 percent of direct work, at a cost of \$250 million. The agency also estimates it could re-direct \$100 million to on-the-ground work with more efficient processes. The Forest Service is not alone. (Business, Washington, DC - #403.8.10300.XX)

## Role of Governments

### **359. Public Concern: The CEQ Task Force should consider that NEPA has proved to be the most significant process available for state input to major federal agency decisions.**

I am inherently suspicious of potentially expensive and time-consuming bureaucratic planning processes. I do not believe in planning or processes for the sake of their existence. I do, however believe in the substance of knowing what alternatives are available, having the best information to select an alternative and having the opportunity to gauge public support

NEPA has proved to be the most significant process available for state input to major federal agency decisions in Tennessee. I can think of no better example of federalism and state input to executive branch actions. Unpredictable political channels, federal rule making and congressional hearings are not direct links to federal agency managers and their decisions. (State of Tennessee, No Address - #543.2.10310.XX)

### **360. Public Concern: The CEQ Task Force should encourage states to make a voluntary commitment to environmental stewardship.**

#### **BY GOING BEYOND THE REQUIRED MINIMUM**

To fully appreciate how far the transportation community has come with respect to environmental stewardship, we submit the definition and goals as presented by American Association of State Highway and Transportation Officials in their Transportation Environmental Stewardship Program. One of the key points that the American Association of State Highway and Transportation Officials makes is that environmental stewardship is a voluntary commitment to go beyond the minimums required by law. It can only succeed if states embrace the concept in their own unique ways. It cannot be standardized, nor can it be embodied in a new set of requirements, without defeating the whole purpose of inducing a culture change that encourages going beyond bare minimums. (Transportation Interest, Washington, DC - #472.9.10310.XX)

### **361. Public Concern: The CEQ Task Force should encourage agencies to give more weight to elected officials when reaching final decisions.**

The whole NEPA process eventually culminates in the action of one individual; the decision maker, the person who signs the Finding of No Significant Impact or the Record of Decision. However, NEPA does not mandate that only environmental impacts be taken into consideration. Other factors such as economic and “political winds” could be given more weight in reaching the final decision. Therefore, the ultimate weapon of the disenchanted “public” is their elected officials and not NEPA—the law, the regulations, or the documents. (Individual, Albuquerque, NM - #432.4.10310.F1)

### **362. Public Concern: The CEQ Task Force should advise agencies not to cater to local politicians.**

Resistance from small minded local politicians unable to expand their mindset to encompass a green view of our environment, preferring to attempt to pave our forests and replace our woodlands with more and more strip malls and urban sprawl. (Individual, Ludlow, MA - #243.1.10310.A2)

## Role of Agencies

### **363. Public Concern: The CEQ Task Force should consider that U.S. agencies should set an example for the rest of the world.**

Our government agencies among other things, should set examples for the rest of the world on how to carry out effective negotiations, not get bogged down due to party-lines or other interests. (Individual, Lynnwood, WA - #175.2.10310.F1)

**364. Public Concern: The CEQ Task Force should define the key roles and responsibilities of agencies involved in the NEPA process**

Transforming the culture is not easy, but it must be done. How can this be accomplished? In providing leadership and policy direction with respect to federal agencies' environmental oversight and regulatory activities, the CEQ can have an enormous impact in defining the key roles, responsibilities and perhaps most importantly, what is expected of the agencies involved in the process. (Business, Washington, DC - #470.4.10310.XX)

**365. Public Concern: The CEQ Task Force should require agencies to develop an internal accountability process for responsible management.****AND ENSURE THAT DESIGNATED PROGRAM TASKS ARE ACCOMPLISHED IN AN EFFICIENT, COST-EFFECTIVE AND TIMELY MANNER**

Sadly, a growing problem within the federal land management agencies is a lack of commitment to their programs and to accomplishing important and routine tasks associated with their programs. Therefore, it is essential for each federal land management agency to develop an internal accountability process for responsible management and for ensuring designated program tasks are accomplished in an efficient, cost-effective and timely manner. These include meeting program goals and objectives. There also needs to be consistency among the agencies' accountability systems so that progress can be monitored to determine whether they are progressing in the achievement of their management goals and objectives. As such, indicators of success need to be established which provide for explicit and quantitative standards by which actions can be planned, expectations evaluated and accomplishments measured. We believe that an accountability system would help make the federal land management agencies more productive and cost effective. We do not recommend congressional oversight of such accountability programs. (Oil, Natural Gas, or Coal Industry, Denver, CO - #545.25.10300.XX)

**366. Public Concern: The CEQ Task Force should give land managers the authority to act.**

The NFS and BLM forest managers must have the authority to act. They cannot be responsible for the forest if they don't have the authority to act. This should be the objective of NEPA revision. (Individual, Minneapolis, MN - #404.8.10310.XX)

## Role of Interest Groups

**367. Public Concern: The CEQ Task Force should advise agencies not to cater to special interests.**

According to the notice in the Federal Register, the Council's NEPA Task Force is actively seeking opportunities to improve the coordination of NEPA processes between all levels of government and the public. While I am convinced that meaningful reform in the execution of the NEPA is sorely needed, I have a sneaking suspicion that the work of this Task Force will only serve to compound existing systemic problems and further alienate an otherwise interested public. The objectivity and integrity of the NEPA process have been tarnished by the eagerness of federal agencies to cater to vested interests and the habit of submitting unconditionally to the demands of "sovereign" tribal governments. (Individual, Farmington, NM - #91.1.130.XX)

Don't let special interest or single-issue organizations dictate poor policy in the face of common sense. If they want the issues to go to a vote, there are referendums to be drafted. (Individual, Washington, DC - #60.4.10320.F1)

According to notice in the Federal Register, the Council's NEPA TF is actively seeking opportunities to improve the coordination of NEPA processes between all levels of government and the public. While I am convinced that meaningful reform in the execution of the NEPA is sorely needed. I have a sneaking

suspicion that the work of this TF will only serve to compound existing systemic problems and further alienate an otherwise interested public. The objectivity and integrity of the NEPA process have been tarnished by the eagerness of federal agencies to cater to vested interests and the habit of submitting unconditionally to the demands of “sovereign” tribal governments. (Individual, Farmington, NM - #459.1.130.XX)

#### **CORPORATE INTERESTS**

While this is not my area of expertise, I do know that the regulations which currently exist are in place because developers have, as their number one priority, making money. Since developers are businesses, I suppose this goes without saying. However, it does not go without saying that business interests must be balanced out by the interest of the greater public, an interest that is no longer served by environmental destruction—no matter what the form. Until the people of this country realize that “growth” (i.e. of business, markets, development, etc.) is not always good, quality of life for ALL will continue to be threatened. (Individual, San Diego, CA - #302.1.10320.XX)

#### **368. Public Concern: The CEQ Task Force should eliminate loopholes in regulations for special interest groups.**

Bureaucratic regulations may be cumbersome, and no doubt they could be streamlined; however this cannot be at the expense of the greater public good. If regulations are to be altered, they should be simplified in such a way that there are fewer loopholes for certain “special interests.” Easing regulations is exactly the opposite direction from where we should be heading as a nation.

Let those who would seek to make money via the easing of regulations find another way to earn financial profit. There are infinite ways to make money: To those who would like things to return to how they were in past decades, we must say, “Put that ‘American’ ingenuity to work and find such other ways—but never at the expense of the public interest.” (Individual, San Diego, CA - #302.2.10320.XX)

#### **369. Public Concern: The CEQ Task Force should address the degree to which special interests are allowed to dictate the terms of consultation.**

While it may fall outside the scope of the NEPA Task Force’s examination, the degree to which special interests developers and the Utes have been allowed by the Bureau of Reclamation to dictate the terms of consultation under Section 7 with the Fish and Wildlife Service in order to manipulate the Endangered Species Act in the promotion of A-LP [Animas-LaPlata project] and the re-operation of Navajo Dam, is a far-reaching matter great import. (Individual, Farmington, NM - #91.10.10320.XX)

#### **370. Public Concern: The CEQ Task Force should advise imposing larger penalties on corporations that violate environmental regulations.**

I think that corporations that make violations should be fined much larger amounts than what is presently administered, and for each time a corporation has a repeat violation the fine rate that is paid would go up quite significantly. This eventually would get the point across that it is absolutely not okay to conduct business as usual while desecrating the environment.

The problem we have now is that the fines are just too low and corporate executives aren’t held accountable for the crimes they commit on the environment. There are some companies that have literally hundreds, if not thousands, of routine violations. So why do they keep doing it? Simply because they can afford to. Many corporations seem to be in serious denial of how essential our natural ecosystems are for maintaining a healthy quality of life on this planet.

So let’s be smart about this and significantly increase fines and jail terms for our corporate executives. Let’s also use these fines to directly improve the environment and create more jobs. Respecting the Earth needs to be the new standard in the business world. I believe that we as a nation cannot afford to do otherwise. (Individual, No Address - #285.2.70500.XX)

**371. Public Concern: The CEQ Task Force should not allow special interests to use NEPA to drag out the process.**

It is increasingly common for entities opposed to the original mission of the National Forests—the provision of timber to various classes of wood users—to take advantage of NEPA to drag out the process of analysis and decision making to such a point that little is ever accomplished. HHP, Inc. and the NHTOA believe that NEPA is contributing to the “analysis paralysis” problem plaguing the professionals charged with managing the WMNF and highlighted by U.S. Forest Service Chief Dale Bosworth in testimony before Congress on June 12, 2002. (Timber or Wood Products Industry, Concord, NH - #24.1.10200.XX)

The best quote I have heard recently is “analysis paralysis” especially as it relates to managing our national forests. The same people who complain about the forest service having below cost timber sales are the ones abusing the rules and regulations creating costly delays, lawsuits, etc. all adding up to creating the so-called below cost timber sales.

Give the forest service the tools to manage the forest and responsible timber harvesting by promulgating a set of rules that cannot be manipulated. (Gene G. Chandler, Speaker, New Hampshire House of Representatives, Concord, NH - #64.2.10200.XX)

**372. Public Concern: The CEQ Task Force should not allow special interest groups to eliminate multiple uses on public lands.**

In a meeting on May 29, 2002, Forest Service Officials determined that an Environmental Impact Statement would now be the appropriate level of NEPA analysis required to reissue High Mountain Heli-Skiing's (HMH) 5-year special use permit.

Although scoping had just been completed for an EA (Environmental Assessment), the decision to change the level of analysis was deemed to be necessary in light of some of the comments received and the anticipated appeals by local special interest groups. Scoping is the process by which the Forest Service as the lead agency solicits input from the public and interested agencies on the nature and extent of the issues and impacts to be addressed in the analysis and the methods by which they will be evaluated.

There has been very little opposition to our permit being reissued, except from our local special interest groups. The Greater Yellowstone Coalition (GYC) and Jackson Hole Conservation Alliance (JHCA) have made their goals clear—put heli-skiing out of business for good. This past spring the GYC and JHCA sued the Forest Service, naming HMH in their suit. They were seeking an injunction to stop heli-skiing, claiming the appropriate NEPA analysis had not been completed before issuing us a temporary one-year permit to operate last winter. The case has been dropped temporarily, as it is a moot point, now that our season has ended and the analysis is well underway.

Make no mistake, the agenda of these special interest groups would be to shut down all FS permittees and eliminate multiple use on our public lands. They use the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA) to create gridlock within the Forest Service and hold the FS and Permitted Outfitters hostage. For the price of a postage stamp, they can demand all these studies be done and they know that it is the permittee that will have to pay for them.

If they can't put us out of business legally they will try to put us out of business financially. Simply put, it is economic blackmail.

What we think will happen? The EIS will clearly show no significant impact. I'm sure these special interest groups think that we are out there chasing lynx around on skis. But, as an experienced heli-skier, you'll agree how absurd it is to spend this much time and money to study a bunch of animals that simply aren't there. Once the Record of Decision is released they will file their appeals. When they don't get their way they will sue. The effect would be to stall the process until we are into our ski season and then seek another injunction to stop heli-skiing. If it comes to it, there is no precedent for a judge to allow our business of 26 years to close while this process proceeds. Please do not let any of this affect your plans to visit us this winter. Should this process be delayed, the FS has indicated that they will issue another

temporary permit for us to operate this ski season. (Special Use Permittee, Teton Village, WY - #554.2-3.10320.XX)

**373. Public Concern: The CEQ Task Force should advise discontinuing government-funded environmental agencies.**

All environmental agencies funded by the government should be discontinued or abolished. (Individual, North Richland Hills, TX - #143.1.70500.F1)

**374. Public Concern: The CEQ Task Force should advise holding environmentalists accountable for their activities.**

The Environmentalists are morally and ethically responsible for the destruction of millions (billions) of acres of forest, public and personal property burned, the billions spent fighting fires, and most importantly, lives lost fighting fires. They should be held accountable for their ignorance of the predictable result of banning responsible logging and the costs that have resulted. Our society must hold fanatical groups responsible for the results caused by their activities. What has happened to “majority rules?” (Individual, Hartville, OH - #132.1.70500.F1)

## **Role of Other Groups/The General Public**

**375. Public Concern: The CEQ Task Force should grant decisionmaking authority to unbiased, non-agency third parties.**

The only way NEPA analysis can be strengthened is to get it out of agency hands and into unbiased, non-agency hands. NOT NATURE CONSERVANCY OR OTHER PARTNERS IN CRIME OF THE AGENCIES, BUT truly third party disinterested parties that aren't biased against rural lifestyles, cattle and farming.

If not, NEPA will continue to be the abysmal failure it is today. (Individual, Pioche, NV - #337.1.10300.C2)

**376. Public Concern: The CEQ Task Force should grant decisionmaking authority to scientists and conservationists.**

James Watt was wrong and we threw him out. The Sierra Club was also wrong so we stopped listening to them. Please ignore the timber and mining interests (like Watt's old organizations) and also the Sierra Club's view at this time. Listen instead to the scientists and conservationists (as opposed to the profiteers and preservationists) and really beef up the beef first, then you will have credibility for cutting out the fat! It's about CREDIBILITY and so far, your admin is missing that on environmental issues. Here is your chance to do the Texas thing and make more beef! (Individual, No Address - #268.1.10320.XX)

**377. Public Concern: The CEQ Task Force should require that NEPA clearly state the important roles that citizens have in the NEPA process.**

NEPA should clearly state the important roles that citizens have in the NEPA process as well as in the efforts to protect the environment.

Here are some important aspects that are critical for citizens:

To request information about any phase/procedure/task/data related to a proposal.

To learn about and effectively participate in an open planning process.

To learn what the internal and external experts have to say about planning needs and certain aspects of proposals.

To help protect the physical and biological elements of the environment by lawful means.

To impress procedural and documentation standards where they are absent or poorly thought out.

To reject elements of policy statements, conclusions, assumptions, etc. for a proposal or as a basic component of a proposal.

To have a means to stop the creation of project proposals based on certain criteria or local guidelines.

To stop proposals and the implementations of proposals by writing letters.

To file appeals and lawsuits when bad decisions are made.

Opposition to federal proposals and policies is, at times, acceptable and appropriate behavior. (Individual, Nashville, TN - #513.4.10330.XX)

### **378. Public Concern: The CEQ Task Force should never consider citizens, or groups of citizens, to be special interest groups or “competing interests.”**

Opposition to federal proposals and policies is, at times, acceptable and appropriate behavior. Citizens, or groups of citizens that act to try to protect the environment should never be considered as a special interest group or as a “competing interest.” (Preservation/Conservation Organization, Spokane, WA - #655.3.10330.XX)

## **Public Involvement**

### **Summary**

This section includes the following topics: Public Involvement General, Agency Outreach Efforts, Public Meetings, Comment Periods, Effective Public Comment, Agency Use of Public Comment, and Collaboration.

**Public Involvement General** – Numerous respondents request that the Task Force encourage adequate public involvement. One individual says simply, “Involve the affected community early, substantively and continuously throughout the planning and project review process.” Respondents maintain further that the Task Force should encourage the early involvement of both regulatory agencies and the public without imposing unnecessary costs or burdens.

Similarly, a number of respondents state that the Task Force should not weaken NEPA public involvement requirements. One individual asserts, “I oppose any reforms of the current system which would reduce the opportunities for citizens or ‘speed up’ the development of a project as a consequence of reduced citizen involvement.”

Respondents request that the Task Force encourage agencies to improve stakeholder participation by clarifying the basis for it and by encouraging early involvement of key stakeholders. Others maintain that the Task Force should encourage involvement by independent scientists. Some request that the Task Force implement a performance based acknowledgement system to utilize interested parties in a constructive manner. Moreover, some argue that “the NEPA process should require the agencies to seek human dimensions assistance from specialists in the private and/or academic community.” Others suggest that the Task Force formalize a plan to avoid hindrances to effective public participation.

**Agency Outreach Efforts** – Many respondents who address this topic assert that the Task Force should require agencies to adequately notify the public of proposed actions. One individual writes, “Specifically, improvements could be made in notifying citizens, locally, regionally, and nationally, of proposed projects so that comments could be gathered from those most interested/affected.” Other respondent’s suggestions for adequately notifying the public of proposed actions include adequately notifying all parties of scoping, notifying nearby residents, and making better use of mailing lists of potential stakeholders and interest groups.

Other respondents suggest that criteria be established to determine which local governments to contact and how contact should be established. In much the same vein, respondents suggest that

the Task Force encourage the use of a central point of contact when forwarding NEPA documents. One individual asserts that to achieve this the Task Force should require federal agencies to follow the example set forth by the Department of Energy, while another suggests the use of state clearinghouses.

Other respondents request that agencies provide the public with convenient access to information, with one respondent suggesting that agencies distribute free copies of environmental documents to each person who submits scoping comments.

**Public Meetings** – Respondents suggest that the Task Force require meetings to be held at appropriate locations. One individual writes, “NEPA action meetings must be scheduled in the immediate area of the proposed action.” Several respondents, however, feel that public meetings, as they are presently formatted, do not meet the needs of the public; these respondents request that agency personnel interact with meeting participants at public meetings and use public meetings as a venue for explaining the proposed action and accepting comment.

**Comment Periods** – Some respondents believe that the Task Force should require adequate comment periods. Notes one individual, “Allow the public ample response time so they won’t continuously ask for an extended comment period.” Along the same lines, some request specific time frames for comment periods.

**Effective Public Comment** – A few respondents say it would be helpful for the Task Force to provide the public with suggestions on how to effectively participate in the commenting process. Some offer that the public should be encouraged to “provide site-specific concerns and issues” when responding to proposals.

**Agency Use of Public Comment** – Respondents address the general use of public comment, analysis of public comment, and the form of comment submission. Of those who address the general use of public comment, some request that the Task Force require agencies to provide “an immediate agency response acknowledging receipt of the comment . . . within five working days.” Others allege that their comments are ignored and urge the Task Force to require agencies to address all comments. Along the same lines, other respondents request that the Task Force encourage agencies to demonstrate a sincere interest in public comments and concerns by considering public opinion as seriously as agency opinions.

Of those who address the analysis of public comment, some maintain that agencies ought to weigh comment differentially according to who submits it. Some believe agencies should give greater weight to comments from residents and local and state elected officials. One individual suggests, “Preference, or weight, must be given to people directly affected by NEPA projects, i.e. those who live in the affected county, resource area, socioeconomic prevailing conditions. Particularly, comments and issues of importance to locally elected officials must be given more weight than those from unelected persons/groups.” Other respondents, however, believe agencies should respect comments from all citizens, not just local residents. One individual, for example, insists that “all Americans deserve to know about all American resources, and how they are managed.”

Some suggest that the Task Force should encourage agencies to require voter consensus prior to implementing any regulatory measures. To accomplish this, respondents suggest the use of an objective third party to report the level of support. On the other hand, some request that the Task Force should “explicitly [advise] that NEPA is not a ‘vote.’”

Others suggest that guidelines be developed for handling eleventh hour comments, and that comments and appeals that are out of scope of the project be dismissed. One individual maintains that the Task Force should encourage agencies to analyze substantive comment separately from statements of preference or personal values. Finally, one respondent feels that the Content Analysis Enterprise Team does not analyze public comment fairly.

Those who address the form of comment submission generally express frustration over the growing submission of form letters in response to agency proposals. According to these respondents, mass submission of form letters represents an attempt by some groups to treat the NEPA process as if it were a vote, adds nothing substantive to the process, and only adds to the time required to analyze comment. Thus some feel the Task Force should revise the process by which agencies treat faxes, e-mails, and form letters. Some request that the Task Force prohibit the submission of comments through electronic means altogether.

**Collaboration** – Respondents suggest that the Task Force should encourage agencies to cooperate with all interested parties. One individual remarks “Actual consultation, sitting down and talking about impacts and what to do about them—would go far toward simplifying and demystifying the NEPA process, building public understanding and support, and resolving conflicts short of litigation.” Other respondents support “a revision of NEPA in order to foster improved coordination between government agencies and the public.” In much the same vein, some respondents suggest that the Task Force should emphasize stakeholder collaboration to ensure that significant issues are resolved early in the NEPA process. Respondents suggest that one way to accomplish this would be to change “the NEPA paradigm from confrontation to collaboration,” with the results being “better environmental decisions for all stakeholders.” Some request that the Task Force impose penalties on collaborating participants who choose to appeal or litigate, while others request that agencies implement a process to resolve disputes.

## Public Involvement General

### 379. Public Concern: The CEQ Task Force should encourage adequate public involvement.

Public involvement is good and important as long as it isn't plain old monkey wrenching. We have to figure a way to protect ourselves from this. (Individual, McCall, ID - #32.1.10400.A7)

We are concerned that any changes to NEPA—this country's premier public involvement statute—will have adverse repercussions that will further delay the implementation of environmentally beneficial projects. As the Clinton Administration learned when it exempted logging projects from environmental review in 1995, cutting the public out of land management decisions is poor political and social policy, and leads to more gridlock. We hope that this Administration will not make similar mistakes. (Preservation/Conservation Organization, Vancouver, WA - #103.19.10400.F1)

The Bush Administration proposes to cause grievous harm to the environment by gutting one of the most citizen-friendly involvement laws in existence. NEPA allows a citizen to ask questions, hold officials accountable, and help stop many wasteful taxpayer funded projects. As the owners of the public lands, the public has a right to an honest analysis, assessment, and evaluation of how these assets are affected by proposed projects that often benefit private interests with subsidized public money. (Individual, San Jose, CA - #437.2.10330.XX)

NEPA helps stop many wasteful taxpayer funded projects. By telling the truth NEPA allows citizens to shine the light of honesty and responsibility onto agencies and public officials. Since the public are the owners of their government and public lands the public has a right to an honest analysis, assessment, and evaluation of how these assets will be treated, environmentally, by proposals that often benefit private interests with subsidized public money. (Preservation/Conservation Organization, Missoula, MT - #624.15.10330.XX)

Involve the affected community early, substantively and continuously throughout the planning and project review process. Since so much delay is attributed to local controversy and lack of support, it makes sense to design projects with significant public participation in order to build support and improve acceptance. Promote more public involvement in transportation plans. (Preservation/Conservation Organization, Washington, DC - #535.45.10400.XX)

#### **BY ENCOURAGING AGENCIES TO BE RESPONSIVE TO THE PUBLIC**

We have experienced certain federal agency discretion in deciding who the field office considers "interested public." Regardless of our preferred methods of contact, the system breaks down if the responsible officials cannot, or are not held accountable if the public, local or state government have accomplished what is required of them, but then are ignored or sometimes delayed by the agency or field office. (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.17.10400.A5)

#### **BY ENCOURAGING EARLY INVOLVEMENT OF BOTH REGULATORY AGENCIES AND THE PUBLIC**

The Task Force should recommend that, once an agency begins the NEPA review process for a project, early and substantive involvement of both other regulatory agencies and the public occurs. One of the major causes of NEPA-related delays is that agencies take a top-down approach in which they use the Draft and Final EISs merely to justify a particular preferred project to the public and regulatory agencies. This approach creates delay because the agency has often overlooked environmental impacts and public opposition in designing its project, and therefore drawn-out battles ensue over the proposal.

A more effective approach to NEPA implementation would seek to replace this top-down approach with an approach that involves early and substantive involvement of both regulatory agencies and the public in the NEPA process. This would enable the regulatory agencies and public to steer agencies away from environmental and other problems earlier in the process, and help craft a proposal, that is much less likely to engender significant opposition or be mired in substantial debates over environmental impacts. By creating an approach that encourages the development of better proposals to begin with, such changes to NEPA implementation could reduce delay without sacrificing thorough environmental review. This recommendation is relevant to Study Area B, in that the Task Force could recommend substantive inter-governmental collaboration on NEPA issues early in the process.

It is also relevant to Study Area F, as the Task Force could recommend that agencies develop other NEPA implementation procedures that provide for substantive public involvement at the planning stage. (Preservation/Conservation Organization, Chicago, IL - #87.16-17.10200.XX)

Environmental Law and Policy Center and CNT recommend the following improvements to the NEPA implementation process:

**Early Substantive Involvement:** Once the NEPA process begins, both the public and regulatory agencies should have early and substantive involvement, so that the NEPA process is truly an open exchange of ideas designed to achieve the best results, rather than simply a top-down way for an agency to justify its own preferred project. (Preservation/Conservation Organization, Chicago, IL - #87.3.10400.XX)

Having been involved in the NEPA process in the West for the last 17 years, I have seen the NEPA process when it has worked well and when it has worked not so well. In its purest sense, NEPA's intent was, and continues to be, to provide decision makers with more and better information to make better decisions. The process is sound and time tested. When the process has not worked, one area that clearly has affected this is the lack (of desire) of extensive and upfront (and ongoing) public and agency input in a cooperative environment. Still to this date, the lead agencies and project proponents fail to see the benefit of this in fact, in many instances, it seems there is a fear factor about letting agencies and the

public know what is going on. This inevitably leads to more energy expended in a confrontational setting at the end of the process; where it is highlighted in the press! When the process has worked well is when the same amount of energy is expended upfront. The results are commonly very positive and undertaken in a cooperative setting. And I can identify many such examples. (Individual, No Address - #223.1.10430.XX)

In general, NEPA is more effective where it is used to invite and engage the public in a process where they are involved in the planning of their government's actions. The people are in the best position to tell their government what the effects will be on their environment. The government has a duty to listen to the governed. NEPA provides the government with the tools to do that.

If any changes are made to NEPA, those changes should be to invite and engage the public earlier into the decisionmaking process. Public engagement should occur when an agency first becomes aware that interest groups are seeking federal action which could have an environmental impact. The NEPA process should not wait until the private interests urging governmental action are already entrenched in the project. (Dennis J. Kucinich, United States Representative, State of Ohio, Lakewood, OH - #567.4.10400.XX)

The successes of early planning and proponent involvement suggest guidelines for continued procedural improvement. The decision maker must be open to environmental input. During these discussions, a trusting atmosphere appears which is a first step toward quality environmental planning. These factors help simplify the preparation of the Environmental Document and allow decision makers to focus on real issues. (Individual, Bainbridge Island, WA - #467.8.10430.XX)

#### **WITHOUT IMPOSING UNNECESSARY COST OR BURDEN**

There is a need for more effective involvement in the NEPA process by state and local governments, Indian tribes, and the public. We commend CEQ on its recent memorandum which attempts "to ensure that state, tribal and local governments are included as 'cooperating agencies' whenever appropriate during federal environmental reviews." (See CEQ memorandum of January 30, 2002, and related attachments). However, in addition to recognizing the benefits of enhanced cooperation among parties, CEQ should ensure that such involvement does not result in unnecessary cost or burden. It is our experience that it is preferable to have an all inclusive process from the outset, rather than create a situation where stakeholders are in a position to claim they lacked access to the process and are positioned to raise procedural objections at a later date. Our members would rather invest this energy and effort at the outset and conduct a comprehensive process from the beginning. (Utility Industry, Washington, DC - #474.6.10400.XX)

#### **TO MAINTAIN THE INTEGRITY OF THE NEPA PROCESS**

The NEPA is about a local, site specific process to be used to evaluate important data prior to making a decision. It involves the sharing of information with the public, doing diligent and objective work, and a substantive effort to formulate a decision that is consistent with the need for environmental protections as well as maintaining public trust. How can the CEQ or the federal agencies make any claims about the success of NEPA when they have not sought to audit the NEPA process at the most basic interface? Do appeals of agency decisions reflect problems with local, site specific processes or the evaluation of important data? How would one know? Don't look, don't tell? Also, what happens to our goal of protecting the environment when federal agencies "pollute" the NEPA process in order to dress up their rationalizations? What happens when an agency yahoo undermines the NEPA process to achieve his personal desires? Who has been provided to ordinary citizens to oversee the integrity of this process?

For our society, there are important answers discovered during careful planning. The only way to reach those answers is to do careful planning within an environment of effective two-way communications. It is not productive for the Administration or for federal agencies to unilaterally decide that NEPA is not important or that it needs to be weakened at this point in time. (Individual, Nashville, TN - #513.3.10430.XX)

### **380. Public Concern: The CEQ Task Force should not weaken NEPA public involvement requirements.**

Regulations should be clarified to ensure that the NEPA process is triggered as soon as possible in the federal decision-making process. One major source of process entanglement, appeals, and litigation is the realization by affected parties that NEPA has been used retroactively to justify decisions that had, in actuality, already been decided by a small number of senior staff. By revising the NEPA regulations to standardize the “early and often” axiom for public involvement, the concerns of effective parties can be better resolved, public input can be more meaningfully used in formulating project alternatives, and litigation spawning disputes can be headed off before they erupt into the judicial and political spheres.

Any moves by the NEPA task force to reduce, or make less meaningful, the public involvement process will only spawn more litigation, thereby worsening the “process gridlock” the Administration has publicly decried. A similar “early and often” revision should also apply to consultations with the Fish and Wildlife Service and other partner agencies, so that biological opinions and other documents do not abruptly land on the desk of the lead agency, pouring cold water on its plans, and creating intense political pressure to suppress such documents. (Individual, Logan, UT - #383.2.10400.XX)

In a democracy, where tax payer dollars support federal land management agencies and the federal government, the NEPA process insures the right of the public to be heard regarding environmental issues. Although there are ways [in] which the NEPA process could be made more “user friendly” and accessible to the public, the general process must not be compromised in any way.

The North West Forest (NWFP), as now being implemented, has come out of this process and is an excellent example of a Programmatic document which allows agency action projects to proceed with citizen oversight. (Individual, Rogue River, OR - #382.2.10400.XX)

The history of problems with NEPA in the Forest Service stems from two decades of ignoring public input, rarely considering the no-action alternative as a viable choice and allowing strong personal wills to dominate the process. Finally in the 1990s we saw true efforts to collaborate, listen to the public and make balanced decisions. And now we are surprised that the public still doesn't feel all that trusting. It's not the system that's broken. It's the lack of trust and credibility.

Efforts to cut the public, and even local decision-makers, out of the process by this administration is visible at every turn. The House Energy Bill is just one example. Altering the ability of the public to participate meaningfully in land management decisions, moving decision-making to the political appointees and relaxing the scientific rigor of NEPA is not the way to solve problems on public lands. As a matter of fact, it's just the recipe to increase divisiveness and mistrust. (Other, Helena, MT - #412.3.10440.XX)

Since I have found the official request for public comment stifling rather than solicitous, I am responding in general terms to the proposed NEPA amendments. NEPA has been a lifeline for citizens in all walks of life and political persuasions that object to federal projects being imposed upon them with no regard to the potential impacts. Public comment allows the people to be heard. The general population is the group that is most affected by federal projects. These amendments seem to be nothing more than a way to silence the voice of the people. It seems to me that elected officials are suppose to be representing the people not looking for creative ways to silence them. (Individual, Maryville, TN - #364.1.10400.F1)

I am submitting comments for inclusion in the public record on CEQ's attempts to “reform” the National Environmental Policy Act (NEPA). I oppose any reforms of the current system which would reduce the opportunities for citizens or “speed up” the development of a project as a consequence of reduced citizen involvement. (Individual, Toledo, OH - #516.1.10400.XX)

**381. Public Concern: The CEQ Task Force should encourage agencies to improve stakeholder participation.**

The Nuclear Regulatory Commission (NRC) Report clearly emphasizes the importance of meaningful stakeholder participation in the NEPA process, and strongly recommends that stakeholders participate fully in the early stages of a NEPA environmental review. The NRC Report also observes that poor stakeholder participation is one of the main reasons the NEPA process is often time consuming and inefficient. In response to the NRC's recommendations and observations regarding stakeholder participation, I would like to urge the NEPA Task Force to consider ways to improve stakeholder participation in order to improve both the quality and the efficiency of the NEPA process. (Individual, Reno, NV - #449.9.10400.XX)

**BY CLARIFYING THE BASIS FOR STAKEHOLDER PARTICIPATION**

Rules have to be developed to ensure the timely and constructive participation of stakeholders. They should not be allowed to use such a role for obstructionist or delaying purposes. Clear guidance needs to be developed to define the basis upon which such participation can occur. (Utility Industry, Washington, DC - #474.6.10400.XX)

**BY ENCOURAGING EARLY INVOLVEMENT OF KEY STAKEHOLDERS**

In order for land management or regulatory agency staff to receive quality input from the public, they must engage key stakeholders when conceptualizing projects and vigilantly seek input early and throughout the NEPA process. It also is critical to provide response and feedback to meaningful input received by federal agencies. (Recreational/Conservation Organization, Washington, DC - #89.11.10410.A6)

**382. Public Concern: The CEQ Task Force should require the Environmental Protection Agency to provide those affected by its regulatory determinations the opportunity to comment.**

The Environmental Protection Agency (EPA) should have greater interaction with the individuals who are impacted by their policies. This would give the EPA a greater understanding of the individual's specific needs, goals and desires. The EPA has long utilized "interim guidance" documents, memoranda, and other interpretive documents as a substitute for formal rulemaking, resulting in the imposition of far-reaching rules. A fair and formal opportunity for input by stakeholders and the public is obligatory, particularly by the groups that are adversely affected by the policies and formal rulemaking.

Suggested Action:

EPA should better identify those regulatory determinations under consideration that are likely to have a significant impact upon the regulated community or the public. Where significant impacts are identified, either formal rulemaking procedures should be employed or, at a minimum, a fair opportunity must be provided for comment upon the proposed regulatory interpretation. (Business, Concord, NH - #16.10.10430.XX)

**383. Public Concern: The CEQ Task Force should encourage involvement by independent scientists.**

The NEPA process should continue to include and strengthen the right of the public to comment on issues involving NEPA. Particularly important is preserving access to independent scientists who wish to comment and provide input. Streamlining should not happen at the expense of democratic input. (Individual, Iron River, MI - #527.1.10400.XX)

**384. Public Concern: The CEQ Task Force should implement a performance based acknowledgement system to utilize interested parties in a constructive manner.**

If the Federal Government is to have any successes in the long term future then a primary shift of the public's involvement in all decisions and master planning needs to be implemented. A performance

based acknowledgement system is the only way to utilize the varied and interested parties in a constructive manner. (Individual, Johnson City, TN - #631.22.10330.XX)

**385. Public Concern: The CEQ Task Force should encourage agencies to seek human dimensions assistance from specialists in the private and/or academic community to facilitate public involvement activities.**

The NEPA process should require the agencies to seek human dimensions assistance from specialists in the private and/or academic community. Because agencies regularly address controversial issues that often involve polarized interest groups, it is imperative that the agencies have a neutral individual facilitate their public involvement activities. A human dimensions specialist can even help the agencies identify the most appropriate public involvement strategy (e.g., workshops, attitude surveys) that would enhance the credibility of the agencies among the public and assure the public that all decisions will be made in a transparent and collaborative manner. (Recreational/Conservation Organization, Washington, DC - #89.36.10400.F1)

**386. Public Concern: The CEQ Task Force should require agencies to formalize a plan to avoid hindrances to effective public participation.**

NEPA should clearly state that Federal agencies should avoid hindrances to effective public participation in the NEPA process

Each federal agency should formalize a plan to prevent hindrances to public participation. Below is a list of hindrances encountered within the NEPA process used by the Forest Service on the Ouachita NF

Overall agency bias to “treat and keep” externals outside of “the information loop” by producing flimsy, generic NEPA documents

Falsification of NEPA documentation by “boiler-plating”, hiding authorship of components of NEPA documents, use of no data, no fieldwork, etc.

Unfair appeal handling; not tied to site specific observations made during the NEPA process or in NEPA documents

Use of Decision Memos often improper, bypassing NEPA and the appeal process

Many unpublished “decisions” do not allow participation; initiate NEPA process for them

Too many Forest Service activities requiring public participation

Not enough time to do a good job of participation

Not enough time for all planning phases, beginning with scoping

No formal audit of the Knutson Vandenberg “slush” fund and its uses

Annual budget process should be moved into the public planning process if lack of funding becomes an excuse for not doing something important

Not enough time or money to conduct quality field surveys related to the NEPA process

Employees not qualified to conduct many types of needed field surveys for the NEPA process

Cannot persuade the Forest Service to be conservative on NEPA process proposals

The public had no real role and no appeal rights in the large Weyerhaeuser land exchange

Forest Service employees refused to follow NEPA for Weyerhaeuser land exchange

Lack of objective external scientist involvement in the NEPA process

No master bibliography of important works, especially local research articles, for use during the NEPA process

No published or peer-reviewed interpretation of important works, especially local research articles, for use during the NEPA process

No site specific project level information is being collected by qualified individuals during the NEPA process

Post-implementation effects are not being studied for use in the NEPA process

NEPA process information does not identify the cumulative impacts to be avoided

Poor programmatic EIS approach bypasses site-specific concerns  
Forest Service claims comments supplied during the NEPA process as being “out of scope” at all levels  
NEPA documents are built solely for the court, i.e., for limited legal sufficiency  
NEPA environmental assessments are biased towards the support of substantive environmental impacts  
NEPA environmental assessments do not present important site specific information  
NEPA environmental assessments do not undergo “objective external peer review”  
Line officers are not very well qualified to gauge the quality of work on NEPA documents  
NEPA process has not been audited in the past  
NEPA has no formal auditing plan for key activities and procedures  
NEPA process does not require federal agencies to answer important questions in a complete and professional manner  
NEPA does not try to solve communication/language barriers  
Employees often not on duty; unable to help with public needs  
NEPA does not provide for the discovery of qualification or limitations of federal employees that have key roles in the NEPA process  
NEPA does not provide a framework for the detailed tasks relating to the preparation of Environmental Assessments, EISs, and related planning documents  
NEPA does not recognize that the public has no access to uncollected or unprocessed information that is used in the NEPA process  
NEPA has an implied assumption that the public has reasonable access to reasonable elected officials to handle problems with the NEPA process  
NEPA does not recognize that the public does not have a direct means to seek assistance from the General Accounting Office, in order to address financial or economic data presented during the NEPA process  
NEPA does not recognize that the public does not have a direct means to seek legal assistance from the Office of General Counsel or the Department of Justice, as it pertains to needs that arise from within the NEPA process  
NEPA does not provide that federal agencies make available all “internal” documentation, databases, methodology descriptions, etc. that relate to the NEPA process  
NEPA does not provide that federal agencies should offer training to the public on the various complex aspects of scoping, meeting legal requirements, methods for evaluation of comments, etc. (Individual, Nashville, TN - #513.5-7.10400.XX)

## Agency Outreach Efforts

### **387. Public Concern: The CEQ Task Force should require agencies to adequately notify the public of proposed actions.**

We not only support the current requirements under NEPA, we would like to see stronger safeguards built to ensure our well-being, the well being of our neighbors, and most importantly, future generations. Specifically, our neighbors, and most importantly, future generations. Specifically, improvements could be made in notifying citizens, locally, regionally, and nationally, of proposed projects so that comments could be gathered from those most interested/affected. Indeed, said comments are a critical part of our great democracy and those who make informed decisions make better decisions. (Individual, Seattle, WA - #222.1.10410.XX)

At a minimum, keep NEPA as is; and if changes need to be made, improve notification of the tax-paying public, and increase our opportunity to comment. (Individual, Seattle, WA - #222.4.10410.XX)

We focus on forging working relations with specialists, forest supervisors, refuge managers and other land management leaders to answer specific resource and policy questions relevant to NEPA. We depend on the same individuals to apprise us of emerging NEPA activities. (Recreational/Conservation Organization, Edgefield, SC - #89.9.10430.A6)

#### **BY PROVIDING ADEQUATE NOTIFICATION OF SCOPING**

The public-scoping process has been badly abused in the last eight years by the Federal Agencies.

There is inadequate notice of the scoping schemes (“Promulgating categorical exclusions, structure and documentation of Environmental Assessments and implementation practices,” quoted from July 9, 2002 (Volume 67, Number 131, Notices page 45510-45512) (Individual, Yellow Jacket, CO - #72.2.10400.XX)

#### **BY NOTIFYING NEARBY RESIDENTS**

The New Mexico public Lands Council believes that the NEPA process should require notification of the people in the immediate area of any proposal in a variety of ways to make sure that the public is fully aware of proposals and has the opportunity to comment. Agencies should be required to send notification letters to organizations and elected officials in the area and publish notice in all area newspapers. (New Mexico public Lands Council, Roswell, NM - #85.9.10410.A2)

#### **BY MAKING BETTER USE OF MAILING LISTS OF POTENTIAL STAKEHOLDERS AND INTEREST GROUPS**

Agencies should develop and better utilize mailing lists of potential stakeholders and interest groups to inform them of proposed, significant actions that may affect the environment and require compliance with NEPA. (Individual, Las Vegas, NV - #359.4.10410.XX)

### **388. Public Concern: The CEQ Task Force should establish criteria to determine which local governments to contact and how contact should be established.**

Criteria could be established to help federal agencies determine which local governments should be contacted and how other contacts need to be established, given the unique needs of each federal agency.

The President does not need to re-institute the previous A-95 State Clearinghouse executive order. Every state and local government has different needs and their own institutional preferences for coordination within their branches of government. (State of Tennessee, No Address - #543.12.10410.XX)

### **389. Public Concern: The CEQ Task Force should encourage federal agencies to use a central point of contact when forwarding NEPA documents to states.**

#### **BY FOLLOWING THE EXAMPLE SET BY THE DEPARTMENT OF ENERGY**

We believe that federal agencies in Tennessee and others who forward NEPA documents to our state should use a standard central point of contact. We miss numerous opportunities to participate in the NEPA process. As the supervisory entity of the NEPA process under federal law, the White House Council on Environmental Quality could request states to provide a central point of contact for every state, keep it updated annually and then require federal agencies to use it. The Department of Energy does this very well and could provide a model for CEQ. (State of Tennessee, No Address - #543.12.10410.XX)

#### **BY USING STATE CLEARINGHOUSES**

Federal Government Agencies should utilize the State Clearinghouse to route their documents to ensure all possibly affected parties are notified. (California Department of Transportation, Sacramento, CA - #660.6.10230.XX)

### **390. Public Concern: The CEQ Task Force should encourage agencies to provide the public with convenient access to information.**

Instead of shutting the public out, the Administration should look for creative ways to involve the public in a meaningful way. Engaging the public effectively can be challenging. Providing easy access to information helps. Some agencies are much better than others in making notices of proposed decisions

and NEPA documentation available on the internet. In addition to these documents, increased availability of data for relevant environmental indicators (such as water and air quality, threatened or endangered species populations) and links to this information from the notice of proposed decision would enhance the quality of public input. (Preservation/Conservation Organization, Washington, DC - #471.8.10410.XX)

**391. Public Concern: The CEQ Task Force should advise agencies to distribute free copies of environmental documents to each person who submits scoping comments.**

**BY CHANGING SECTION 1506.6(F)**

Require that each person who submits scoping comments receive a free copy of the environmental documents. The owners of the U.S. Government deserve service and not customer fees. Change Section 1506.6(f) to reflect the changes enumerated in this comment. (Preservation/Conservation Organization, Weldon, CA - #473.4.10400.XX)

Require that each person who submits scoping comments receives a free copy of the environmental document. Currently, the Texas Department of Transportation, Grand Parkway Association, and federal Highway Administration require that citizens, even those who submitted scoping comments, pay for the cost of duplicating the DEIS. The DEIS for Segment C of the Grand Parkway cost over \$120. This high cost ensures that few citizens will be able to afford to pay of the very document that their tax dollars created and that assesses how their tax dollars will be spent. The owners of the U.S. Government deserve service and not customer fees. Change Section 1506.6(f) to reflect the changes enumerated in this comment. (Preservation/Conservation Organization, Bellaire, TX - #590.4.10200.XX)

**BY PROVIDING CD COPIES TO THOSE WHO CAN USE THEM**

If it is less expensive, provide CD copies to those citizens who can utilize them. When high costs are charged for environmental documents, it ensures that few citizens will be able to afford to pay for the very document that their tax dollars create and that assesses how their tax dollars will be spent. The owners of the U.S. Government deserve service and not customer fees. (Preservation/Conservation Organization, Charlottesville, VA - #555.5.10400.XX)

**392. Public Concern: The CEQ Task Force should publish in the Federal Register the full Environmental Protection Agency report prepared pursuant to the NEPA Process.**

The EPA comments prepared pursuant to the Environmental Review Process (ERP) that are published in the Federal Register should include the complete EPA report. The information should include the justification EPA uses to make the comments. Also the name of the individual at EPA responsible for the comments should be a part of the published comments. An example of these comments is "EPA expressed environmental concerns about the impacts of sediment production/delivery from the proposed timber harvest and road management on water quality. EPA supports road decommissioning, road BMP improvements and other watershed restoration activities which should reduce sediment production and improve water quality, fisheries habitat, fish passage and connectivity over the long term." Presently Individuals must requests copies of EPA comments from the Office of Federal Activities at (202) 564-7167. (Individual, Huachuca City, AZ - #372.13.10420.XX)

**393. Public Concern: The CEQ Task Force should encourage agencies to provide adequate contact information regarding NEPA actions in the Federal Register.**

All contact information for the agency responsible for the EA/EIS action should be provided in the Federal Register and other documents. This should be no less than a person's names, address, phone number and email address. The present system, at times, only provides the name of an office, address

and phone number. They do not identify an individual or provide an email address for a person to contact to obtain information. Here is an example of an August 21, 2002 Federal Register Notice:

The USDA Forest Service will prepare a Supplemental Environmental Impact Statement (SEIS) to the South Spruce ecosystem Rehabilitation Project EIS (1999) to implement vegetation management treatments in the spruce/fir forests within the Cedar City Ranger District, Dixie National Forest, Utah. For further information and send comments to: Long Deer Interdisciplinary Team Leader, Cedar City Ranger District, Dixie National Forest, 1789 Wedgewood, Cedar City, Utah 84720. No name and no phone number were provided. (Individual, Huachuca City, AZ - #372.5.10410.XX)

**394. Public Concern: The CEQ Task Force should provide a pamphlet describing the NEPA process to the public.**

The government should prepare a pamphlet on the NEPA process and make it available to all the American people. This pamphlet should describe the purpose of NEPA, the information required in a NEPA document, list the laws involved and provide the information needed for individuals to be involved in the NEPA process. (Individual, Huachuca City, AZ - #372.32.10410.F1)

## Public Meetings

**395. Public Concern: The CEQ Task Force should require meetings to be held at appropriate locations.**

There are improper siting locations for the public meetings. As was the case for the Endangered Fish: Humpback chub, pikeminnow, razorback sucker, boney tail chub, and the Endangered Southwestern Willow Flycatcher, Grizzly Bear and some other threatened and endangered species which include their restoration projects such as the Wolf Restoration. These species have a direct impact on the local human populations, including several Indian Nations. There is a total deliberate silence and disregard for the interests of all these peoples. The clear intent of these actions by these agencies is to limit public comment to only those who favor the agency(ies) action and now you want to make it worse.

Why don't you do something unusual: Follow the Clear Intent of the Law. U.S.C.44, Chapter 3506 (c) 2, Chapter 3507, NEPA Section 1500.1, NEPA 1501.7. (Individual, Yellow Jacket, CO - #72.3.10400.XX)

NEPA action meetings must be scheduled in the immediate area of the proposed action. A lot of times the meetings are held clear across the state or in the next state 300-400 miles from the area impacted by the EA/EIS. (Individual, Huachuca City, AZ - #372.9.10410.XX)

The NEPA meeting should be held in the area of the proposed action, not hundreds of miles away, or in other states. (Individual, Salem, MO - #425.6.10410.XX)

**396. Public Concern: The CEQ Task Force should encourage agency personnel to interact with meeting participants at public meetings.**

Meetings that are scheduled, whether they are public meetings designed to take comments, or open house/informational meetings where public comment is not accepted, do not address the needs of the public. Agency personnel at these meetings need to interact with meeting participants, answer questions, or provide information, rather than the current format where they will not respond to questions and just listen to what is said. It is a waste of time for people to travel to these meetings if the agency representatives are not prepared or authorized to answer questions, because the information needed by the public is not always what is in the document prepared by the agency. (Domestic Livestock Industry, Albuquerque, NM - #80.5.10410.XX)

The current system of "Open House Meetings" is a waste of time. Agency personnel at these meetings with the current format will not respond to questions and just listen to what is said but take no action with the information. The agencies need to interact with meeting participants, answer questions, or

provide information. The people who will be most impacted by the actions, receive no pay for traveling to and attending the meetings and sometimes have to travel long distances and are then able to accomplish absolutely nothing. (Individual, Huachuca City, AZ - #372.10.10410.XX)

Scheduled meetings such as public meetings (public comment only) or open house/informational meetings (public comment is not accepted) do not address the needs of the public. These meetings are a waste of our time, agency personnel's time and a waste of money. Many of the agency personnel who attend these meetings are not prepared or authorized to answer questions. This recently happened at the National Park Services Gaviota Coast Forum held in Buellton, CA this past August. The lady who represented the Park Service didn't have a clue as to what or where the Gaviota Coast was. And many times the information needed by the public is not in the agency's documentation. (Individual, Buellton, CA - #511.6.10400.XX)

The current mode of conducting so-called informational meetings/open house discussions is not adequate. The meetings should be presented in a forum where public comment is welcomed and accepted. Top personnel from the agencies should be present at these meetings to answer questions and take responsibility for their answers. If not, the meetings are a waste of time for the public, which I suspect is the general idea. (Individual, Salem, MO - #425.4.10410.XX)

The open house meetings are a joke and a waste of time. Public input should be a finalizing process and qualified agency personnel should listen, answer questions and keep records of the meeting for public scrutiny. (Individual, Salem, MO - #425.8.10420.XX)

#### **BY USING PUBLIC MEETINGS AS A VENUE FOR EXPLAINING THE PROPOSED ACTION AND ACCEPTING COMMENT**

All meetings should be public meetings where the agency personnel provide a presentation on the proposed action then take oral comments from the people. These meetings should be recorded and the information made a part of the action record. (Individual, Huachuca City, AZ - #372.9.10410.XX)

Oral comments from meeting participants should be accepted by available agency personnel. (Individual, Salem, MO - #425.7.10420.XX)

#### **THROUGH USE OF A ROUND TABLE FORMAT**

In the case of advisory groups, we have eleven operational Sanctuary Advisory Councils encompassing over 200 community and governmental representatives, plus additional individuals serving on working groups formed under each Council for various purposes. The Councils provide an important link to communities and allow the flow of communication from staff to constituents and vice versa. The Councils also hold extensive user, technical, and other specialized knowledge sources to which the Sanctuary has access. The Councils therefore help the NMSP achieve some of the chief requirements of NEPA:

Disseminate and collect information; Identify, prioritize, and characterize issues; Develop and consider alternatives; and Review documents.

The use of a round-table format has greatly enhanced the use of public meetings to obtain information from members of the public. Typically, the participants at a meeting are divided into groups often to twelve at separate tables, each with its own facilitator and note-taker. The role of the facilitator is to help guide the discussion to keep it focused on the intended purpose of the meeting, respond to factual questions, and ensure that each person at the table has a chance to participate. The note-taker captures the comments of each individual, although people are encouraged to submit comments on their own to ensure all of their concerns are relayed. Each meeting opens with an introduction or overview of the purpose of that meeting, then each group works separately. The public meeting usually ends with a brief summary of the issues or comments raised at each table. This format has resulted in wider participation by individuals; more focused and higher quality comments than at traditional public meetings; and the correction of misinformation by allowing participants to interact with a knowledgeable facilitator. In

many cases, the NMSP has been told by participants in this process that it was the first time they'd felt that the Federal government had really listened to them. (National Oceanic and Atmospheric Administration, Washington, DC - #637.62-63.10400.XX)

### **397. Public Concern: The CEQ Task Force should consider that public meetings are not effective venues for meaningful public involvement.**

Public meeting are usually bogus sales pitches by agency personnel. They normally lack substance and truth and focus only on squealing opposing opinions. (NEPA Professional or Association - Private Sector, Tucson, AZ - #82.7.20500.A1)

## **Comment Periods**

### **398. Public Concern: The CEQ Task Force should require adequate comment periods.**

Allow the public ample response time so they won't continuously ask for an extended comment period. (Individual, Washington, DC - #60.2.10400.F1)

The public-scoping process has been badly abused in the last eight years by the Federal Agencies.

The sham you call 'public comment' has been deliberately derailed. public input by way of extremely short and inadequate time for us 'citizens' to supply any reasonable comment clearly eliminates citizen participation. (Individual, Yellow Jacket, CO - #72.1.10400.XX)

#### **45 DAYS FROM THE DATE OF RECEIPT FOR EA'S**

In recent years, the U.S. Department of Energy and other federal agencies have increased the opportunity for nonfederal involvement in Environmental Assessments. The City of Oak Ridge has appreciated the greater opportunity to participate in the decision process for actions addressed in Environmental Assessments, although the CEQ NEPA regulations do not require public involvement in these documents. Unfortunately, unpredictable document distribution and brief comment periods often results in the local government not having a meaningful opportunity for involvement.

Oakridge is a small city, governed by a City Council composed of volunteer members that normally meets twice each month. Because the matters addressed in federal NEPA documents affecting our City are often of significant consequences to the City, most City comments and related communications regarding these documents need to be approved by the City Council, often following advice from the City's Environmental Quality Advisory Board (EQAB). The EQAB's regular meeting schedule is monthly.

When fewer than 45 days are allowed for comment on a document after we receive it, it is difficult for the City to respond, as there is insufficient time for the local government's deliberative process to occur. Draft Environmental Assessments sometimes are issued for comment periods as short as 14 days from the date the document was approved for release, which may be several days before the City receives it. This puts the City in a difficult position. A minimum comment period for Environmental Assessments of 45 days from the date of receipt would make it easier for local governments such as ours to participate effectively and substantively in the process. (David Bradshaw, Mayor, City of Oak Ridge, Oak Ridge, TN - #124.1.10400.XX)

#### **90-DAYS FOR ALL ACTIONS.**

The NMCGA feels that a minimum 90-day comment period should be required for all actions. This would give people enough time to learn about a proposed action, read and research the action, develop comments and submit them. Shorter comment periods simply do not provide enough time, especially in rural areas where access to the internet may be limited. Agencies; documents, style and comment periods vary greatly, making it even more difficult. (Domestic Livestock Industry, Orick, CA - #125.1.10230.XX)

A 90 day comment period provided. Many comment periods are too short. (Individual, Bigfork, MT - #206.2.10400.XX)

CEQ should reexamine the period available for public comment. While there is a need for timeliness, a planning document that takes seven or eight years to complete could not be harmed by allowing the public more than 30 or 60 days to review it. (Willy Hage, Supervisor, Modoc County Board of Supervisors, No Address - #636.21.10400.XX)

Short comment periods have been a problem. . . . 90 days would be more appropriate, especially in rural areas where internet access is limited. (Individual, Salem, MO - #425.2.10410.XX)

#### 90 TO 120 DAYS

I feel a 90 to 120 day comment period should be given. Many rural people are not informed for weeks and have to travel miles into town to get information and respond. The document was completed over a period of years it is unrealistic to expect an adequate response in a number of days. (Domestic Livestock Industry, Tucson, AZ - #361.1.10400.XX)

## Effective Public Comment

### 399. Public Concern: The CEQ Task Force should educate the public on how to effectively participate in the commenting process.

Teach the general public how to get involved in ways that work, or are effective. For instance, teach the general public where they can find the information they need and how best to respond to the agency. (Individual, Washington, DC - #60.3.10410.F1)

### 400. Public Concern: The CEQ Task Force should encourage the public to provide site-specific concerns and issues.

Public response to proposals is often vague and difficult to respond to. The public should be required to provide site-specific concerns and issues. As such, these concerns could not be applied to other areas of the forest. For example, Unit 21 of the Pole Timber Sale has numerous skid trails that currently exist from past timber harvest. I am concerned that additional harvest will prevent growth of vegetation on this unit in the future. What we receive is typically something like this: "Soil erosion will increase under this proposal." (Individual, Willows, CA - #318.3.10400.A2)

## Agency Use of Public Comment

### *Use of Comment General*

### 401. Public Concern: The CEQ Task Force should require agencies to accept comments.

BLM has violated NEPA in every document they produce in my county and I don't believe the process is real or viable.

They have never complied with local plans and they have interfered in the local NEPA process by having my comments withdrawn three times. I don't believe it should be lawful for the agencies to destroy any comments that make them comply with NEPA, but it happens in every document. EVERY document. (Individual, Pioche, NV - #325.4.10420.A2)

There is total failure to collaborate with local government. Department of Interior does not like any comment they cannot control. So there is utter failure to allow comment and honest review of our comment unless we are in their pocket so to speak. NEPA is constantly violated by local BLM because

they do not take my comments as a department head or an appointed board without permission of the county commissioners. NEPA says I have a right to comment and the county commissioners should not be able to withdraw them.

I am glad I get to comment, but I don't hold out much hope you are really paying attention. (Individual, Pioche, NV - #331.1.30140.B1)

#### **402. Public Concern: The CEQ Task Force should require agencies to immediately acknowledge receipt of comment.**

##### **AND PROVIDE AN ACCURATE RESPONSE WITHIN FIVE WORKING DAYS**

An immediate agency response acknowledging receipt of the comment should be required; an accurate response to the stakeholder or interested public should be made within 5 working days. (Agriculture Industry, Santa Fe, NM - #466.4.20210.XX)

#### **403. Public Concern: The CEQ Task Force should require agencies to address all comments.**

Concern that the comments (as usual) mean nothing, and are just easier to slap into the back of the Finding of No Significant Impact. (Individual, Pioche, NV - #325.2.10440.A2)

One can call NEPA a success only in that it has brought our society (common man) to a point where we recognize a) that we do live in a complex, dynamic environment that is being degraded in many ways, b) that agencies must produce some kind of documentation for the public, and c) that federal agencies must at least reply in some fashion to citizens and some of their concerns before decisions are made. (Individual, Nashville, TN - #513.1.10400.XX)

NEPA should include statements that require federal agencies (employees at all levels) to thoroughly address items raised by the public.

It is very embarrassing to rewrite letters to the Chief of the Forest Service, the Regional Forester in Atlanta, the Forest Supervisor in Hot Springs, District Rangers on the Ouachita National Forest, and lower level employees in order to get them to honestly address the content and intent of my letters to them. They might consider themselves as "professionals"—but they appear to be petty, incompetent readers and writers. I can't tell if this is the best that they can do or if they are simply trying to ignore their duties. It is quite amazing how many times I have had to rewrite letters and number or underline each item in order to flag their attention. Even after this effort, employees seem compelled to offer only unproductive, abbreviated, defensive answers—as if their replies are "processed" by a legal think tank set up to prevent free thought. I would describe this "communication stance" as Sudden Political Onset—Incompetent Liaison Syndrome (SPOILS) because the writer "suddenly" takes on a "political" stance that causes himself to become an "incompetent liaison" between the agency and the other party. Such a mechanism alienates the agency from the public.

SPOILS is also the stance used throughout the NEPA process, especially by the Forest Service. Consider that many issues are raised by the public to the Regional Forester, for example. He responds by discarding all but one of them—saying that the others are not significant. The Regional Forester takes on the "incompetent liaison" role because the agency does not want to deal with the other issues for "political" reasons. In the end, the Regional Forester is a place holder for political control, although he initiated the NEPA process to ask for issues and concerns from the public. This is a major failure since the Forest Service cannot be relied upon for the total representation of significant issues for the public. (Individual, Nashville, TN - #513.8-9.10420.XX)

#### **404. Public Concern: The CEQ Task Force should encourage agencies to demonstrate sincere interest in public comment and concerns.**

The main concern about the use of most public information/involvement tools is not so much the use of various tools, as HOW they are used—the sincerity of those using them. Is the public agency REALLY

trying to incorporate public environmental values? Or are they just trying to sell an already made decision to the public? (Individual, Moscow, ID - #7.2.10440.A6)

Here is a real-time case study of how NEPA can be abused by an agenda driven federal agent.

As the Arcata Resource Area proceeds with the public process associated with the Headwaters Forest Reserve Draft Management Plan EIS/EIR (HFRDMP), I wanted to advise you about the lack of confidence I have in the apparent agenda-driven leadership of the area manager . . . [This person] has already stated (preferred alternative) she wants to close the Forest to all mountain bikes, equestrians, and even ban general public access except for “guided tours.”

This predetermined outcome is reminiscent of a previous NEPA process cited below.

In 1997, [this person] told the off-road community that she was starting a National Environmental Policy Act (NEPA) process to close one of the last remaining motorized beaches on the coast of California. She was very upfront about her desire to ban off-highway vehicles (OHVs) in the King Range National Conservation Area. Her public meetings were well attended by those in opposition to the closure including local residents and inholders. Yet, she proceeded with what many considered a front-loaded predetermined decision to close Black Sands Beach to OHVs. Even . . . the leader of Earth First! basically said at the Matteel hearing that the BLM’s process was unfair.

Also, the BLM Resource Advisory Council voted against the closure and wanted the BLM to consider a variety of management options that would allow OHV access. However, in the end [this person] closed the beach to OHVs despite a petition signed by over 2,000 people in the Gaberville/Shelter Cove area! Another example of hostility towards access interests by the Arcata Resource Area Office is best illustrated by the following statement made in a public meeting—in front of Congressman Frank Riggs and former BLM state director, Ed Hastey—“The government does recognize deeded right-of-way, but they deem what right-of-way is, and if they deem you shall crawl on your knees then you shall crawl on your knees,”— . . . land acquisition specialist, BLM Arcata Resource Area Office. The BLM’s apparent silence or lack of correction by Mr. Hastey implies the agency’s adoption of that statement.

It troubles me greatly to tell you about my lack of confidence in the fairness of decisions made by . . . the Arcata Resource Area Office. However, many of our mountain bike and equestrian members are asking why they should waste their time to participating in meetings and commenting on the HFRDMP since [they have] already made the decision to close. There is inadequate notice of the scoping schemes by the Forest to said interests. (Recreational Organization, Oakley, CA - #18.3.10440.XX)

We believe our regular comments to most proposed actions on our local national forests, and many regional and national decision documents as well, have fallen on deaf ears or are considered almost meaningless. (Timber or Wood Products Industry, Quincy, CA - #452.5.10420.XX)

#### **AGENCIES SHOULD CONSIDER PUBLIC OPINION AS SERIOUSLY AS AGENCY OPINIONS**

If the public is to be involved then their input must be considered as seriously as the agency personnel’s opinions. More effort must be given at the beginning to study the science and literature using criteria in order to rely on the best of the best science. (Domestic Livestock Industry, La Grande, OR - #496.19.30140.B1)

## *Analysis of Comment*

### **405. Public Concern: The CEQ Task Force should encourage agencies to give greater weight to comments from residents and local and state elected officials.**

We recognize the need for every one to have the opportunity for input into the process as a part of the purpose of NEPA. It does grate pretty hard when some one who has never been anywhere close to the situation has as much voice as those who live and work here. It is our livelihood that is being decided upon, for them, it is a 37-cent stamp and a “feel good” feeling that they had a say—right or wrong. . . . “Weighting” the comments during the public comment period . . . would [help]. (Lin Hintze, Chairperson, Custer County Board of Commissioners, Challis, ID - #104.7.10420.XX)

Preference, or weight, must be given to people directly affected by NEPA projects, i.e. those who live in the affected county, resource area, socioeconomic prevailing conditions. Particularly, comments and issues of importance to locally elected officials must be given more weight than those from unelected persons/groups. The latter, depending on how far they live from the affected area, have little or no actual stake in the outcome. Local expertise is important in forming a good, viable NEPA outcome, including resource protection. Outside-area responders have lesser knowledge of the workings of the project/nature/culture and customs of the affected human environment. Here in the Northwest, we are crippled by the Northwest Forest Plan and its inability to permit land stewardship to continue. As a result of shutting down land and natural resource management, the obligation of the agencies whose jurisdictions are involved, outsiders and profiteers have all but destroyed our regional culture, customs and economy. Due to the misuse of well-intentioned federal laws and policies, profiteers are to blame for most of the environmental misdeeds underway. (John Griffith, Commissioner, Coos County Board of Commissioners, Coquille, OR - #68.1.10420.B2)

Propaganda from special interest groups is often considered more credible than logical opinions expressed by the people who are most affected by decisions reached by agencies involved in the NEPA process. When public comment is solicited, the comments offered by local residents are sometimes “drowned out” by outside interests, frequently be people who are employed by outside special interest groups. (Bob Cope, Commissioner, Lemhi County Board of Commissioners, Salmon, ID - #70.10.20611.A6)

The final approval of any regulation should be given by the group of people that it will affect the most. New York does not know what is best for Arizona, or vice versa. The population that must adopt the management must be the group that has the final input on what that will be. (Individual, Challis, ID - #287.3.10330.XX)

I believe that federal agencies should place more weight on comments from local and state governments than out-of-state activist groups. Local and state governments are in an ideal position to carefully weigh the pros and cons of a Proposed Action. Additionally, local and state elected officials have to be sensitive to the viewpoints of their electorate (i.e., their stakeholders). Thus, placing more reliance on local and state governments would help achieve the important goal of balancing environmental and economic concerns. (Individual, Reno, NV - #449.12.10310.XX)

#### **406. Public Concern: The CEQ Task Force should encourage agencies to respect comments from all citizens, not just local residents.**

I think NEPA is the greatest law ever written. It makes agencies take a tough look at actions that affect the natural environment and how humans relate to it.

One of the best things about NEPA is that it has the potential to dilute the phenomenon of the perception of local abundance. For example, say that a federal agency is contemplating an action in one State that might affect an endangered species—perhaps a re-introduction to historic parts of its range. In that State, the residents might feel that the species is abundant enough, that the species is in fact a pest (agricultural or otherwise). But sentiment across the nation might be otherwise—and notification across the nation allows all Americans to weigh in on the issue—and show their support of this action. All Americans deserve to know about all American resources, and how they are managed. (Individual, Homestead, FL - #493.1.10420.F1)

#### **407. Public Concern: The CEQ Task Force should encourage agencies to require voter consensus prior to implementing any regulatory measures.**

‘Cumbersome’ is the key Clue here as to appropriate implementation processes. I do believe that there is an unreasonable amount of complexity involved in descriptive style. All regulatory agencies need to have more public input prior to installing specific regulations. Regulations should never have the power of legality without having voter input. Regulatory agencies seem to have insidiously become what seems to be a 4th branch of government. This is not consistent with the original intent of constitutional

government. I believe we need to have more voter consensus pertinent with any and all regulatory measures prior to implementation. (Business, Happy Camp, CA - #399.1.10400.F1)

#### **THROUGH USE OF AN OBJECTIVE THIRD PARTY TO REPORT THE LEVEL OF SUPPORT**

Environmental impact statements and environmental assessments often have alternatives expressly for the public to choose. Even so, the alternatives are poorly designed in order to encourage a distribution of opinions (support) about outcomes. Alternatives are often not designed to reflect conservation levels, i.e. from Maximum to None. Also, prior to a decision, federal officials often remind the public that the NEPA process does not include a “voting contest” and that they are the sole decisionmakers. They further alienate the public by suggesting that citizens are free to appeal the decision and litigate if they desire. Such a reaction might be desired by the decisionmaker, but it is inappropriate to offer this course as a possible solution to their original proposal.

There must be a way to give the public a fair “vote” concerning proposals. There must be some counting and considerations displayed in an effort to be accountable. There also needs to be a “weighting” applied to comments from citizens who try to encourage environmental protection versus those seeking financial favors or outcomes. Could a third-party service be used to gather and report the support or lack of support for aspects of a federal proposal? (Individual, Nashville, TN - #513.20.10200.XX)

#### **408. Public Concern: The CEQ Task Force should clarify that the NEPA process is not a vote.**

We are concerned about the sheer volume of comment that is now provided in NEPA processes through the advent of electronic NEPA participation. Well-funded participants have used technology to “create” hundreds of thousands of comments in highly publicized processes, such as the Roadless Initiative or Yellowstone/Grand Teton Parks Winter Use EISs. The vast majority of these are ‘form letter’ comments, designed to create fodder for public relations campaigns routing overwhelming “public opinion” on the issue dujour. All involved know that NEPA is not a “voting process” but is designed to allow the agency to focus on the substance of the input submitted. We feel the Task Force could address this challenge by including or strengthening regulations, clarifying the focus of the NEPA process, explicitly advising that NEPA is not a “vote,” and that agencies conducting NEPA processes disclose information to the public, and that they receive substantive input from the public. (Recreational Organization, Boise, ID - #90.4.10420.XX)

#### **409. Public Concern: The CEQ Task Force should develop guidelines for handling eleventh hour comments.**

##### **THAT LAST MINUTE COMMENTS SHOULD NOT RECEIVE THE SAME LEVEL OF CONSIDERATION AS THOSE OFFERED EARLIER IN THE PROCESS**

###### **Develop Stakeholder Participation Guidelines**

I would like to suggest that the NEPA Task Force consider developing some guidelines for stakeholder participation with the objective of implementing the NEPA and stakeholder participation recommendations in the NRC’s Report on hardrock mining. These guidelines should clearly establish the importance of early stakeholder participation. This could be accomplished by setting a policy that stakeholder issues raised at the last minute in the NEPA process may not receive the same level of consideration as those developed early in the process (i.e., during public scoping).

I recommend these guidelines provide federal agencies with accepted, routine procedures for handling and even dismissing eleventh-hour issues and public comments that focus on unlikely, worst-case scenarios. Agencies currently devote too much time dealing with last-minute concerns and improbable events raised in public comments on Draft Environmental Impact Statements. Federal agencies should not be required to spend valuable resources addressing remote, extreme, and late issues. (Individual, Reno, NV - #449.13.10420.XX)

**410. Public Concern: The CEQ Task Force should encourage agencies to dismiss comments and appeals that are out of the scope of the project.**

Comments and appeals should be obviously directed to the project under analysis. If no direct link to site specific issues can be shown, the Agency should be able to dismiss the comment or appeal without detailed discussion. Some foresters get comment letters that are so general they could describe any sale in the US. Also, issues like global warming, the economics of the national timber program, and population trends of neotropical birds that are not on a T and E list are not relevant to a specific project. (Individual, Cortez, CO - #379.1.10420.XX)

**411. Public Concern: The CEQ Task Force should encourage agencies to analyze substantive comment separately from statements of preference or personal values.**

Insofar as the content analysis of public comment is concerned, it may be worthwhile to attempt to separate what constitutes substantive comment from statements of preference or personal values, and allow them to be analyzed separately. You could still recognize and acknowledge that personal preferences and values are important, but they do not need to be analyzed for content in the same way that those comments which actually address technical aspects of the proposed action do. If you can develop a clear and comprehensible definition of “8220; substantive and #8221” that both the public and content analysis personnel can understand, then comments can be separated into statements of personal preference or opinion and values or overall management style, versus statements of fact which could potentially result in revisions to the planned program or action, analysis process, or documentation. Statements of preferences or personal values could be sorted into broad categories and addressed in a short narrative, while statements of fact could be analyzed for relevance and application to the proposed action, and responded to appropriately. (Individual, No Address - #562.6.10420.XX)

**412. Public Concern: The CEQ Task Force should consider that the Content Analysis Enterprise Team does not analyze public comment fairly.**

Practices which I believe have contributed to the overall gridlock include Use of the Content Analysis Enterprise Team to manage public comment. I have not found CAET’s analysis of comments to be balanced or fair. In addition, the CAET approach concentrates on demographics and preferences of commenter—where does NEPA authorize or require profiling? Rather than on responding to substantive comments in the manner prescribed by CEQ in the implementing regulations. I was very disappointed that the CAET dismissed the comments of the Quincy Library Group on the Sierra Nevada Forest Plan Amendment DEIS as being from a “place-based interest group.” The CAET’s summary of public comments made it very clear that the comments of “conservation organizations” were given more weight than those from “interest groups,” even those which sought integrated, balanced management solutions. (Individual, Quincy, CA - #542.9.10440.XX)

*Form of Comment Submission***413. Public Concern: The CEQ Task Force should revise the process by which agencies treat faxes, e-mails, and form letters.**

It is recommended by Petroleum Association of Wyoming that the Task Force review the process for how comments that are submitted by the public are accepted by agencies and considered substantial. Over time the public process has been used as a distorted popularity contest, which translates into “whoever gets the most votes wins.” This is not a prudent or effective process when determining land management decisions that are truly beneficial for the resource and the citizens. The analysis process used by agencies to evaluate substantive and significant comment must be revised and suggestions include: 1) Faxes and written letters should be accepted without an original signature. Faxed comment should be followed in the mail by the hard copy of the original letter; 2) Email letters should not be accepted. It is easy for email letters and addresses to be generated without the knowledge of the signatory and most emails do not include an original signature; and 3) Form letters or postcards should

be analyzed as one substantive comment, regardless of how many form letters or post cards are received by the agency through a mass mailing. (Oil, Natural Gas, or Coal Industry, Casper, WY - #643.4.10400.XX)

Another concern regarding public comment is all the form letters that organizations get their members to send. Getting so many forms can cloud issues, waste the time and money of content analysis staff, and make management decisions look like public opinion polls. It would not be appropriate to completely discount form letters, but there must be some way of acknowledging them without wasting a lot of time. Perhaps form letters could just be counted and have their key points summarized. (Individual, No Address - #562.6.10420.XX)

Any assessment might begin with something as elemental as - Who? What? Why? Where? When? How? The CEQ could begin validating the level of public comment by factoring in repetitive comment of national interest. Often times, lead agencies will receive pre-formatted, pre-fabricated identical comments that can add into the tens of thousands. The Task Force should identify these identical comments as one comment, having the same bearing as any other single thought comment on the outcome of any particular NEPA process. Mass public opinion does not of itself make for “validating the quality of the information”, and generally serves no purpose other than to perpetuate analysis paralysis based on philosophical or ideological premise unassociated with long-term management protocols. To be United States Forest Service specific, in light of the National Forest Management Act, sometimes forgotten is the Forest Service Organic Administration Act of 1897 giving the current intent and long-range management of our forests. If this, or in the case of any Act of the Congress, is ignored, the quality of information being assessed could be in direct conflict with any future desired condition of forest or rangelands as mandated by law. (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.12.10420.A2)

#### **414. Public Concern: The CEQ Task Force should prohibit the submission of comments through electronic means**

We are concerned about the sheer volume of comment that is now provided in NEPA processes through the advent of electronic NEPA participation. Well-funded participants have used technology to “create” hundreds of thousands of comments in highly publicized processes, such as the Roadless Initiative or Yellowstone/Grand Teton Parks Winter Use EISs. The vast majority of these are ‘form letter’ comments, designed to create fodder for public relations campaigns routing overwhelming “public opinion” on the issue dujour. All involved know that NEPA is not a “voting process” but is designed to allow the agency to focus on the substance of the input submitted. We feel the Task Force could address this challenge by simply prohibiting submission of comments through electronic means. (Recreational Organization, Boise, ID - #90.4.10420.XX)

## **Collaboration**

#### **415. Public Concern: The CEQ Task Force should encourage agencies to cooperate with all interested parties.**

The public should have access to as much information that is available to be able to understand the scope and proposed results. Open communication will generate cooperation. As with the Gavuita Coast feasibility study it was a result of seven years of collusion with environmental agencies, county government and the National Park Service without any affected landowner input. All agencies must be required to cooperate with all parties involved not just the special interest groups but the area residents that will directly be affected. (Individual, Buellton, CA - #511.5.10400.XX)

Changes are needed to make NEPA practice more effective, efficient, and balanced.

Give much greater emphasis to consultation with concerned parties—landowners, citizens’ groups, Indian tribes, and just plain people—in the course of analysis and decisionmaking. At present, much

“public involvement” under NEPA is pro forma, so the public’s ability to influence NEPA analyses is severely limited. This may be all right where strictly hard-science issues are involved, but with regard to “softer” matters like socio-cultural impacts and many elements of ecosystem management, it is distinctly inadequate, to say nothing of demeaning to the interested public. Actual consultation—sitting down and talking about impacts and what to do about them—would go far toward simplifying and demystifying the NEPA process, building public understanding and support, and resolving conflicts short of litigation. (Individual, Silver Spring, MD - #604.1.10400.F1)

#### THROUGH EARLY CONSULTATION

The National Ocean Industry Association recommends that agencies consult with other Federal agencies, as well as State agencies, tribes, and affected individuals early in the NEPA process. (Oil, Natural Gas, or Coal Industry, Washington, DC - #61.4.10400.XX)

#### **416. Public Concern: The CEQ Task Force should improve coordination between government agencies and the public.**

We do not wish to have the NEPA process thrown out. However, we do support a revision of NEPA in order to foster improved coordination between government agencies and the public. We do not believe the alternative to NEPA of “Rulemaking” would serve the public well in a balanced approach for land use decisions. (Multiple Use or Land Rights Organization, Lakeshore, CA - #86.1.10400.XX)

#### **417. Public Concern: The CEQ Task Force should emphasize stakeholder collaboration.**

##### TO ENSURE THAT SIGNIFICANT ISSUES ARE RESOLVED EARLY IN THE PROCESS

One of the regulatory streamlining program objectives is to improve our collaborative efforts with other federal agencies, states, local governments, tribal organizations, and all stakeholders in our rulemakings. In part, this is to ensure that all significant resource and management issues, including environmental impacts, are identified and resolved as early in the rulemaking process as possible. (National Oceanic and Atmospheric Administration, Washington, DC - #637.19.30100.XX)

##### BY CHANGING THE NEPA PARADIGM FROM CONFRONTATION TO COLLABORATION

Modify NEPA to Emphasize Stakeholder Collaboration

It has been my experience that stakeholders view the NEPA process as an opportunity to advocate a position, either supporting or opposing the Proposed Action being analyzed in the NEPA document. Stakeholders rarely approach NEPA as a collaborative process and an opportunity to work with federal agency decision makers to make the Proposed Action the best possible action for the environment and surrounding community.

Currently NEPA is mainly a disclosure process that evaluates, compares, and contrasts the environmental impacts associated with a Proposed Action and Project Alternatives. The process is not designed (or at least is not currently implemented in a way) to foster meaningful stakeholder dialogue on how to improve a proposed project, minimize environmental impacts, or enhance environmental benefits. Changing the NEPA paradigm from confrontation to collaboration would result in better environmental decisions for all stakeholders. (Individual, Reno, NV - #449.10.10430.XX)

#### **418. Public Concern: The CEQ Task Force should encourage collaboration between environmental and corporate interest groups.**

Environmentalists must come to the understanding that care for the environment must be balanced with the interests of industry, society, and humanity in general. Those opposed to the environmentalist movement must also come to this same conclusion. I am not mad at those who wish to protect the environment, nor am I upset with those who wish to make use of the resources. What does upset me is when people take it to the extreme, and either don’t wish, or just fail, to realize that both need the other. The loudest proponents on either side continually talk over each other, trying to be the loudest and most read. What we need is a constructive advance on ideas, where human needs are also taken into consideration. We are the dominant species on the planet, and rightly so. We are also the only living

thing on this planet that can actively destroy or protect the very planet we live on. Here are my thoughts in a nutshell; environmentalists: we need our space, our resources, and we need to consume. But we also need for you to take an active role in using your knowledge to integrate man into nature, while not destroying it. To the others, at the moment, we only have one planet. We need to take care of it while it is in our possession. Start working with “the other side”. Until we find away to move off this rock, we’re going to have to work together, and we’re going to have to work together to get off this rock. Let’s get moving folks. (Individual, Bowling Green, KY - #350.1.10320.)

#### **419. Public Concern: The CEQ Task Force should penalize collaborating participants who choose to appeal or litigate.**

Even though a collaborative process in well intended in that it is an avenue for public input, collaboration as defined in the NEPA process has failed miserably. “Collaboration” is a popular way to do business in today’s world, but by its very nature is too time consuming. The biggest problem with the collaboration process is that radical environmentalists are using it as a stall tactic. They come to the table, profess to be negotiating in good faith, then basically walk away and appeal or litigate the project. Their tactic has allowed them to further their agenda! Most of us in industry are burned-out, tired, and no longer have the energy to participate. This stalling tactic works to radical preservationists’ agenda locales with degraded forest conditions. By the time the project is worked through the current exhaustive process, on-the-ground conditions have further degraded to the point that wood is no longer merchantable, grazing is no longer available, or the entire area has burned in catastrophic wildfire. Often so much time has gone by that the final planning product cannot be implemented.

If “collaboration” is retained in the revised NEPA, there must be included a much higher degree of certainty that a proposal or modification will be implemented in an economically viable manner. Those that choose to participate in collaboration and then appeal or litigate, or simply don’t like the outcome must face a larger penalty for their actions. (Individual, Joseph, OR - #424.4.10430.XX)

#### **420. Public Concern: The CEQ Task Force should require agencies to implement a dispute resolution process.**

CEQ should require Federal resource agencies to implement a simplified, responsive and effective decision and dispute resolution process to be invoked at the request of a Governor and led by a Secretary or his designee. (Business, Washington, DC - #470.10.40400.XX)

## **Relationship to Other Planning Processes**

### **Summary**

This section includes the following topics: Licensing/Permitting Processes, Transportation Planning, and Winter Recreation Planning.

**Licensing/Permitting Processes** – Numerous respondents offer comment regarding licensing/permitting processes. In general, people ask that permitting processes be simplified and streamlined. One mining industry representative states, “The scope of NEPA review at the project level should consider the breadth and depth of review required under the permitting process to minimize duplication of analysis and the public participation process.” Another respondent requests that agencies “plan for and implement a more timely permitting process.” Other suggestions include the streamlining of the permitting process to conduct field trials and experimental releases, increased funding for permitting processes, and the waiving of subsequent review levels during the NEPA review of the application preparation process if it can be documented that there has been adequate coordination with resource agencies. Beyond these general comments, a number of respondents offer comments specifically related to permitting processes for grazing; oil, gas, and mineral development; and utilities

Those who address the topic of grazing permit renewal generally request that the Task Force expedite the process. According to some, the Task Force should consider that the “complex weaving of varying interests with long-term and annual planning and permit issuance has made the application of NEPA contentious.” Others suggest that the Task Force should require agencies to conduct NEPA analysis at the time of the initial issuance of grazing permits and not at the time of reissuance; that it require agencies to renew grazing permits if they fail to complete the renewal prior to their expiration; and that it not require separate NEPA analysis for grazing permits. Finally, some argue that the Task Force should not impose the NEPA process on permit renewals for unchanged historic use. One representative of the domestic livestock industry describes years of frustration over the grazing permit renewal process and claims that “none of the years of abuses, adverse calls, biological assessments, biological opinions, court cases, costs, red tape, anger and bitterness would have taken place if the NEPA process were not imposed on simple renewals of the unchanged historic use on each individual ranch.”

Several who address the permitting process for oil, gas, and mineral development request that the Task Force create a more efficient permitting process for mining. One individual states, “The land management agency with lead responsibility should set and achieve deadlines and have sufficient qualified staff to do so.” Many who address this topic, however, stress the need for greater public notification and involvement in the permitting process. One preservation/conservation organization, for example, insists that “in order to avoid the worst types of mining impacts, the public must be fully involved in the permitting process.” Thus respondents request that the Task Force require agencies to adequately notify the public of applications for permit to drill; to ensure more meaningful public involvement prior to the selling of oil and gas lease parcels; and to notify landowners who are affected by split-estate situations. Some also suggest that applicants should be encouraged to work more cooperatively with stakeholders before filing applications. Finally, some respondents charge that the prohibition against interim actions in the oil and gas program is routinely violated throughout the West and urge the Task Force to review these violations.

Those who comment on the permitting process for utilities generally ask that the process be simplified and improved. One individual states, “The Task Force must facilitate effective coordination among the agencies and more timely action on the issuance of permits for generation plants and transmission lines.” Suggestions include allowing applicants for electricity permits to request the designation of a single lead federal agency; improving federal permitting processes to retain existing electricity facilities and increasing investment in electric infrastructure; and reducing the cost and time in the hydroelectric relicensing process. Some also request that the Federal Energy Regulatory Commission allow NEPA scoping as part of the pre-license application, and include all regulatory conditions in its document, in order to ensure that the license satisfies the public interest standard of section 10(a)(1) of the Federal Power Act.

Other comments relative to the permitting process include the request that the Task Force revise the wetland permitting process to more adequately protect wetlands, and that it address the economic effects of requiring the NEPA process for general construction permits. Finally, some submit examples of effective permitting processes for the Task Force to consider.

**Transportation Planning** –A number of respondents who address the topic of transportation planning state that the Task Force should encourage the Department of Transportation to improve its planning processes. Suggestions to improve planning include: integrating resource

protection efforts, streamlining the planning and environmental regulatory approach, and streamlining the NEPA process for federally funded transportation construction.

Other respondents request that the Task Force encourage better integration of transportation planning and NEPA planning with respect to analysis and public involvement, and that it clarify expectations of transportation agencies and environmental agencies. One business representative writes, “CEQ should clearly define its expectations for expediting project delivery by articulating in clear and unmistakable language a balanced array of basic policy principles. Such clearly defined expectations [of transportation agencies and environmental agencies] will be of great value in guiding the actions of participants in the process.” Some respondents suggest that the Task Force should encourage transportation agencies to advance projects that reflect environmental sensitivity as a priority. Additionally, some urge the Task Force to encourage agencies to consider the effects of transportation decisions on minority groups in order to comply with environmental justice requirements.

**Winter Recreation Planning** – A few respondents address the topic of winter recreation planning. Comments include the request that the Task Force encourage agencies to achieve the goals and objectives outlined in the December 4, 1996, Memorandum of Understanding regarding management of winter recreational sites, and that it advise agencies not to impose more requirements on the ski industry than on other land users. One special use permittee explains, “[One] of our concerns is that the ski industry seems to be held to higher standards than other similar uses on National Forest lands. For instance, there are a number of electronic communication sites on the summit ridge of Brundage Mountain immediately adjacent to the ski area that, similar to the ski area, are authorized by special use permits. These sites have substantial improvements such as tall steel towers, permanent buildings and access roads—facilities not too much different than those on the adjacent ski area. The Forest Service has prepared a Communication Site Plan for this use and has done the necessary environmental analysis required by NEPA. This is quite a contrast from what is being required on the adjacent ski area where the operator is required to prepare his own site plan (the MDP) and conduct his own NEPA analysis, all at his own expense.”

## Licensing/Permitting Processes

### *Licensing/Permitting Processes General*

#### **421. Public Concern: The CEQ Task Force should address the required review for permitting processes.**

##### **TO MINIMIZE DUPLICATION OF ANALYSIS AND THE PUBLIC PARTICIPATION PROCESS**

The scope of NEPA review at the project level should consider the breadth and depth of review required under the permitting process to minimize duplication of analysis and the public participation process. (Mining Industry, Billings, MT - #440.4.10240.XX)

#### **422. Public Concern: The CEQ Task Force should encourage more timely permitting processes.**

Inefficiencies and time delays in the completion of environmental review under NEPA, issuance of permits, and conduct of other administrative actions unnecessarily consume the resources and time of many stakeholders. Recommendation: BLM and the Forest Service should plan for and implement a

more timely permitting process, while still protecting the environment. (Individual, Reno, NV - #449.3.10220.XX)

**423. Public Concern: The CEQ Task Force should streamline the permitting process to conduct field trials and experimental releases.**

The National Ocean Service (NOS) would like to see the NEPA Task Force address intentional and experimental releases for the purpose of testing old and new response technologies, and specifically, whether there are ways to streamline the permit process in order to conduct field trials and experimental releases. For example, off spill response could be greatly enhanced if it was easier to conduct field trials to test newer, as well as older, technologies. The benefits of conducting an experimental release or discharge may well demonstrate that the cleanup technologies and levels of treatment being tested are more cost-effective and protective of the resources. (National Oceanic and Atmospheric Administration, Washington, DC - #637.58.50600.XX)

**424. Public Concern: The CEQ Task Force should support increased funding for permitting processes.**

The “delay” in processing environmental permitting requirements under NEPA is always pinpointed as problematic. This “delay” in actuality gives the permitting authority adequate time to review, analyze potential impacts, and coordinate with other agencies, prior to issuing a permit. These agencies are commonly understaffed, overworked, and overwhelmed with projects. I personally have worked with government staff who have complained of understaffing and lack of financial and project support from the current Bush administration.

Instead of expediting permitting in order to benefit the proponent’s development, can the US Government provide additional funding for staff budgets in those permitting agencies to increase their effectiveness in responding, including US Fish and Wildlife Service, Army Corps of Engineers, National Marine Fisheries Service, etc. (Individual, San Leandro, CA - #607.3.10210.XX)

**425. Public Concern: The CEQ Task Force should encourage collaboration with stakeholders in licensing processes.**

When the application and preliminary draft NEPA document are collaboratively developed, there is usually general agreement (often in the form of a settlement) among stakeholders as to license terms and conditions, including those which would otherwise be mandatory conditions. While a resource agency’s mandatory conditioning authority could be used as a trump card to try to dictate at least part of the outcome of an ALP, the vast majority of ALPs have not had this as an issue. Furthermore, negotiations continue towards a satisfactory conclusion in the few instances where this potential exists. An ALP has less structure and may be best suited when all stakeholders share an expectation that collaboration on solutions will produce a workable result.

In an ALP, the NEPA process starts early in the application preparation process. Scoping, for example, could be done before any scientific studies are started. In the traditional process, the NEPA process does not start until after an application is filed and accepted. This early start in the NEPA process speeds up the licensing process considerably, resulting in a preliminary draft NEPA document instead of the Exhibit E (environmental exhibit) required in a TLP. The collaborative team involved in the ALP determines, to a great extent, the design and content of the draft NEPA document, and Commission staffs are involved in advising the collaborative team throughout the ALP pre-filing activities. In the traditional process, staff does not become involved in the process until after an application is filed. (United States Federal Energy Regulatory Commission, Washington, DC - #544.5.10230.XX)

**426. Public Concern: The CEQ Task Force should waive all subsequent review levels during the NEPA review of the application preparation process.**

**IF IT CAN BE DOCUMENTED THAT THERE HAS BEEN ADEQUATE COORDINATION WITH RESOURCE AGENCIES**

NEPA Coordination with Resource Agencies and Follow-ups during Federal Action Approvals/Permit

During project development, one of the Early tasks is to send resource agencies a project data sheet informing them of what is planned and what the potential impacts may be. We then wait to receive comments and then incorporate those comments into our final designs. Despite this proactive effort, at the beginning of the project, once we submit actual applications for NEPA delegated approvals/permits, the federal agency/delegated agency then sends out a second series of notices to the same resource agencies asking for a second round of comments. Why? If I did a good job at up-front coordination and have included review comment from these agencies (or documentation of my efforts to get their comments) in the application packages, why should there be a second round of coordination? This is duplicative or our original efforts to expedite the project and of a sound project management strategy.

#### Recommendations

If, during the NEPA review process or the application preparation process, there has been adequate coordination with resource agencies and this can be documented, then the requirements for subsequent coordination should be waived at all subsequent review and approval levels. I very much like the August 9, 2001 Corps of Engineers Federal Register proposal, regarding Nationwide Permits, General Permit Condition Number 13 (3) Agency Coordination, that Resource Agencies be given 10 calendar days to provide comments or to request additional review time. I would like to see this expanded to include up-front applicant coordination efforts and waive the requirements at the tail end. The NEPA and other federal actions/approvals/permits should encourage up-front coordination instead of being reactive at the tail end of projects.

Resource Agencies may object to this proposal because they lack sufficient staff to do up-front evaluation on projects that may or may not ever get built. But this attitude keeps them in a reactive mode of operation instead of forcing them to become pro-active in their project reviews. There may also be a question as to whether all of the Resource Agencies were contacted and/or whether they were given accurate up-front information.

In response to the objection, good project management calls for the identification of potential issues early in the project planning and design process. With 30% of plans, all of the potential impacts can be identified and there is still adequate time to modify the designs without a significant effect on the overall project schedule and/or budget. Delaying resource agency coordination to the end stages of the design process risks project delays. It also creates a potential need to totally redesign the project, something that is not in the economic interests of anyone. This approach is wasteful of both developers' and agencies' resources. (NEPA Professional or Association - Private Sector, Philadelphia, PA - #286.10500.XX)

## Grazing

### **427. Public Concern: The CEQ Task Force should expedite the permitting process for grazing.**

The problem that ranchers most often face is the agencies' belief that not only do grazing permit renewals require NEPA analysis, even though these permits are a continuation of activities that in some cases have been on-going for two hundred years, but also a simple grazing permit renewal requires individual project level NEPA review. The problems associated with the use of endless project level analysis is recognized by the USFS as follows:

The entire NEPA process for a project, from scoping to implementation, can normally take more than a year. For example, the Morgan Falls Trail Reroute Project was a noncontroversial project with a widely accepted need. There were relatively few public comments and no appeals. Yet planning for the project, from initial scoping to a decision notice took about 12 months. (Id at p. 35.)

A similar example of this type of endless procedural delay occurred in Modoc County recently where one of many of the grazing permits was up for renewal in the Modoc Forest. But what should have been a simple review of an on-going activity resulted in a seven year NEPA process. While the process dragged on, everything on the property had to remain status quo even though changes in grazing management probably would have improved the environment. (Agriculture Industry, Sacramento, CA - #589.6.10700.XX)

**428. Public Concern: The CEQ Task Force should consider that the complex weaving of varying interests with long-term and annual planning and permit issuance has made the application of NEPA contentious.**

Livestock grazing permits (grazing permits) are issued within the framework of the National Forest Management Act (NFMA) 16 U.S.C. [section] 1600-1614. CCA and CPLC members utilize grazing permits by grazing in accordance with strict standards and best husbandry practices, in accordance with NFMA, as reviewed below.

NFMA relies upon LRMPs as its core-planning tool. 16 U.S.C. [section] 1604(e). A NEPA review is conducted on LRMPs and an EIS is prepared for their adoption. The LRMP is statutorily tasked with providing for multiple use and sustained yield of forest resources. Livestock grazing is one of these multiple uses and a separate grazing permit is issued, pursuant to the LRMP, for each allotment, usually for a ten year period. An Allotment Management Plan (AMP) is prepared with each grazing permit that is issued. The AMP also contains NEPA documentation. 36 CFR [section] 222.2(b). Finally, seasonal variations, such as the amount of rainfall, and the date of snowmelt, require that a specific annual operating plan be approved.

This complex weaving of varying interests with long-term and annual planning and permit issuance has made the application of NEPA contentious. CCA and CPLC feel that significant improvements should be implemented in the NEPA process as applied to National Forest System use, including grazing. For this reason the Task Force should evaluate and recommend improvements . . . . (Domestic Livestock Industry, Sacramento, CA - #463.5.10200.XX)

**429. Public Concern: The CEQ Task Force should advise agencies to conduct NEPA analysis at the time of the initial issuance of grazing permits, not at the time of reissuance.**

The issuance of livestock grazing permits on National Forest System allotments should be looked upon as an excellent opportunity to significantly improve NEPA processes by conducting any required NEPA analysis and evaluation during the development, revision, or amendment of Land and Resource Management Plan (LRMP) and/or initial issuance of grazing permits, not during the routine reissuance or renewal of individual grazing permits, which are merely the continuation of the government action. (Domestic Livestock Industry, Sacramento, CA - #463.4.10200.XX)

**430. Public Concern: The CEQ Task Force should allow grazing permits to be renewed if the agency fails to complete the renewal prior to their expiration.**

Clearly something must be done to improve NEPA. The process used by agencies such as the BLM and USFS in renewing grazing permit and conducting NEPA analyses is not working. Currently, each agency faces an enormous backlog in renewing grazing permits and is helpless to remedy the situation. As a result, legislation in the form of language allowing for the renewal of a grazing permit, should the agency fail to complete the renewal of the permit prior to expiration, has been needed to deal with the backlog. Otherwise ranchers, through no fault of their own, will not be able to graze livestock. The provision will be needed again this year as the agencies fall further and further and behind. If such extensions are necessary and the process to renew a permit can take up to 10 years—the length of a grazing permit—then what is the point of having a statute like NEPA? The numbers of ranchers facing lengthy renewal periods due to appeals, litigation or some other obstacle are increasing every day. (Domestic Livestock Industry, Washington, DC - #630.23.10200.XX)

**431. Public Concern: The CEQ Task Force should not require separate NEPA analysis for grazing permits.**

Livestock grazing permits should not require a separate NEPA analysis. Necessary NEPA analysis should be conducted as part of the adoption of the LRMP. Where allowed grazing under the LRMP will be equal to or less than existing grazing, NEPA should not then apply at all. In those cases, grazing permits should be categorically excluded from NEPA review. (Domestic Livestock Industry, Sacramento, CA - #463.16.10200.XX)

#### **432. Public Concern: The CEQ Task Force should not impose the NEPA process on permit renewals for unchanged historic use.**

In 1996 the Forest Service began the NEPA process to examine and possibly amend the Chilton's Allotment Management Plan on the 21,000-acre Montana allotment located south of Arivaca, Arizona and adjacent to the U.S.-Mexico border.

Cattle have grazed the Montana allotment for approximately 300 years beginning with Spanish ranchers headquartered in both the communities of Arivaca, Arizona and Saric, Mexico. The Chilton's ranching activities are a direct continuation of this long-standing historic land use. Thirty years of data in the Coronado National Forest files, detailed production and utilization studies by nationally recognized range management scientists (Dr. Jerry Holechek and Dr. Dee Galt), and reports by numerous other researchers show that the Chilton range resources are currently in good condition, are improving and have an exceptional number of high value native climax species. On August 25, 1998 widely published range management text book author, Jerry L. Holechek, Ph.D., Professor, Range Science, New Mexico State University and Dee Galt, Ph.D., range and soils expert stated that "It is our strong opinion that the Montana Allotment is one of our greatest success stories in modern range management. This applies to both upland and riparian portions of the allotment."

In 1995, a small, prolific minnow, the Sonora chub, was found in ephemeral waters in a tiny, quarter-mile reach of California Dry Gulch immediately adjoining the Mexican border. The minnow is safe, secure and abundant in its habitat in Mexico according to the leading specialist on this desert fish (Dean Henderson) but is only found in the United States in one perennial water on a neighboring ranch east of the Chiltons and, since 1995, occasionally in pools in California Dry Gulch on the Montana Allotment. The Southwestern Naturalist, June 1990, describes the Sonora chub (*Gila ditaenia*) as abundant in Mexico where the chub dominates its 5,000 square mile watershed and constitutes 99.7% of the total number of fish and 96.9% of the biomass. Nancy Kaufman, former Regional Director, FWS, Albuquerque, justified listing this species, and others whose range barely extends across the Mexican border, by stating that, if a species is small in number in the U.S., citizens should not have to travel abroad to see it regardless of its abundance in its native habitat across an international border.

The NEPA process to renew a 10-year grazing permit has taken about six years. Furthermore, the NEPA process empowers some activists in the bureaucracy to "push the envelope" of the law. Poof of arbitrary, capricious and unlawful activists' behavior within the bureaucracy against the Chiltons was found by both U.S. District Court Judge Broomfield and the U.S. Court of Appeals, Ninth Circuit. Please refer to Arizona Cattle Growers' Association, Jeff Menges, Plaintiffs-Appellees-Cross Appellants, v. United States Fish and Wildlife Bureau of Land Management, Defendants-Appellants-Cross-Appellees, and the Southwest Center for Biological Diversity, defendant-Intervenor-Appellant, No. 99-16102, 00-15511, 99-16103, 00-15322, for the Montana Allotment portion of the decision.

Grazing on the Montana Allotment has existed for approximately 300 years and is a continuation of a long-standing historic land use. Federal law requires the Forest Service to prepare plans "in consultation with the permittee(s)" and analyze each allotment "with careful and considered consultation and cooperation with the affected permittees" (43 U.S.C.S. 1752). There are many outstanding and competent people within the Forest Service who can and have worked with permittees to manage the land in the spirit of (43 U.S.C.S. 1752). Prior to the 1990s, permit renewals were made without the unbelievable cost in time and money required by the NEPA process. The overwhelming backlog has resulted in the "analysis paralysis" desired by grazing opponents because it gives them an open door to request a cheap injunction against grazing without any need for proving any harm to any species.

The public burden created by the present interpretation of NEPA can be graphically understood just by calculating the paper involved. There are approximately 30,000 Federal grazing allotments. If each official record created during the NEPA process for each Federal grazing allotment is only 6 inches thick, eliminating the NEPA process requirement for each grazing permit renewal would eliminate approximately 15,000 feet (about three miles) of official records every ten years. Additionally, the lessened paperwork burden would permit Forest Service range officers to do the constructive work they were intended to do in the field rather than spend the vast majority of their time on the "paper process."

In our case, none of the years of abuses, adverse calls, biological assessments, biological opinions, court cases, costs, red tape, anger and bitterness would have taken place if the NEPA process were not

imposed on simple renewals of the unchanged historic use on each individual ranch. (Domestic Livestock Industry, Arivaca, AZ - #583.3-6.10200.XX)

**433. Public Concern: The CEQ Task Force should not allow agencies to use the permit renewal process as a means to end grazing.**

During the early 1990s some Justice Department and federal agency bureaucrats created a very useful political hammer: a determination that NEPA analyses would no longer be confined to “major federal actions” but would be required for each and every 10-year permit renewal on every historic federal grazing allotment in the county. Activists in the federal bureaucracy in three specific agencies, the U.S. Forest Service, the Bureau of Land Management, and especially the Fish and Wildlife Service, ratcheted up their campaign to end the harvest of renewable and sustainable forage by tying up grazing permit renewal activities in the NEPA process carried to its illogical extreme. (Domestic Livestock Industry, Arivaca, AZ - #583.2.10310.XX)

### *Oil, Gas, and Mineral Development*

**434. Public Concern: The CEQ Task Force should create a more efficient permitting process for mining.**

Mining technology for a site can vary substantially, depending on the type of ore, the nature and extent of the ore deposit, and many other site-specific conditions. Mining technologies also have changed, and will continue to change. The NEPA process allows the agencies to be responsive to such technological differences. Less flexible regulatory approaches do not allow this flexibility and, as a result, can cause technologies to be “frozen,” often with adverse impacts for both the mining operators and the environment.”

The Committee on Hardrock Mining on Federal Lands believes that the agencies should continue to rely to the maximum extent possible on the flexible, comprehensive NEPA evaluation process for making permitting decisions. However, the Committee also recognizes that the NEPA process is not perfect. The process is complex and time consuming and can be implemented inefficiently . . . .

NEPA reviews and permitting are complex and time consuming because of the wide range of environmental and other issues and the numerous stakeholders with diverse priorities. The collection of some baseline environmental data requires at least a full cycle of seasons, and sometimes longer. All deserve thorough consideration. At the same time, the review and permitting processes should be completed as soon as the work can be done properly, eliminating delays due to inadequate stakeholder cooperation, insufficient planning, or insufficient agency staffing. An efficient process will require full disclosure of information related to a proposed operation, full public access to and participation in the process, and full cooperation of all stakeholders and agencies interested or involved in the proposed operation.

The efficiency of NEPA review and permitting is in large part a management matter. The land management agency with lead responsibility should set and achieve deadlines and have sufficient qualified staff to do so. More timely permitting will free the agency staff to better address all their other environmental responsibilities. (Individual, Reno, NV - #449.7-8.10200.XX)

**435. Public Concern: The CEQ Task Force should require agencies to involve the public in the permitting process for mining.**

The issue of scientific uncertainty implicit in analyzing potential impacts of a decision that may not occur or end for decades or centuries is central to discussing NEPA as it relates to mining, and is discussed in detail below.

The importance of NEPA in mining related decisions affecting public lands is widely acknowledged. In the Nuclear Regulatory Commission report, Recommendation nine specifically addresses this importance:

Bureau of Land Management and the Forest Service should continue to base their permitting decisions on the site-specific evaluation process provided by NEPA. The intent of this recommendation is to retain

the advantages of the current decision-making approach, which bases environmental protection and reclamation requirements on site-specific evaluations conducted pursuant to NEPA. The Committee believes that the NEPA process provide(s) the most useful and efficient framework for evaluating proposed mining activities for three reasons.

First, the NEPA process provides the most comprehensive and integrated framework for undertaking these evaluations. The process includes the full range of environmental concerns, whether or not they are specifically addressed by some other regulatory program, as well as cultural and other concerns. It allows for clear identification of tradeoffs between . . . values, and promotes a better understanding . . . of the implications of the many decisions involved in the preparation and approval of a mine's operating plan . . . . No other regulatory program provides such a comprehensive, integrated mechanism for decision making.

Second, the NEPA process ensures that the decisions are based on careful analyses of site-specific conditions . . . .

Third, The NEPA process allows the agencies to be responsive to (such) technological differences . . . . For all these reasons, the Committee believes that the agencies should continue to rely to the maximum extent possible on the flexible, comprehensive NEPA evaluation process for making permitting decisions. (NRC, pgs. 108 - 110)

This endorsement of the NEPA process for mine permitting decisions is echoed in many parts of the current Administration's Department of the Interior October 30th, 2001 promulgation of the 43 CFR Part 3800; Final Rule and Proposed Rule. (Federal Register, Vol. 66, No. 210, 54834 - 54862):

Section 3809.420(a)(4) requires operators to comply with NEPA . . . . (pg. 54841)

Some small mining operations have created significant environmental impacts or compliance problems. These problems could have been avoided or reduced if Bureau of Land Management had required the operator to submit a Plan of Operations and the plan had been subject to NEPA review . . . (pg. 54847)

While some states have some permit review process, most do not have a comprehensive review process similar to NEPA. Other states may have permits geared towards specific media like air or water, but may not address concerns such as cultural resources, or may not always include a public involvement process. (pg. 54847)

While Alternative five has the same notice/plan of operations threshold as the selected alternative, it does not contain the more specific Plan of Operations content or public notice and comment requirements. Bureau of Land Management believes these requirements are necessary for the identification, prevention, or mitigation, of environmental impacts associated with mining. (pg. 54847)

We share with the current Administration the belief stated twice in these references to NEPA; that, in order to avoid the worst types of mining impacts, the public must be fully involved in the permitting process. (Preservation/Conservation Organization, Durango, CO - #523.4-5.10400.XX)

#### **436. Public Concern: The CEQ Task Force should require agencies to adequately notify the public of applications for a permit to drill.**

Oil and gas Applications for Permit to Drill (APD) require environmental assessments (EAs). Importantly, Bureau of Land Management shall "involve environmental agencies, applicants, and the public, to the extent practicable" in preparation of Environmental Assessments. 40 C.F.R. [section] 1501.4(b). If the Environmental Assessment results in a Finding of No Significant Impacts (Finding of No Significant Impact), the Finding of No Significant Impact must be made available to the public pursuant to section 1506.6. 40 C.F.R. [section] 1501.4(e)(1). (See above recitation of 1506.6 public notification possibilities). Bureau of Land Management has in fact recognized that much more is needed than APD posting for oil and gas Environmental Assessments: "The manager must notify the public of the review period . . . . Generally, notice of the review should be announced in regional and local newspapers or other media." (Bureau of Land Management NEPA Handbook H-1790 (1988) at IV.B.4.a.)

It is both shocking and disturbing, yet somewhat not surprising, that given these clear mandates, Bureau of Land Management never makes an attempt to contact the interested and affected public prior to finalizing NEPA for APDs. An example is the Lower Prairie Dog Creek Environmental Assessment for 13 APDs (Coal Bed Methane wells) within the Powder River Basin. On May 15, 2000, the Buffalo

Bureau of Land Management field office reached a final decision (decision record and Finding of No Significant Impact) on the Environmental Assessment for the APDs in question. In that case, WOC made it clear several months before the APD decision that its membership wanted to participate in any future NEPA processes. We were notified of the Environmental Assessment/Finding of No Significant Impact and decision record, but all of the notifications were after the final decision had been made. (The email notification is dated May 17, 2000; and the hard copy was received May 19, 2000; the decision of the Buffalo FO was reached on May 15, 2000). To expect WOC, or for that matter, any of the interested public, to meaningfully participate in the Environmental Assessment process by notifying them days after the final decision has been made truly shows how little Bureau of Land Management understands NEPA. (Preservation/Conservation Organization, Washington, DC - #475.38.10410.XX)

There is an interplay between FOOGLRA (Federal Onshore Oil and Gas Leasing Reform Act) and NEPA. The Leasing Reform Act requires that, "At least 30 days before approving applications for permits to drill under the provisions of a lease . . . the Secretary shall provide notice of the proposed action. Such notice shall be posted in the appropriate local office of the leasing and land management agency . . . . The requirements of this subsection are in addition to any public notice required by other law." 30 United States Code [section] 226(f) (1994).

As in leasing, the "in addition to" language here is a clear reference to NEPA. The involvement of the public in agency decisionmaking, prior to final agency decisions, is a core underpinning of the entire statute. Moreover, CEQ's own interpretations of its NEPA regulations, which are to be given great deference, ask and answer the following question as follows:

38. Q. Must Environmental Assessments and Finding of No Significant Impacts be made public? If so, how should this be done?

Yes, they must be available to the public. Section 1506.6 requires agencies to involve the public in implementing their NEPA procedures, and this includes public participation of Environmental Assessments and Finding of No Significant Impacts. These are public 'environmental documents' under Section 1506.6(b), and, therefore, agencies must give public notice of their availability . . . . The objective, however, is to notify all interested or affected parties. If this is not being achieved, then the methods should be reevaluated and changed. Repeated failure to reach the interested or affected public would be interpreted as a violation of the regulations. 46 Fed. Reg. 18,026, 18,037 (Mar. 23, 1981). (Preservation/Conservation Organization, Washington, DC - #475.37.10520.XX)

#### **437. Public Concern: The CEQ Task Force should review the Bureau of Land Management's public notification practices, particularly in the area of application for permit to drill approvals.**

FOOGLRA (Federal Onshore Oil and Gas Leasing Act) and NEPA violations consistently leave the public entirely uninformed of the Environmental Assessment process, with no chance at all to participate and comment. We ask CEQ to specifically review Bureau of Land Management's Environmental Assessment public notification practices, particularly in the area of APD approvals. Lastly, in many instances involving the Pinedale and Buffalo field offices, We have learned of projects and, pursuant to 40 C.F.R. 1506.6(b)(1), have written Bureau of Land Management to request pre-decision notification of pending Environmental Assessments. Despite this section's mandatory "shall" requirement that such specific requests trigger NEPA notification, Bureau of Land Management has repeatedly told us that it need not provide Environmental Assessments for pending Application for Permit to Drill and other projects to the public, and in many cases feels that notifying the public after a decision is final satisfies NEPA's public participation requirements. We also ask CEQ to provide the agencies guidance on this important NEPA public participation component. (Preservation/Conservation Organization, Washington, DC - #475.39.10410.XX)

#### **438. Public Concern: The CEQ Task Force should provide the Bureau of Land Management with recommendations to ensure more meaningful public involvement prior to the selling of oil and gas lease parcels.**

Public Notification and Participation. The NEPA fundamentals are seriously undermined when agencies do not “make diligent efforts to involve the public in preparing and implementing their NEPA procedures.” 40 C.F.R. [section] 1506.6(a). In the oil and gas context, Bureau of Land Management’s public notification problems concern both leasing and APD NEPA analyses.

In the leasing context, Bureau of Land Management in Wyoming sells industry oil and gas lease parcels every 60 days pursuant to the Mineral Leasing Act. In 1987 the Mineral Leasing Act was seriously overhauled by the Federal Onshore Oil and Gas Leasing Reform Act (FOOGLRA). Pertinent here is FOOGLRA’s handling of adequately ensuring full public notification of, and participation in, these very important lease sales. FOOGLRA provides that, “At least 45 days before offering lands for lease under this section, the Secretary shall provide notice of the proposed action. Such notice shall be posted in the appropriate local office of the leasing and land management agency. The requirements of this subsection are in addition to any public notice required by other law.” 30 U.S.C. [section] 226(0) 43 C.F.R. [section] 3120.4-2.

Usually, however, Bureau of Land Management merely posts the announcement of the sale in the field office as well as now providing notice about four links into the Wyoming Bureau of Land Management home web page. CEQ should investigate and provide recommendations to Bureau of Land Management about additional requirements under both FOOGLRA (as it relates to public participation) and NEPA to take additional steps to involve the public. The mere posting notice of the sale is insufficient. The “in addition to” public notice required by other law is a clear reference to NEPA. The involvement of the public in agency decisionmaking, prior to final agency decisions, is a core underpinning of the entire statute.

“NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken . . . public scrutiny is essential to implementing NEPA” 40 C.F.R. [section] 1500.1 (b). “Federal agencies shall to the fullest extent possible . . . encourage and facilitate public involvement in decisions which affect the quality of the human environment.” 40 C.F.R. [section] 1500.2(d).

Section 1506.6 of the CEQ regulations, “Public Involvement,” requires that Bureau of Land Management shall:

- (a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.
- (b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies that may be interested or affected.
- (2) In the case of an action with effects of national concern notice shall include publication in the FEDERAL REGISTER and notice by mail to national organizations reasonably expected to be interested in the matter . . .
- (3) In the case of an action with effects primarily of local concern, the notice may include:
  - (iv) Publication in local newspapers (in papers of general circulation rather than legal papers).
  - (v) Notice through other local media.
  - (vi) Notice to potentially interested community organizations including small business associations.
  - (vii) Publication in newsletters that may be expected to reach potentially interested persons.
  - (viii) Direct mailing to owners and occupants of nearby or affected property.
  - (ix) Posting of notices on and off site in the area where the action is to be located.
- (d) Solicit appropriate information from the public. 40 C.F.R. [section] 1506.6(a); (b)(3)(iv)-(ix); (d).

Moreover, Bureau of Land Management must follow Section 1503 on inviting and responding to comments and Section 1501.7 on scoping (see also Section 1501.4(d)). Obviously, Bureau of Land Management has followed none of these additional notice and public involvement activities. We note that the mere listing of the notice on a website is not sufficient—not all of the concerned public has web access, and this is not a method contemplated by Section 1506.6. Therefore, we ask that to ensure more meaningful public involvement prior to the irretrievable commitment of federal resources by selling an

oil and gas lease parcel, CEQ provide Bureau of Land Management recommendations in this area. (Preservation/Conservation Organization, Washington, DC - #475.32-34.10400.XX)

**439. Public Concern: The CEQ Task Force should require the Bureau of Land Management to notify landowners who are affected by split-estate situations.**

In many Bureau of Land Management field offices (particularly the Powder River Basin), these federal minerals are beneath private surface, and Bureau of Land Management knows very well the conflicts created by this unique split-estate situation. For split-estate parcels, why would Bureau of Land Management not bother with sending a certified letter to the affected landowner a month prior to the sale? The burden here is minimal and the benefits tremendous: first and foremost, this would allow these landowners and ranchers to bid on their minerals and if successful at the auction, have a say in how the mineral estate below them, affecting their private surface estate, is developed. To lease out federal minerals underneath private surface without proper notice and the opportunity for these landowners to participate in the NEPA and sale process is a gross mismanagement of public lands. This results in a direct violation of 40 C.F.R. [section] 1506.6(b)(3)(viii), which requires “direct mailing” of the Environmental Assessment and sale proposal to “affected landowners.” (Preservation/Conservation Organization, Washington, DC - #475.35.10400.XX)

**440. Public Concern: The CEQ Task Force should encourage applicants to work with stakeholders before filing applications.**

**SHOULD REVIEW “IDEAS FOR BETTER STAKEHOLDER INVOLVEMENT IN THE INTERSTATE NATURAL GAS PIPELINE PLANNING PRE-FILING PROCESS”**

Interstate Natural Gas Pipeline Projects

The Commission, in its effort to improve the way the public and other stakeholders are informed as a project develops, encourages applicants to work with stakeholders before the filing of applications so that the applications can be processed more efficiently by having significant environmental issues resolved in advance. This pre-filing effort gives the Commission staff and other stakeholders a more complete understanding of the issues earlier in the review process. The use of the process is voluntary on the part of natural gas pipeline companies, and must be approved by the Commission staff. In order to receive approval, the applicant must commit to resolve issues as they are identified and to develop a plan which identifies specific tools and actions to facilitate stakeholder communications and public information, including establishing a single point of contact.

In keeping with this goal, the commission’s Office of Energy Projects (OEP) has hosted a series of public outreach meeting around the country for the purpose of exploring and enhancing strategies for constructive public participation in these early pre-filing stages of natural gas facility planning. One outcome of the meetings was our report entitled “Ideas for Better Stakeholder Involvement in the Interstate Natural Gas Pipeline Planning Pre-filing Process (December 2001).” The report provides information to the industry, agencies, and citizens on the value of public involvement and suggests methods to enhance participation.

In particular, our report suggested by beginning the NEPA review for pipeline projects before the filing of the application at the Commission, environmental issues could be identified and resolved efficiently as the project develops. This NEPA pre-filing environmental review process offers a number of potentially significant benefits to companies choosing to implement it. Among other things, these activities, when started early, enhance the NEPA process by facilitating issue identification, study needs, and issue resolution. For companies that provide a detailed route and the related resource reports substantially before the filing of the application, a draft environmental impact statement may be released within two or three months after a complete application is filed, with a final environmental impact statement issued possibly six months earlier than average for a major project. Therefore, a final certificate could be issued seven to nine months earlier than possible for the traditional certificate application process. (United States Federal Energy Regulatory Commission, Washington, DC - #544.1-3.10400.XX)

#### **441. Public Concern: The CEQ Task Force should review violations of the prohibition against interim actions in the oil and gas program throughout the West.**

##### **AND PROVIDE RECOMMENDATIONS TO THE BUREAU OF LAND MANAGEMENT REGARDING SECTION 1506.1**

One of the most disconcerting aspects of BLM's oil and gas program is that it allows interim activities to jeopardize the full range of possible alternatives during ongoing NEPA processes. The fundamental prohibition against this is found within 40 C.F.R. [section] 1506.1.

Violations of this prohibition against interim actions abound in the oil and gas program (e.g., allowing a multitude of "exploratory" projects to proceed within the PRB during the current study of 51,000 wells; allowing 200 exploratory wells in the Atlantic Rim project during the current EIS underway to study 3,880 wells), but nowhere is the NEPA violation is this circumstance more pronounced than in BLM's leasing program. Presently, the Wyoming Pinedale field office presents the most egregious example.

Due to old RMPs throughout the West needing amendments to finally address CBM impacts and to bring current the very outdated cumulative impacts analyses in the 1980s of expected oil and gas development, BLM is now amending numerous RMPs in the Interior West. RMP amendments are done in concert with an EIS. In the oil and gas context, one of the primary questions an amended RMP will address is to what extent unleased public lands will be open to oil and gas leasing at all, or if so, with what resource specific stipulations? In 2001, Wyoming BLM announced its intent to amend the Pinedale RMP, primarily for the oil and gas concerns stated above. At the time, summer of 2001, of the 1.2 million acres of public lands in the Pinedale field office, over 95% of those lands that were open to oil and gas leasing were under lease. One would think that proper land stewardship would result in BLM not leasing the remaining 5% until the RMP was amended, to preserve the option of not leasing those lands or attaching newly developed stipulations in the RMP process to these last few remaining acres.

Unfortunately, this has not been the case. From August 2001 to the present, the Pinedale field office has taken every opportunity to lease every last acre—over 100,000 acres have been leased since that time. The result is that over 99% of the lands available for leasing in the Pinedale field office are now locked up under 10 year (or indefinite if held in production) leases, necessarily precluding the ability of BLM in the ongoing RMP amendment process, scheduled to be completed by 2004, to say "no" to leasing these last few acres or attaching newly developed stipulations. We ask CEQ to review these situations across the West and to provide recommendations to BLM concerning section 1506.1. (Preservation/Conservation Organization, Washington, DC - #475.42-43.10200.XX)

### *Utilities*

#### **442. Public Concern: The CEQ Task Force should facilitate coordination among agencies to issue electric utility permits in a timely manner.**

In previous comments submitted to CEQ on the scope and activities of the White House Energy Streamlining Task Force (October 31, 2001), EEI [Edison Electric Institute] stated: "The Task Force must facilitate effective coordination among the agencies and more timely action on the issuance of permits for generation plants and transmission lines. As such, as described in more detail in the balance of these comments, EEI strongly encourages the Task Force to:

- Ensure adequate recognition of the nation's electricity needs in federal agency permitting decisions relating to generation and transmission facilities,
- Eliminate duplicative permitting and review processes,
- Streamline environmental review processes,
- Impose reasonable but specific and enforceable timeframes for agency review, and
- Institute procedures to require concurrent and coordinated, rather than sequential, review and approval processes for energy facilities." (Individual, Kanab, UT - #537.7.10500.XX)

**443. Public Concern: The CEQ Task Force should allow applicants for electricity permits to request the designation of a lead federal agency.**

In the context of siting a new electricity generation or transmission facility that involves one or more federal permits or approvals, the applicant for those permits or approvals should have the Option to request designation of a lead federal agency to help manage the overall permitting process, including any associated NEPA review. This option should be at the applicant's choice rather than a mandate in all cases or without an applicant's consent, so it can be invoked only in cases where the applicant wants such a lead-agency process. That would be a way of ensuring that limited federal agency resources are best called into play for coordinated permitting and environmental review in only cases where the applicant believes such coordination is needed. Further, the applicant should have some say in the selection of the lead agency, given that the applicant will be most familiar with the array of federal permits or approvals needed for each proposed facility. (Utility Industry, Washington, DC - #586.5.10500.XX)

**444. Public Concern: The CEQ Task Force should improve federal permitting processes to retain existing electricity facilities and increase investment in electric infrastructure.**

Improvements in federal permitting processes are needed to retain our nation's existing electricity generation and transmission facilities and to increase investment in the nation's electric infrastructure. These improvements cannot wait. The security and reliability of the electric system are dependent on expanding capacity and redundancy. Modernization of the NEPA process can go a long way towards achieving these improvements. (Utility Industry, Washington, DC - #586.10.10500.XX)

**445. Public Concern: The CEQ Task Force should reduce the cost and time in the hydroelectric relicensing process.**

Duke Energy recommends that the task force review and amend the current NEPA practice in the hydroelectric re-licensing process. Hydropower constitutes 15% of Duke Power's current generating capacity, and delivers 15-25% of each day's peak load. Duke Power is facing the re-licensing of over 80% of its hydro facilities by 2008.

The extensive record development in Congressional hearings over the past three years, as well as the Federal Energy Regulatory Commission's report to Congress on licensing improvements pursuant to Section of the Energy Act of 2000. Show the need for reform of this cumbersome multi-agency process. Reform of the NEPA process can form an integral part of the solution to reduce the cost and time of the licensing process, which is a priority of President Bush's Energy Plan. (Utility Industry, Charlotte, NC - #84.1.10520.XX)

**446. Public Concern: The CEQ Task Force should require the Federal Energy Regulatory Commission to allow NEPA scoping as part of the pre-license application, and to include all regulatory conditions in its document.****TO ENSURE THAT THE LICENSE SATISFIES THE PUBLIC INTEREST STANDARD OF SECTION 10(A)(1) OF THE FEDERAL POWER ACT**

Duke Energy recommends changes to the NEPA process described as follow:

The Federal Energy regulatory Commission should allow every license applicant to conduct NEPA scoping as part of the pre-license application. Under the Commission's Traditional Licensing Process, an applicant conducts a three-stage consultation with state and federal resources agencies regarding its license application, then prepares and submits an environmental review (referred to as Exhibit E) with the license application. Once the application has been submitted, the Commission essentially starts over by conducting a second review of the license application pursuant to NEPA that includes additional study requests, scoping of issues and public participation, and ultimately issuance of draft and final NEPA documents. Allowing applications to conduct NEPA scoping and prepare draft NEPA documents would eliminate the need for the duplicate environmental reviews. Currently, however, the Commission's regulations only allow applications to prepare draft NEPA documents under the

Alternative Process (“ALP”). The Commission should eliminate the restriction on application-prepared draft NEPA documents and allow all applicants to replace the three-stage consultation process and Exhibit E with a one-step, pre-filing NEPA process in both traditional and alternative licensing processes. Once the applicant has filed its draft NEPA document, the Commission would make whatever changes it deems necessary, as is done currently in the ALP. Interested parties, of course, will have full opportunity to comment and intervene. Thus, the Commission would in no way be shunning its NEPA responsibilities.

#### Require NEPA Documents to Include All Conditions

Duke Energy recommends changes to the NEPA process described as follow:

In most licensing proceedings, numerous state and federal agencies are authorized to impose conditions or make recommendations pursuant to the Federal Power Act (FPA), the Endangered Species Act, the Clean Water Act, the Federal Land Policy and Management Act, the National Historic Preservation Act, and other statutes. Under the commission’s regulations, most resource agencies are not required to submit final conditions and recommendations until after the Commission has issued its NEPA document. Moreover, final conditions and recommendations are often not submitted until after the Commission has issued its final NEPA document. Consequently, the conditions and recommendations are “piled on” late in the process and are often not reflected in the Commission’s review under section 10(a)(1) of the Federal Power Act. To address this problem, the Commission should require submission of conditions prior to authoring either its preliminary or final NEPA document. Coupled with the previous recommendation, this would ensure that the license, as modified by the conditions and recommendation, continues to satisfy the public interest standard of section 10(a)(1) of the Federal Power Act. It would also secure a more timely and coordinated process that has been documented to be so urgently needed. (Utility Industry, Charlotte, NC - #84.2-3.10520.XX)

## Other

### **447. Public Concern: The CEQ Task Force should revise the wetland permitting process to more adequately protect wetlands.**

Wetland systems perform valuable functions for our environment, yet they are being fragmented and impacted by land development. Our existing wetland permit process seems to be capable of protecting only small wetlands of questionable value and function. Federal policy considers off-site wetlands mitigation only as a last resort. When the existing process does little to help the applicant or the permit issuing agency meet its goals, it is clearly time to try some different approaches.

#### Suggested Action:

Support granting states more authority over wetland permitting.

Support legislative, regulatory and policy changes that preserve strictly an advisory and technical role for federal agency involvement in the wetland permitting process. There is a need to maintain the diminished regulatory role of these agencies.

Encourage state wetland mitigation banking and habitat banking programs.

Support seed funding to procure land and perform the necessary scientific and legal work required to properly implement wetland mitigation banks. (Business, Concord, NH - #16.19.10520.XX)

### **448. Public Concern: The CEQ Task Force should address the economic effects of requiring the NEPA process for general construction permits.**

NAHB . . . takes this opportunity to make the Task Force aware of a pending US Environmental Protection Agency (EPA) regulation that has the potential to trigger NEPA for General Construction Permits (CGPs) issued under the Phase I NPDES permit regulation. Currently, “storm water permits issued under the CGP does not trigger such an assessment because the permit does not regulate any dischargers subject to New Source Performance Standards under section 306 of the Clean Water Act, and is thus statutorily exempted from NEPA.” (63 FR 7907, February 27, 1998) However, EPA has proposed Effluent Limitation Guidelines and New Source Performance Standards for the Construction and Development (67 FR 42644, June 24, 2002), which when finalized has the potential to trigger NEPA

for all storm water permits issued under the CGP. NAHB urges the Task Force to discuss the economic ramifications of potentially requiring NEPA for all new construction covered under the CGP (should EPA expand its proposal to redefine “new source” to include all construction projects—an option subject to a request for comments) and to consider seriously making a recommendation to exempt any such category of “new sources” from NEPA requirements.” (Business, Washington, DC - #517.18.10520.XX)

## Examples

### 449. Public Concern: The CEQ Task Force should consider examples of effective permitting processes.

#### THE SALINAS VALLEY WATERSHED PERMIT COORDINATION PROGRAM

The Salinas Valley watershed Permit Coordination Program . . . which is a one-stop permit program for water quality improvements, is a good example of a streamlined permitting process that relies upon the programmatic NRCS NEPA document. The pre-approved practices within the Salinas Valley Program include providing access roads, critical area planting (like highly erodable slopes), fences (to keep livestock away from waterways), filter strips, grade stabilization structures, grassed waterways (channel construction), irrigation regulating reservoirs, pipeline, sediment basins, spring development, stream bank protection, stream channel stabilization, tanks or troughs (for livestock), underground outlets, and water and sediment control basins. It is our understanding that the NRCS completes an environmental evaluation (“EE”) and circulates a document describing the project and possible impacts to their government agencies (specifically the United States Fish and Wildlife Service, National Marine Fisheries Service, and the California Department of Fish and Game). If there are no objections that cannot be remedied, then the project moves forward. This entire process takes a couple of months. Other necessary environmental permits are similarly expedited.

This program is relatively new, but everyone involved, including agencies and landowners, has been pleased with its success. Perhaps even more importantly, the agency is able to complete projects that are improving land management without costing the agency millions of dollars and endless hours of staff time. (Agriculture Industry, Sacramento, CA - #589.10.10210.XX)

## Transportation Planning

### 450. Public Concern: The CEQ Task Force should encourage the Department of Transportation to improve its planning processes.

We hope that the NEPA Task Force will consider its recommendations, including the following, which are relevant to the adequacy of adaptive monitoring, management, and evaluation plans related to NEPA (Tasks A, B, C, D of the Task Force):

U.S. DOT should monitor progress in improving analysis and in reducing disparate impacts through the planning certification process and in considering state and regional transportation plan and program approvals. Areas of concern include adequacy of Metropolitan Planning Organization (MPO) data collection, data analysis, data integration, transportation network and analysis zone coding, peak and off-peak transit service representation in transportation models, land activity and zoning data, non-work travel behavior, and consideration of pedestrian environment factors.

Improvements to these are needed to assure timely evaluation of accessibility of protected populations to jobs and public facilities, including education and health services, grocery stores, places of worship, and other opportunities. Improved analysis of these factors should be required in the next Atlanta regional transportation plan and program, along with initiatives that assure timely progress to provide equal access for all to jobs and public facilities, without undue time and cost burdens, including for those without cars.

U.S. DOT should recommend new guidance and regulations to require state and local agencies to report exact locations of projects to better track spending and its effects, and analysis of who uses the transportation facilities and services that are provided.

US DOT should consider additional steps that might promote development of uniform land use and zoning data bases to facilitate the analysis of housing types, employment locations, and occupancy information to support analysis of transportation benefits and burdens. (Preservation/Conservation Organization, Washington, DC - #535.25.10240.XX)

The need for fixing the environmental review and approval process for transportation projects is real. The problem has been building for decades. We urge the NEPA Task Force to support reforms that will address these problems in meaningful and effective ways. (Transportation Interest, Washington, DC - #472.16.10200.XX)

#### **BY INTEGRATING EXISTING RESOURCE PROTECTION EFFORTS**

Transportation planning which considers communities and protected resources such as public parks, wildlife habitat, historic sites and scenic areas will produce better projects that are less likely to incur opposition and delay. Integrate existing resource protection efforts into transportation planning to ensure future projects will avert impacts. Taking protected resources into account at the beginning, and planning accordingly will both protect resources and facilitate project approvals. Effective policy would support efforts to develop, harmonize, and coordinate state and local transportation, environmental, resource and land use planning. (Preservation/Conservation Organization, Washington, DC - #535.44.10230.XX)

#### **BY STREAMLINING ITS PLANNING AND ENVIRONMENTAL REGULATORY APPROACH**

Streamlined Planning and Environmental Regulations: The U.S. DOT should be directed to change its planning and environmental regulatory approach from an overly complex and prescriptive framework to a more concise, flexible, performance-based combination of rulemaking and guidance that focuses on outcomes. Opportunities to integrate planning and environmental requirements should be offered, but not prescribed, and should be predicated on the notion that guidance derived from duly certified and valid long range transportation planning processes bearing upon such issues as transportation corridor purpose and need, mode selection, and range or alternatives will be acknowledged and have standing in subsequent environmental stages. For example, duplicative corridor studies that have no standing under NEPA should clearly be eliminated as a requirement. (Transportation Interest, Washington, DC - #472.11.10200.XX)

#### **BY STREAMLINING THE NEPA PROCESS FOR FEDERALLY FUNDED TRANSPORTATION CONSTRUCTION**

Streamlining the environmental review process for federally funded transportation construction projects has been a top priority of ARTBA for several years. According to the U.S. General Accounting Office (GAO), "it typically takes 9 to 19 years to plan, gain approval for and construct a new major federally funded highway project that has significant environmental impacts. GAO Testimony Before the committee on Environment and Public Works, U.S. Senate, GAO-02-1067T (Sept. 19, 2002) at 2. The GAO states that "as many as 200 major steps can be involved in developing a transportation project from the identification of project need to the start of construction. (Transportation Interest, Washington, DC - #472.1.10200.XX)

Delay is not only limited to large projects that require an EIS. A recent study conducted by the National Academies of Science under the National Cooperative Highway Research Program (NCHRP) concluded that states experience delays in satisfying environmental requirement for small, simple, federally funded highway projects as well. According to the report, 63 percent of all state departments of transportation (DOTs) responding to the survey reported environmental process delays with preparation of categorical exclusions and 81 percent reported similar delays involving environmental assessments. These delays have tripled average review times for categorical exclusions—from about eight months to just under two years—and have more than doubled review times for environmental assessments, from under 1.5 years to about 3.5 years.

Many state DOTs have extended their planning schedules to reflect these extremely long delays, which can give the misimpression that the environmental review process is not taking an inordinately lengthy period of time. Other state DOTs do not allocate funds to a project until all of the environmental requirements have been met. This then gives the misimpression that the delays are not being caused by

environmental requirements, but by funding constraints. In reality, just the opposite is true. (Transportation Interest, Washington, DC - #472.4.10200.XX)

#### **451. Public Concern: The CEQ Task Force should encourage better integration of transportation planning and NEPA planning.**

##### **WITH RESPECT TO ANALYSIS AND PUBLIC INVOLVEMENT**

In the transportation arena, we believe there are many benefits to be gained from better integration of the transportation planning and NEPA project review process. But it is vital that this integration be founded on the adoption of best-practice analysis methods to consider secondary, indirect, cumulative, and distributive impacts and the expansion of effective opportunities for informed, continuous, meaningful involvement of all stakeholders in planning and decision-making. (Preservation/Conservation Organization, Washington, DC - #535.1.10240.XX)

#### **452. Public Concern: The CEQ Task Force should clarify expectations of transportation agencies and environmental agencies.**

[We] have defined two overarching goals with regard to expediting environmental reviews:

- 1) Reduce delays to projects while improving the environmental process through better stewardship; and,
- 2) Preserve the integrity and fulfill the intent of environmental statutes.

We have identified three basic components for accomplishing these objectives: (These components were included in our recent testimony to the Senate Environmental and Public Works Committee, and are the basis of our comments to CEQ.)

- (1) Clarify expectations of both transportation and environmental agencies:
- (2) Transform specific processes; and
- (3) Hold both transportation and environmental agencies accountable for achieving positive results. (Business, Washington, DC - #470.3.10200.XX)

CEQ should clearly define its expectations for expediting project delivery by articulating in clear and unmistakable language a balanced array of basic policy principles. Such clearly defined expectations will be of great value in guiding the actions of participants in the process. Shown below is our draft of 20 such policy principles in the form of expectations—10 that would apply to transportation agencies and 10 to environmental resource agencies.

##### Expectations of Transportations Agencies in Expediting Project Delivery

- Advance projects that reflect environmental sensitivity
- Ensure that the purpose and need are well established and compelling
- Consider alternatives that reflect environmental concerns
- Treat environmental concerns on a par with transportation issues
- Foster an open and interactive project development process
- Encourage early involvement by environmental resource agencies
- Keep unavoidable environmental impacts to a bare minimum
- Develop context sensitive solutions with environmental agency as well as public involvement
- Provide effective mitigation and reasonable enhancements to temper unavoidable impacts
- Adhere rigorously to environmental commitments and monitor effectiveness

##### Expectations of Environmental Agencies in Expediting Project Delivery

- Uphold and implement environmental laws and regulations
- Recognize the need for environmentally sensitive transportation projects
- Participate early and effectively in transportation project development

- Demonstrate a spirit of cooperation
- Offer constructive and problem-solving ideas that address purpose and need
- Reflect a sense of urgency about meeting schedules
- Implement concurrent processing and a performance approach to permitting
- Apply clear and consistent interpretations of legal and regulatory requirements
- Consider common sense, balance and proportionality consistent with legal and regulatory requirements
- Avoid unnecessary duplication by sharing responsibilities with capable and willing state counterparts

We are certain that these principles can be broadened to apply to other areas besides transportation. (Business, Washington, DC - #470.5-6.10200.XX)

#### **453. Public Concern: The CEQ Task Force should encourage transportation agencies to advance projects that reflect environmental sensitivity as a priority.**

Transportation agencies should be expected to advance projects that reflect environmental sensitivity as a priority. This will help lend substance and meaning to the philosophy of environmental stewardship that the American Association of State Highway and Transportation Officials (ASSHTO) and FHWA have been articulating and practicing. At the same time, environmental agencies would be expected to recognize the economic, safety/health and mobility needs for transportation projects, and offer constructive and problem solving ideas that respect to their basic purpose. Environmental staffs would work with the transportation agencies in a search for win/win outcomes. (Transportation Interest, Washington, DC - #472.9.10310.XX)

#### **454. Public Concern: The CEQ Task Force should encourage agencies to consider the effects of transportation decisions on minority groups.**

##### **TO COMPLY WITH ENVIRONMENTAL JUSTICE REGULATIONS**

Inadequate Attention to Distribution of Benefits and Burdens of Transportation. For US DOT and most major transportation project implementing agencies to comply with Title VI of the Civil Rights Act, NEPA, and numerous executive orders on environmental justice, transportation project environmental reviews and the regional and state transportation planning process must consider the distribution of benefits and burdens of transportation decisions on minorities and other protected groups, seek to mitigate those impacts, and justify the business necessity of any adverse disparate impacts. This has been acknowledged in recent guidance from the US DOT, which states:

US DOT, state transportation agencies, metropolitan planning organizations, and recipients of federal transportation funds must take additional actions to assure that approvals of metropolitan and state transportation plans, programs, and projects fully comply with Title VI of the 1964 Civil Rights Act (42 U.S.C. 2000d-1) and related regulations, the President's Executive Order on Environmental Justice, the U.S. DOT Order, and the FHWA Order.

Title VI states that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Title VI bars intentional discrimination as well as disparate impact discrimination (i.e., a neutral policy or practice that has a disparate impact on protected groups).

The Environmental Justice (EJ) Orders further amplify Title VI by providing that "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." Increasingly, concerns for compliance with provisions of Title VI and the EJ Orders have been raised by citizens and advocacy groups with regard to broad patterns of transportation investment and impact considered in metropolitan and statewide planning. While Title VI and EJ concerns have most often been raised during project development, it is important to recognize that the law applies equally to the processes and products of planning. The appropriate time for FTA and FHWA to ensure compliance with Title VI is during the planning certification reviews conducted for Transportation Management Areas (TMAs) and through the

statewide planning finding rendered at approval of the Statewide Transportation Improvement Program (STIP).

This guidance was further articulated in draft US DOT regulations on NEPA and planning that were withdrawn from further consideration by the Administration on September 19, 2002. We urge the Administration to reaffirm and strengthen that federal commitment to assuring that environmental justice is adequately considered in the transportation planning and NEPA process. Most regional and state transportation planning fails to pay much attention to the analysis or consideration of such adverse impacts and many basic transportation related data collection systems are poorly designed to accomplish tasks and the same weaknesses afflict most project-level NEPA analysis.

The inadequacy of existing data, analysis, and planning to meet these Title VI obligations has been made quite apparent through the recent Atlanta Transportation Benefits and Burdens study carried out by US DOT, Georgia DOT, and the Atlanta Regional Commission, which is concluding its work in fall 2002. A copy of a letter dated April 25, 2002 from 10 environmental justice groups, environmental and civil rights groups, and Rep. John Lewis to the Federal Highway Administration concerning the draft final report for this study is attached. (Preservation/Conservation Organization, Washington, DC - #535.23-24.10520.XX)

**455. Public Concern: The CEQ Task Force should give standing to guidance derived from transportation planning processes.**

On the transportation side, opportunities to integrate planning and environmental requirements should be offered, but not prescribed, and should be predicated on the notion that guidance derived from duly certified and valid long range transportation planning processes bearing upon such issues as transportation corridor purposes and need, mode selection, and range of alternatives will be acknowledged and have standing in subsequent environmental stages. Duplicative corridor studies that have no standing under NEPA should clearly be eliminated as a requirement. (Business, Washington, DC - #470.9.10500.XX)

**456. Public Concern: The CEQ Task Force should consider that although very few federally funded highway projects require in-depth environmental study, most such projects are very expensive.**

The GAO noted that only about three percent of federally funded highway projects require an in-depth environmental impact study (EIS), Id, however, most of these projects are very large and account for a large portion of each state's construction budget in any given year. Many of these projects, while small in number, are very large in terms of cost, often in the range of tens of millions of dollars to over a billion dollars each. These projects also have a very large impact on public safety and mobility for the traveling public. (Transportation Interest, Washington, DC - #472.2.10210.XX)

**457. Public Concern: The CEQ Task Force should address delays in transportation planning.**

Congress has recognized that environmental process delays slow down the delivery of badly needed transportation improvement projects. When Congress passed the Transportation Equity Act for the 21st Century (TEA-21), section 1309 of the Act directed the Secretary of Transportation to develop and implement a coordinated environmental process for highway and mass transit projects. The Act said that this process should include concurrent environmental process for highway and mass transit projects. The Act said that this process should include concurrent environmental reviews and establish time periods for completion of all reviews. The FHWA and Federal Transit Administration published a proposed streamlining rule on May 25, 2000. 65 Fed. Reg. 33,922. However, the proposed rule fell far short of the mark. In comments to the agencies, ARTBA stated:

“The proposed regulations fail to comply with the statutory requirements to affect streamlining of the transportation project delivery process. To the contrary, the proposal adds many new requirements that will not only lengthen the project delivery process, but also increase project and transportation agency costs.”

In December 2000, the agencies put the proposed rules on hold until the Bush Administration was well in place. In light of the President's September 18, 2002, Executive Order 13274, 67 Fed. Reg. 59,449, calling on federal agencies to enhance environmental stewardship and streamline the environmental review process for transportation infrastructure projects, the agencies formally withdrew the 2000 proposed rule and closed the public docket. 67 Fed. Reg. 59,225.

Section 4(f) Reform:

Legislation is needed in addition to administrative actions that the U.S. DOT might advance, to address Section 4 (f) problems that have become a major source of delay. The needed reforms include:

- Integration of 4(f) alternatives as part of the NEPA process
- Review of "feasibility" and "prudence" in a manner that permits weighing the balance and proportionality of diverse impacts.
- Allowing satisfactory completion of the Section 106 Historic Preservation process for historic properties to suffice for 4(f) review
- Not requiring 4(f) review for private properties unless they are National Historic Landmarks or fall under some form of legal protective covenant.
- Ensuring that Interstate highways and bridges are not subject to Section 4(f) and 10-6 requirements as "historic" structures or properties.

Decision/Dispute Resolution Process: US DOT should be expected to implement a simplified, responsive and effective decision and dispute resolution process to be invoked at the request of a Governor and led by the Secretary or his designee. (Transportation Interest, Washington, DC - #472.6,12.10520.XX)

#### **458. Public Concern: The CEQ Task Force should provide a mechanism for local agencies to better communicate with the Federal Highway Administration via the State Transportation Department in resolving NEPA issues in a timely manner**

It would help if NEPA Task Participants could:

Provide a mechanism where local agencies can achieve better communication with Federal Highway Administration via the State Transportation Department in resolving NEPA issues in a timely manner. (Imperial County Department of Public Works, El Centro, CA - #15.5.10520.XX)

#### **459. Public Concern: The CEQ Task Force should address the use of the review process by local residents to delay rail line construction projects.**

Environmental analysis of proposals to construct new rail lines can be particularly challenging. The ICC Termination Act provides that "the Board shall issue a certificate authorizing [the construction] unless the Board finds that [the construction] inconsistent with the public need and necessity." To give full effect to Congressional intent, the Board has stated that rail constructions are to be given the benefit of the doubt, and that there is now a presumption that rail line construction projects will be approved.

Railroads typically seek completion of the environmental review process and final Board approval in an expedited manner. However, members of the interested public, whose homes may be adjacent to the proposed rail line, frequently are opposed to any rail line construction located near their homes. As a result, they may attempt to use the environmental review process to delay the issuance of SEA's environmental documentation and the conclusion of the Board's decisionmaking processes. (Surface Transportation Board, No Address - #519.2-3.10520.XX)

## Winter Recreation Planning

### **460. Public Concern: The CEQ Task Force should encourage agencies to achieve the goals and objectives outlined in the December 4, 1996, Memorandum of Understanding regarding management of winter recreational sites.**

Willamette Pass Ski Corp. notes that the geographic area covered by its Permit is specifically set aside as a winter recreational facility primarily providing alpine and skiing opportunities to the general public. In recent years, the Forest Service has recognized the need to move beyond the traditional permit relationship to one based on the concept of partnership with respect to the management of areas specifically set aside for use as a winter recreational site. Specifically, this relationship is set forth in the Memorandum of Understanding (“MOU”) dated December 4, 1996. The purpose of the MOU is expressly stated as being to establish “a general framework of cooperation between the USDA Forest Service, US Skiing and the National Ski Area Association (“NSAA”) in partnership to achieve the common goals of managing and promoting active participation in alpine recreation and sports by all people in a manner that emphasizes public/private partnerships in developing recreational facilities; multi-use public land management; sustainable communities; viable local economies; and ecosystem health.” Willamette Pass Ski Corp believes that various improvements to the NEPA process would be significant steps toward achieving the goals and objectives outlined in the MOU. (Special Use Permittee, Eugene, OR - #461.1.10500.XX)

### **461. Public Concern: The CEQ Task Force should advise agencies not to impose more requirements on the ski industry than on other land users.**

[One] of our concerns is that the ski industry seems to be held to higher standards than other similar uses on National Forest lands. For instance, there are a number of electronic communication sites on the summit ridge of Brundage Mountain immediately adjacent to the ski area that, similar to the ski area, are authorized by special use permits. These sites have substantial improvements such as tall steel towers, permanent buildings and access roads—facilities not too much different than those on the adjacent ski area. The Forest Service has prepared a Communication Site Plan for this use and has done the necessary environmental analysis required by NEPA. This is quite a contrast from what is being required on the adjacent ski area where the operator is required to prepare his own site plan ( the MDP) and conduct his own NEPA analysis, all at his own expense.

The Forest Service requires more in the way of planning and NEPA for skiing activities on national forest lands than is the case with other winter uses. For instance, the McCall area is fast becoming a Mecca for snowmobiling and in recent years the Payette National Forest has received a number of requests for staging areas, warming huts, guided touring operations, signing and a system of groomed routes for snowmobiling purposes. Snowmobilers freely roam off-trail over much of the Forest. These things are being done without the direction of an overall snowmobiling plan similar to an MDP required for ski areas. The Forest Service has been doing the NEPA work on a piecemeal basis for each parking lot, warming hut etc, rather than preparing one comprehensive NEPA document to cover the entire range of snowmobiling activities on the Forest. There is no charge to the snowmobiling community for this work. This is not consistent with the manner in which alpine skiing activities are handled. (Special Use Permittee, McCall, ID - #646.5.10510.XX)

## Relation to Laws, Regulations, and Policies

### Summary

This section includes the following topics: Relation to Laws, Regulations, and Policies General; Specific Laws/Acts; Appeals Process; Regulatory Requirements; and American Indian Interests.

**Relation to Laws, Regulations, and Policies General** – Respondents offer various general comments regarding the relation of NEPA to laws, regulations, and policies. Some contend that NEPA is flawed because it requires agencies to constantly prove to “everyone with a hidden

agenda” that the NEPA process is thorough, and so ask the Task Force to encourage legislation that promotes effective public involvement but discourages project opponents from manipulating the process for their own interests. Some also ask the Task Force to encourage states to adopt “Little NEPA” laws.

A number of respondents express general concerns related to environmental laws. Some assert that the Task Force should encourage the implementation of stricter laws that focus on improving the health of public lands. Similarly, respondents advocate that the Task Force discourage any weakening of existing environmental legislation or suspension of existing environmental laws.

**Specific Laws/Acts** – Respondents offer a number of comments relative to specific laws and acts. Some of the most frequently commented upon laws include the Antiquities Act, the Clean Air Act, the Endangered Species Act, and the Freedom of Information Act.

Some allege that the Antiquities Act has been abused and recommend that the act be amended. According to one individual, “The Amendment should permit the President to make a temporary designation of a national monument in order to deal with present emergencies. However, there should be a time limit within which he must provide an environmental impact statement and a fully developed management plan to Congress for approval. The temporary designation should expire after a designated time period.” Likewise, some urge the Task Force to advise the administration not to use the Antiquities Act to avoid complying with NEPA.

Respondents comment that “the Clean Air Act (CAA) places businesses under immense pressure to comply with hundreds of new emission reduction and control requirements. Non-compliance is strictly enforced with severe financial penalties. These regulations and tight compliance schedules are often very specific and ignore the fact that industrial operations can vary significantly. The result is compliance requirements that make little economical and environmental sense.” Thus respondents request that the Task Force encourage revision of compliance requirements for the Clean Air Act in general, as well as for the New Source Review program.

Numerous respondents express frustration over the requirements of the Endangered Species Act and state that it should be revised. One individual comments, “I believe the ESA is overly protective of very small subsets of ‘species’, highly adaptive to their particular mini-ecosystem. Also, the ESA apparently does not differentiate long-standing duration. Therefore that act needs to be modified for reasonableness.” Some urge specifically that the section 7 consultation requirements be revised to allow programmatic consultation instead of project-by-project consultation. Others insist that the act should be eliminated altogether. According to one respondent, “The extreme environmentalists have had it all their way long enough. All the forest fires are the direct fault of Congress for letting the environmentalists lock up our national forests. And as we all know they are doing this using the Endangered Species Act. Now is the time to do away with the Endangered Species Act once and for all.”

Comments on the Freedom of Information Act follow two different paths. On the one hand, some comment that it is difficult for citizens to acquire information from agencies, “whether or not they submit formal Freedom of Information Act requests,” and so urge agencies to “be proactive in their efforts to collect/maintain/share information for the NEPA process.” On the other hand, some assert that agencies are sometimes required to send incomplete evaluations and assessments to Freedom of Information Act applicants, and protest that this causes confusion.

**Appeals Process** – The effect of appeals and litigation on the NEPA process is one of the most frequently mentioned topics in public comment on the CEQ review of NEPA; respondents make numerous reference to appeals and litigation within numerous contexts. Of those who direct their remarks specifically to this topic, some offer general remarks regarding the appeals process, some address the need to revise the process, and some address appeal standing.

Of those who offer general comment on the appeals process, some advise the Task Force to encourage agencies to legally defend their projects. One Special Use Permittee states, “It is critical that the NEPA analysis have sufficient support from all levels of the agency so that each decision can hold up to legal scrutiny.” One respondent further suggests that the Task Force can accomplish this by building contingency time into the NEPA process for appeal and litigation work by the ID team. According to some, judicious rulemaking reduces NEPA procedural burdens and litigation vulnerability.

Some respondents express frustration over the perception that when agencies fail to comply with NEPA’s requirements, litigation is their only recourse. As a result, some believe that “an administrative resolution process should be developed providing for checks and balances short of expensive litigation regarding issues of non-compliance.” At the same time, others express frustration that litigation is unnecessarily stalling the planning process and hindering the efficient management of public lands. As a result, some suggest development of a non-appealable “Core Plan” for public land management which is developed through the EIS process but which is not subject to executive, legislative, or judicial review.” Some go further in asserting that the entire appeals process relative to NEPA should be eliminated altogether as “it has become only another means of delay.”

Finally, some comment that in order to reduce the travel burdens associated with litigation, “NEPA lawsuits should be allowed to be removed to the District Court where the property at issue is located, rather than requiring that all cases be heard in Washington, D.C.

Numerous respondents specifically assert that the appeals process should be revised to discourage or restrict litigation. Suggestions include eliminating automatic stays for appeals under 36 CFR 215; limiting appeals to whether the proposed action is consistent with a land use plan; requiring the appellant to exhaust administrative remedies before the appeal is considered; requiring appeals to contain substantive grounds before being considered; requiring minimum informational standards for appeals; allowing excluded decisions to proceed without the possibility of administrative appeal; requiring short agency response time and outside scientific review; and incorporating a statute of limitations into NEPA.

Others assert that the appeals process should be revised to address the costs of litigation. Respondents express concern that the public ultimately pays for lawsuits filed by special interest groups. According to one individual, “The idea that anyone from anywhere can block, via lawsuit, a proposed power plant or any other matter is totally insane. Who is going to compensate the public who is the ultimate bearer of the costs involved with legal battles?” As a result, people ask that appellants be required to bear the cost of appeals shown to be frivolous.

Respondents who comment on the topic of appeal standing generally believe that currently some parties are granted standing without sufficient grounds, while other parties who do have sufficient grounds are not granted standing. These respondents request that the Task Force amend the definition of “affected interests” to include only those “people or entities that are actually impacted by a proposal, not anyone who philosophically disagrees with the project.”

According to some, those who are actually impacted are those who are impacted economically. Thus some insist that “economic interests must be given standing to challenge NEPA actions to the same extent as environmental interests.” Further, some protest that current NEPA rules allow interested parties to establish standing at any point in the public involvement process, thereby causing delays, and thus urge the Task Force to create filing dates that require interested parties to express their concerns up front during the comment period.

**Regulatory Requirements** – Numerous respondents comment on the relation of NEPA to various regulatory requirements. A number of respondents remark in general that the Task Force should integrate NEPA with other regulatory requirements. Some assert that agencies misunderstand the requirement to integrate NEPA with other laws and regulations. They suggest that the Task Force should, “Provide a more complete list of laws and regulations that must be integrated with NEPA and provide specific suggestions as to when and how to achieve successful integrations with other laws.”

More specific suggestions include encouraging practices that adequately respond to state and local agency regulatory and proprietary concerns on new project proposals; granting states the flexibility to demonstrate compliance with the Environmental Protection Agency within the parameters of federal programs; requiring NEPA planning in coastal zones to include a Coastal Zone Management Act Consistency Determination; and addressing the overapplication of NEPA to the Federal Aid in Fish and Wildlife Restoration Programs.

Some express concern over the OMB’s recent guidelines regarding information quality and ask the Task Force to “assess how the OMB information quality guidelines will affect timely decisions under the NEPA process, especially in light of new and evolving information and circumstances.” Finally, some ask the Task Force to address the conflict between NEPA demands for disclosure of alternatives and statutory prohibitions against disclosure of proprietary and competition sensitive information, and to provide guidance regarding the necessary level of public disclosure when such a conflict exists.

**American Indian Interests** – Respondents commenting on American Indian Interests request that the Task Force address the preservation of American Indian sacred sites as a function of NEPA. Comments one respondent, “We have nothing against sacred sites, but doubt whether the preservation of religious practices is a proper object of NEPA.” One tribal representative asks the Task Force to address the negative social and economic effects of the NEPA process on the Pine Ridge Reservation. By way of example, this person explains that “the Indian Health Service provides what is known as individual services, which are basically water and sewer services to individuals. Since these are federal actions, then NEPA needs to be complied with. The fact that we must address the NEPA on such small scale projects costs money—money that could be used by the project, and time—time that our people must go without water or sewer. This is just one of the many problems or barriers that we must address.”

## **Relation to Laws, Regulations, and Policies General**

### **462. Public Concern: The CEQ Task Force should encourage legislation which promotes effective public involvement but discourages project opponents from manipulating the process for their own interests.**

The questions asked by this survey lead me to conclude that the CEQ believes the problem of NEPA/National Forest Management Act (NFMA) gridlock can be satisfactorily resolved by greater

sharing of research, improved technology, and more effective use of NEPA tools and formats already at our disposal. This approach will never work. The nature of the problem with NEPA is the way in which it places agencies in the untenable position of constantly having to prove and reprove to everyone with a hidden agenda that they have fully considered everything imaginable for even the most basic, recurring, minor projects. No amount of information-sharing or modern technology is going to discourage or prevent the person who has a mind to obstruct a project for philosophical reasons (and there are hundreds of such people). This problem requires a legislative fix that will encourage effective public involvement, but discourage abuse of would-be monkey-wrenchers. NEPA and NFMA have made a cottage industry out of people who would use the Forest Service to advance their own narrow objective. Please fix the law! (Individual, Fryeburg, ME - #26.1.10520.A2)

**463. Public Concern: The CEQ Task Force should encourage states to adopt “Little NEPA” laws.**

The Task Force should encourage . . . states to adopt “little NEPA”-type laws to provide the common framework to make NEPA more successful throughout the nation. (NEPA Professional or Association - Private Sector, No Address - #530.3.10200.XX)

**464. Public Concern: The CEQ Task Force should encourage the implementation of stricter laws that focus on improving the health of public lands.**

I write on behalf of those who worked on passing this critical act in 1970. I write on behalf of the present population who is very concerned about President Bush’s horrific stance on the environment. I write on behalf of our future generations who will suffer greatly if laws such as NEPA are not enforced. I am greatly concerned that changes made to NEPA will harm our land and the health of our natural resources.

What we need are stricter laws that focus on improving the health of our lands, not rollbacks on laws that help protect endangered species, watersheds, and forests. We need the Environmental Protection Agency to ensure that standards are followed and impacts are minimal. (Individual, Dyer, IN - #224.3.10700.XX)

**465. Public Concern: The CEQ Task Force should encourage the Administration not to weaken existing laws that protect the environment.**

The existing laws and environmental process for logging projects should not be changed. Those protections stand to protect our natural environment against those that would profit at our nation’s expense. (Individual, No Address - #262.1.10700.XX)

In this age of increasing awareness of man’s fragile relationship with nature, I think it is extremely short sighted for any policymaker to be considering revising the laws we have that protect those few places we keep untouched by man. (Individual, No Address - #265.1.10700.XX)

Please DO NOT lessen any more laws protecting our forests and wild lands, look around the world carefully and notice what happens to these places without strong protection. Some of us prefer that the rest of the US not end up looking like Texas, smog choked cities and ruined farmland from inorganic farming practices. Look open-mindedly at the illnesses brought on by poor treatment of Dear Mother Earth given to us by God to cherish! (Individual, No Address - #272.1.10700.XX)

**466. Public Concern: The CEQ Task Force should discourage Congress from suspending environmental laws.**

The move by congress to suspend environmental laws by attaching riders to large legislative appropriations is a dangerous precedent and should be discouraged because political considerations often take precedence over sound scientific judgment. While congressional actions are beyond the scope of

these comments it is important to note that they do affect the way NEPA projects are executed on the ground. (Individual, Rogue River, OR - #382.3.10520.XX)

## Specific Laws/Acts

### *Antiquities Act*

#### **467. Public Concern: The CEQ Task Force should encourage legislation to amend the Antiquities Act.**

The Antiquities Act was originally intended to give the President the power to designate a monument in an emergency where immediate and irreversible harm to important historic, scientific, or aesthetic resources was threatened. Changes in NEPA regulations cannot change the President's powers under the Antiquities Act. Moreover, I would not deny the President his authority. However, the President should send a bill to Congress amending the Antiquities Act. The Amendment should permit the President to make a temporary designation of a national monument in order to deal with present emergencies. However, there should be a time limit within which he must provide an Environmental Impact Statement and a fully developed management plan to Congress for approval. The temporary designation should expire after a designated time period. (Individual, Bellingham, WA - #127.7.10520.XX)

#### **468. Public Concern: The CEQ Task Force should advise the Administration not to use the Antiquities Act to avoid complying with NEPA.**

The Effect of Federal Environmental Law in Rural Communities.

On September 18, 1996, President Clinton used his powers under the Antiquities Act to designate an unprecedented 1.7 million acres of public land in southern Utah as the "Grand Staircase-Escalante National Monument." This new monument is approximately the same size as the states of Delaware and Rhode Island combined. The President undertook this designation without informing the Governor or any member of the Utah congressional delegation. Congressional investigations reveal that the Clinton Administration knew that Utah's congressional delegation and the governor [would] be angered by the action, but went ahead with it in order to curry election year favor with environmentalists in California, Washington, Oregon, Arizona, Colorado, New Mexico, and Nevada. A congressional investigation, internal White House documents, and a report by U.S. News and World Report demonstrate that "the White House went to great lengths to keep secret its plan to create by executive fiat a massive 1.7 million acre national monument in southern Utah."

Kathleen McGinty, the Chair of the President's Council on Environmental Quality (CEQ) wrote in a confidential e-mail: "I will say again any public release of information would probably foreclose the President's option to proceed." McGinty provided this advice despite her concerns that "there is a danger of 'abuse' of the withdraw/antiquities authorities especially because these lands are not really endangered." Similarly, Interior Department Solicitor John Leshy said, "I can't emphasize confidentiality too much. If word leaks out it probably won't happen." The administration feared that if news of the monument leaked to the public before the President's announcement, it would be perceived as "war on the west," and that "the Utah delegation [might] try efforts such as a rider on the Interior Appropriations bill . . . to prevent [the President] from taking such action." One of the major reasons the President used the Antiquities Act to specially designate the Grand-Staircase area was to avoid the requirements of the National Environmental Policy Act (NEPA), which would have required public disclosure and public comment, and would have entitled the State of Utah and affected local governments to participate as cooperating agencies in environmental studies and land use planning efforts. NEPA applies every time a decision by any federal agency constitutes a major federal action significantly affecting the quality of the human environment. Regulations under NEPA accord state and local governments joint planning authority if they have environmental protection or planning laws. Joint planning authority under NEPA requires federal agencies to:

Cooperate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements. Such cooperation shall to the fullest extent possible include:

- (1) Joint planning processes.
- (2) Joint environmental research and studies.
- (3) Joint public hearings (except where otherwise provided for by statute).
- (4) Joint Environmental Assessments.

One of the very purposes of NEPA is to “assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings”, and to “preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice.” (Individual, Bellingham, WA - #127.9.10520.XX)

## *Appeals Reform Act*

### **469. Public Concern: The CEQ Task Force should encourage revision of the Appeals Reform Act and NEPA**

#### **TO PROTECT COLLABORATIVE EFFORTS FROM LITIGATION**

Currently, there are no empowerment mechanisms for collaboration. Until collaborative processes are empowered under NEPA, the Appeals Reform Act and “standing” issues with judicial review of NEPA decisions, they are a functional waste of time. Even though collaboration has immense value in building trust and relationships, individuals, interest groups and other collaborating parties are disenfranchised when the final product does not get implemented—or gets dismantled by administrative appeals or litigation by third parties not involved in the collaborative effort.

For collaboration to be successful there must be a higher degree of protection for the final product. Outside parties that choose not to participate or simply don’t like the outcome must face a higher threshold to challenge the actions not done through collaboration. We suggest changing the “standing” status of the Appeals Reform Act and NEPA process litigation standing for those not involved in the collaboration. Also, reforms to the Equal Access to Justice Act to eliminate incentives (court cost remuneration) for litigation by parties external to the collaboration should be considered.

With respect to joint-lead or cooperating agency status, we defer to those with more knowledge of this possibility. While we see this as a benefit to better decisions, there could be significant delays in process if cooperating agencies are not timely in their involvement. (Timber or Wood Products Industry, Kalispell, MT - #462.4.30200.B1)

## *Clean Air Act*

### **470. Public Concern: The CEQ Task Force should encourage revision of the Clean Air Act compliance requirements.**

The Clean Air Act (CAA) places businesses under immense pressure to comply with hundreds of new emission reduction and control requirements. Non-compliance is strictly enforced with severe financial penalties. These regulations and tight compliance schedules are often very specific and ignore the fact that industrial operations can vary significantly. The result is compliance requirements that make little economical and environmental sense.

Suggested Action:

Design future Environmental Protection Agency regulations that determine the results that must be achieved and how they are accomplished.

Allow business and industry to develop emission reductions that correspond with, and can be adapted to their specific operation.

Allow alternative test methods in determining compliance with CAA emission limits.

Facilitate federal and state agencies’ strategic planning, helping to ensure efficient leverage of resources. (Business, Concord, NH - #16.7.10520.XX)

**471. Public Concern: The CEQ Task Force should encourage a clear guidance document for the New Source Review Program.**

The New Source Review (NSR) program is widely recognized as the most complicated program established under the Clean Air Act of 1990 (CAA). The complexity of NSR, plethora of interpretive guidance documents and policies, and apparent dichotomy between proposed reform measures and enforcement actions have created undesirable conditions for the business community.

Suggested Action:

Upon reform, a concise, comprehensive, and clear final guidance document regarding current NSR rules and policies must be produced. The more clear it is, and the better the explanations; the higher the rate of compliance will be. (Business, Concord, NH - #16.4.10520.XX)

*Data Quality Act***472. Public Concern: The CEQ Task Force should require all NEPA documents to comply with the Data Quality Act.**

The NEPA documents including all references must meet the requirements of the Data Quality Act. The person responsible for the preparation of the document should be held accountable for insuring that the document does meet the requirements of the Data Quality Act. (Individual, Huachuca City, AZ - #372.2.10520.XX)

*Endangered Species Act***473. Public Concern: The CEQ Task Force should encourage the reconsideration of the Endangered Species Act.**

The process is an intensely bureaucratic, one large size fits all, exercise that is workable only if no one is paying attention. Even in cases where the process is effectively hijacked by professionals like the Sierra Club (of which I am a life member), or the Center for Biological Diversity, it is very inefficient and wasteful of human and money resources. If the locals find out and get involved, then there is even more time consuming and expensive public gymnastics, often involving a conflict resolution specialist considering all things at once. You need only consider how much money the US Forest Service spends on paper chases (up to and beyond 40% of budget) and you will begin to see how this fits in.

Solution? Start off with a reconsideration of the Endangered Species Act, and its abuse as a money tree for alleged environmental groups. (Individual, Idyllwild, CA - #312.1.10520.F1)

**474. Public Concern: The CEQ Task Force should encourage modification of the Endangered Species Act.**

If the Environmental Species Act (ESA) is any part of this, I believe the ESA is overly protective of very small subsets of 'species', highly adaptive to their particular mini-ecosystem. Also, the ESA apparently does not differentiate long-standing duration. Therefore that Act needs to be modified for reasonableness. And this one does too. (Individual, No Address - #274.1.10520.XX)

**475. Public Concern: The CEQ Task Force should support the streamlining of the Endangered Species Act.****THROUGH REVISION OF THE CONSULTATION PROCESS**

ESA. This law was designed to protect species, biodiversity and ecosystem integrity. These values were poorly understood when the law was passed and the courts have not clarified much during implementation of the law. The law should be revised to achieve its goals in a reasonable and efficient manner. The recent book entitled "Endangered Species Act Law, Policy and Perspectives" suggests the following reforms:

Much of the gridlock problems arise from the Section 7 Consultation Process whereby the federal land management agencies review their plans with FWS to insure there is no “incidental take” caused by the planned activity. A more effective and reasonable process for resolving these “incidental take” issues should be established.

Further streamlining could occur by letting land management agencies do their own biological evaluations and have FWS and NMFS have a monitoring and evaluation responsibility only.

There is no directive to guide the FWS in endangered species listing decisions. Consequently “the agency routinely renders unreliable decisions with no basis in fact or law.” ESA should be designed to protect only those species that are genuinely in danger of extinction.

The agency makes its listing decisions upon the vague undefined direction to use “best scientific or commercial data available.” The listings should be based on clear direction that ‘Evaluates the status of a species throughout its range to ensure that the decision to list a species is truly warranted.’

The FWS should give priority to listing distinct species. Protection of subspecies or population segments should be accorded only when the species is threatened.

“Currently the FWS randomly selects a single point in time to set the baseline habitat and compare that to current habitat. Nothing compels the agency to make a reasoned explanation of the year it selects as the baseline for its listing decisions.” The FWS should establish reasonable guidelines for estimating the historical distribution and habitat for a species and for the designation “Critical Habitat.”

If ESA must remain as is, then we could streamline it by having programmatic consultation instead of project-by-project consultation. (i.e. a best management practices approach rather than project specific terms and conditions) This approach may also require changes in NEPA as well. (Timber or Wood Products Industry, Ketchikan, AK - #524.5-6.10520.XX)

#### **476. Public Concern: The CEQ Task Force should encourage the repeal of the Endangered Species Act.**

[Eliminate] the endangered species act and road blocks to environmental activists. (Individual, Paradise, TX - #149.1.10240.F1)

The extreme environmentalists have had it all their way long enough. All the forest fires are the direct fault of congress for letting the environmentalists lock up our national forest. And as we all know they are doing this using the endangered species act. Now is the time to do away with the endangered species act once and for all. The forest needs to be thinned, logged and grazed. That is the only way to have a healthy forest. (Individual, No Address - #258.1.10520.XX)

### *Equal Access to Justice Act*

#### **477. Public Concern: The CEQ Task Force should encourage the revision of the Equal Access to Justice Act.**

##### **BY LIMITING THE PAYMENTS LAW FIRMS RECEIVE FROM THE GOVERNMENT FOR ENVIRONMENTAL LITIGATION**

Equal Access to Justice Act

Revision of this law should be an objective of the government. Today, large law firms have gone into the business of pursuing environmental litigation against the federal government, knowing that their huge fees will be paid by the government, regardless of the outcome of the suit. Limits should be applied to the payments such firms could receive. (Bob Cope, Commissioner, Lemhi County Board of Commissioners, Salmon, ID - #70.27.10520.F1)

## *Farmland Protection Act and Farmland Policy Protection Act*

### **478. Public Concern: The CEQ Task Force should integrate NEPA with the Farmland Protection Act and the Farmland Policy Protection Act.**

Between FPPA and the Farm Bill's Farmland Protection Act (FPA), the federal government has clear policies, and has committed significant budget resources, towards the conservation of agricultural land resources. The latter program authorizes grants by USDA to states and local organizations for the purchase of agricultural land conservation easements to protect America's best Farmland from urbanization.

CEQA currently requires the analysis and mitigation of project impacts on agricultural land. Several California state agencies consider agricultural land conservation easement purchases and dedication to be one suitable mitigation measure for the agricultural land conversion impacts of projects. We recommend that the Task Force consider linking NEPA with FPPA and FPA to create a cohesive national policy on farmland conservation. Under such a NEPA policy, a federal project that would adversely impact agricultural land as indicated by a federal or state LESA analysis, would be required to use alternatives or mitigation measures that lessen the impact to below the LESA threshold. If an overriding public interest dictates that the project be approved despite its impacts, the lead agency would then be required to pay an impact mitigation fee to the FPA account for the state within which the impact occurred, if that state had an active agricultural land conservation and protection program.

An example of where such a change in NEPA policy could help with the conservation of agricultural land is the State Route 7 project in Imperial County, California. The new freeway will cut across some of the best agricultural land in the world. The California department of Conservation and the California Department of Transportation have agreed that the project's impacts should be mitigated through the use of agricultural land conservation easements on adjacent lands.

However, the Federal Highway Administration has balked at funding the mitigation because of the lack of statutory impetus and precedence. (California Department of Food and Agriculture, Sacramento, CA - #566.6.30100.XX)

#### **BY INCORPORATING A LAND EVALUATION AND SITE ASSESSMENT REVIEW**

The Federal Farmland Protection Policy Act and NEPA

The Federal Farmland Protection Policy Act (FPPA) of 1981 requires federally funded projects that impact farmland to be subject to a Land Evaluation and Site Assessment (LESA) review. The USDA Natural Resource Conservation Service and the lead federal agency jointly conduct the rating process, which results in a score. Under the FPPA, a lead agency whose project scores above a certain threshold is directed to consider alternative projects or project sites.

We recommend that NEPA statute recognize this federal policy by incorporating the LESA analysis as a required tool for determining the significance of a project's impacts on agricultural land. The threshold of significant impact would be the LESA score as set forth in FPPA. The LESA should also serve as basis for considering project alternative projects or project sites.

California has developed, with a grant from USDA, its own version of LESA, using agronomic and land use factors unique and important to agriculture in California. We recommend that where states, like California, have adopted customized LESA analytical models, the NEPA agricultural land impacts (LES) evaluation defer to the use of the state's version of LESA. (California Department of Food and Agriculture, Sacramento, CA - #566.4.10520.XX)

## *Federal Advisory Committee Act*

### **479. Public Concern: The CEQ Task Force should encourage the revision of the Federal Advisory Committee Act.**

#### **BECAUSE IT LIMITS AGENCIES' ABILITY TO COOPERATE WITH AFFECTED MEMBERS OF THE PUBLIC**

FACA should be reviewed and probably revised. It limits agencies' ability to cooperate with affected member of the public. Too frequently, this results in a lack of public trust, and gets in the way of collaborative efforts. (Bob Cope, Commissioner, Lemhi County Board of Commissioners, Salmon, ID - #70.28.10520.F1)

## *Federal Fungicide, Insecticide, and Rodenticide Act; and Food Quality Protection Act*

### **480. Public Concern: The CEQ Task Force should address redundancies between NEPA; the Federal Fungicide, Insecticide, and Rodenticide Act; and the Food Quality Protection Act.**

#### **REGARDING EVALUATION OF HERBICIDE SAFETY**

Several members expressed concern that there is apparent, but not transparent, redundancy between NEPA and the pesticide regulations embodied in the Federal Fungicide, Insecticide and Rodenticide Act (FIFRA) and The Food Quality Protection Act (FQPA). Both of these federal statues were passed after NEPA and are administered by the Environmental Protection Agency (EPA).

The FIFRA and FQPA statutes require that any herbicide undergo extremely extensive scientific analysis before it can be registered and marketed. In addition, the registration process requires that very specific use instructions and use prohibitions be included on an herbicide's label. The use instructions specify the purposes for which the herbicide may be used, the amount that can be used, the number of times it can be used, the crops and environments where it may be used and any precautions that must be taken when it is used. These instructions and prohibitions are based on thorough analysis of data submitted by the herbicide registrant plus review of the relevant scientific literature. This data is analyzed in great detail by several different divisions within EPA's Office of Pesticide Programs (OPP). These include the Health Effects Division (HED), the Environmental Fate and Effects Division (EFED) and the Biological and Economic Effects Division (BEAD). Finally, any use of a pesticide that does not comply with the label instructions is a legal violation.

In view of the rigorous analysis already performed within EPA, several members questioned why other federal agencies are compelled to reevaluate the professional opinion already rendered by the agency that has specific responsibility for thoroughly evaluating herbicide safety. (Other, Washington, DC - #585.7.10520.XX)

## *Freedom of Information Act*

### **481. Public Concern: The CEQ Task Force should require agencies to proactively manage information that may be needed in response to Freedom of Information Act requests.**

As it relates to the Freedom of Information Act, require federal agencies to be proactive in their efforts to collect/maintain/share information for the NEPA process.

Rather than waiting for an opportunity to collect or create data that is important for the public to consider for a given proposal, require that federal agencies consider a comprehensive plan or system to share information that it knows that it will be using from time to time. The Forest Service is a good example of an agency that hordes data and then piece-meals it out according to what it wants to do. This creates an incredible impediment for citizens who try to get information whether or not they submit formal Freedom of Information Act requests. It is much more efficient to pre-determine what

information is important to the NEPA process (the public) rather than saddling the public (individuals) with trying to find it on their own. (Individual, Nashville, TN - #513.11.10520.XX)

**482. Public Concern: The CEQ Task Force should not allow Freedom of Information Act requests for incomplete biological evaluations and assessments.**

Under recent Freedom of Information Requests, a Biological evaluation/biological assessment that had not yet been reviewed by the Fish and Wildlife Service and without a biological opinion had to be sent to the Freedom of Information Act (FOIA) applicant. FOIA requests for Biological Evaluations/Biological Assessments that have not yet completed the process creates confusion. (Individual, Willows, CA - #320.1.10520.A2)

*General Mining Law*

**483. Public Concern: The CEQ Task Force should encourage review of the General Mining Law of 1872.**

I find it interesting NEPA is being reviewed for modernization, when far older and more outdated laws are not. For instance, the General Mining Law of 1872 is clearly inadequate and a better candidate for review. (Individual, Seattle, WA - #222.3.10520.XX)

*Indoor Radon Abatement Act*

**484. Public Concern: The CEQ Task Force should require the Department of Housing and Urban Development to comply with the 1988 Indoor Radon Abatement Act.**

RE: Docket No. FR-4523-P-01 Environmental Review Procedures for Entities Assuring HUD's Environmental Responsibilities Comments for Proposed Rule Revisions to 24 CFR 50

Title 15, Chapter 53, Subchapter III, Section 2661 states, "The national long-term goal of the United States with respect to radon levels in buildings is that the air within buildings in the United States should be as free of radon as the ambient air outside of buildings." Section 2661 goes on to say, "The Secretary [of HUD] shall utilize any guideline, information, or standards established by the Environmental Protection Agency for testing residential and nonresidential radon, identifying elevated radon levels, identifying when remedial actions should be taken."

Executive Order 11514 Protection and Enhancement of Environmental Quality Section 1 states, "Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals". (Again, the 1988 Indoor Radon Abatement Act states the national goal with respect to radon levels is that the air within buildings should be as free of radon as the ambient air outside buildings.) Section 2a and d state, "Heads of agencies shall (a) consult with appropriate Federal, State and local agencies in carrying out their activities as they affect the quality of the environment and (d) review their agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the provisions of the Act (NEPA).

The HUD Secretary seems to be in violation of Executive Order 11514 by failing to direct HUD policies, plans and programs so as to meet the national environmental goal mandated in the 1988 Indoor Radon Abatement Act. (Other, Alstead, NH - #370.5.10520.XX)

## *Unfunded Mandates Reform Act*

### **485. Public Concern: The CEQ Task Force should consider the Unfunded Mandates Reform Act, as applied to the Federal Advisory Committee Act, in the context of cooperating agency relationships.**

When speaking of cooperating agency, primarily during scoping and in the context of “significant federal action” when the cooperators are federal agencies combined with Tribal, State or local governmental entities, the Unfunded Mandates Reform Act of 1995 (Pub. Law 104-4) as applied to the Federal Advisory Committee Act preemption enters this discussion.

Information security while developing a draft environmental impact statement or supplemental EIS prior to public dissemination, can and do pose problems for Cooperating Agencies. For example: Pub. Law 104-4, Title II - Regulatory Accountability and Reform, Section 202. Statements to accompany significant regulatory actions (2 U.S.C. 1532) at section 204(b):

Meetings between state, local, tribal, and federal officers - The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to actions in support of intergovernmental communications where (1) meetings are held exclusively between Federal officials and elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and (2) such meetings are solely for the purposes of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration.

However, Section 202 (a) IN GENERAL - Unless otherwise prohibited by law, before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year, and before promulgating any final rule for which a general notice was published, the agency shall prepare a written statement containing:

(1) An identification of the provision of Federal law under which the rule is being promulgated:

(2) A qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate, including the costs and benefits to State, local, and tribal governments or the private sector, as well as the effect of the Federal mandate on health, safety, and the natural environment and such an assessment shall include:

(A) An analysis of the extent to which such costs to State, local, and tribal governments may be paid with Federal financial assistance (or otherwise paid for by the Federal Government): and

(5A) A description of the extent of the agency’s prior consultation with elected representatives (under section 204 [above]) of the affected State, local, and tribal governments.

Since Title II is inclusive of the above sections, the question could be asked, that if a federal action does not meet or exceed the stated monetary amount in Section 202 (a), combined with promulgating a rule to that effect, are Cooperating Agencies still protected by preemption of the FACA, determined by Section 204 (b) as might be applied under CEQ in that circumstance. If it is found not to be a requirement, does the same instance preempt State statute?

The interest now generated with Cooperating Agency guidelines has been brought about primarily because of the fact, that localized impacts directly having effect on all of the human dimension of the NEPA process have largely been ignored. Especially those processes that cannot quantify with the \$100,000,000 threshold noted above. Case history such as Uintah County v. Norton (Civil No. 2:00-CV-0452J) among others, establishes we have a problem that can be alleviated with comments you hopefully will receive under B. 3 from those county participants. (Multiple Use or Land Rights Organization, Lander, WY - #453.29-31.10520.XX)

## Other

### **486. Public Concern: The CEQ Task Force should support Larry Craig's draft bill "Public Lands Planning and Management Improvement Act of 2002."**

We agree with many elements of Senator Larry Craig's draft bill "Public Lands Planning and Management Improvement Act of 2002" including:

Limiting the number of federal land planning exercises.

Eliminating redundant analysis.

Limiting the scope of resource management plans to basic elements and directing the agencies to give equal preference to each of those elements.

Establishing strict deadlines for completing resource management planning.

Clarifying that management activities are not to be stayed in anticipation of changes that might be made in an amendment or revision. (Timber or Wood Products Industry, Ketchikan, AK - #524.8.10200.XX)

### **487. Public Concern: The CEQ Task Force should consider the Expedited Airport System Enhancement Initiative.**

Early last year, [American Association of Airport Executives] AAEE, together with its sister organization, the Airports Council International-North America (ACI-NA) developed the Expedited Airport System Enhancement (EASE) initiative to improve the review and approval process for runways and other capacity enhancement projects (a more detail description of EASE is attached below). The Senate Commerce Committee passed a project streamlining bill in August of 2001 that includes several EASE-like provisions, and the House of Representatives passed a similar bill in July of this year. Other examples of actions recommended by our EASE initiative that could be considered by the Task Force as it reviews NEPA requirements are the designation of additional funds for agencies directly engaged in critical projects; the creation of a Council, appointed by and reporting directly to the President to coordinate review of federal agency actions as they affect capacity enhancement and environmental review; the establishment of national procedures for excluding specific airport project actions from NEPA review based on historical impact findings for specific types of activities; the facilitation of agreements with local governments to allow additional mitigation for critical airport capacity projects (for example, legislation allowing directed interpretation of policies on revenue diversion and use of passenger facility charges, noise and access restrictions for critical national airport capacity projects to improve mitigation of environmental impacts). We see such efforts as consistent with the Task Force goals of greater interagency coordination and accountability. (Business, Alexandria, VA - #477.2.10520.XX)

### **488. Public Concern: The CEQ Task Force should review the current application of wetlands law.**

Although I believe in environmental protection, I have personally come in direct contact with absolutely ridiculous local application of wetlands laws. It is essential that we preserve access to clean water supplies for the future, but the application of various Wetlands laws are more intended to protect microbes than to promote clean water. In this regard, I had to engage in an expensive lawsuit in order to protect my own rights against a Wetlands commission that did not even understand the law. Though well intentioned, local Wetlands commissioners were quite ignorant of the law and incapable of rational application of the law. I believe in clean water and basic environmental protection, but the current application of environmental law is "out of control" and is economically unsound. (Individual, Glastonbury, CT - #231.1.10520.XX)

### **489. Public Concern: The CEQ Task Force should follow the intent of U.S.C. 44, Chapter 3506, NEPA Section 1500.1, NEPA 1501.7.**

Follow the clear intent of the law, U.S.C. 44, Chapter 3506 (c)2, Chapter 3507, NEPA Section 1500.1, NEPA 1501.7 (Individual, Bigfork, MT - #206.6.10520.XX)

## Appeals Process

### *Appeals Process General*

#### **490. Public Concern: The CEQ Task Force should encourage agencies to legally defend their projects.**

We are also concerned that the agency, often after years of comprehensive NEPA work on a project, may actually decide not to defend their actions in court, leaving a project to die. It is critical that the NEPA analysis have sufficient support from all levels of the agency so that each decision can hold up to legal scrutiny. (Special Use Permittee, Ashland, OR - #495.1.10200.XX)

#### **BY BUILDING CONTINGENCY TIME INTO THE NEPA PROCESS FOR APPEAL AND LITIGATION WORK BY THE ID TEAM**

Plan for Time to Deal with Appeals. For decisions that are appealable, the ID Team work might not be complete when the decision is signed. Contingency time should be built into the NEPA process for appeal and litigation work by the ID team. (Government Employee/Union, Grangeville, ID - #44.35.10520.XX)

#### **491. Public Concern: The CEQ Task Force should define processes in order to withstand legal challenges.**

NEPA processes need to be better and more clearly defined in order to withstand judicial attack. The NEPA Task Force needs to develop a clear administrative roadmap for satisfying NEPA requirements, enact it into regulations, and defend it in court. (Agriculture Industry, Boise, ID - #464.15.10200.XX)

#### **492. Public Concern: The CEQ Task Force should recognize that judicious rulemaking will reduce NEPA procedural burdens and litigation vulnerability.**

It is not simply the statute that has occasioned so much litigation. CEQ's efforts to fulfill its NEPA oversight role also have been marched up the courthouse steps. In recent years, a significant percentage—if not most—of the NEPA lawsuits have been based on alleged violations of CEQ's regulations. The CEQ regulations, promulgated under the authority granted to CEQ by Executive Order 11991 (42 Fed. Reg. 26967 (May 4, 1977)), also have presented abundant opportunities; requirements for additional documentation (e.g., Environmental Assessments (EAs) and Finding of No Significant Impacts (FONSI)s); and expansive but vague analytical requirements (e.g., the content, and geographical and temporal scope, of analyses of cumulative impacts, connected actions and indirect effects). When the CEQ has attempted to reduce complexities or ambiguities arising from case law or its own regulations, it typically has done so through guidance documents (e.g., "Forty Most Asked Questions," 46 Fed. Reg. 18026 (1981); "Incorporating Biodiversity Considerations Into Environmental Impact Analysis Under NEPA" (1993); and "considering Cumulative Effects Under The National Environmental Policy Act" (1997)). These documents, however, lack the force and effect of law and have been virtually ignored by the courts. Yet, on at least one occasion—deletion of the worst case analysis requirement (51 Fed. Reg. 15625 (1986))—CEQ has demonstrated that use of its rulemaking authority can lessen substantially the analytical burdens associated with NEPA documentation and the litigation vulnerability of those documents. Likewise, judicious CEQ rulemaking could reduce NEPA procedural burdens and the litigation vulnerability they present. (Timber or Wood Products Industry, Washington, DC - #507.3.10500.XX)

#### **493. Public Concern: The CEQ Task Force should develop an administrative resolution process for checks and balances short of expensive litigation regarding issues of non-compliance.**

An administrative resolution process should be developed providing for a checks and balance short of expensive litigation regarding issues of non-compliance. Federal planners know that a rural governmental entity does not have the tax base to legally challenge arbitrary federal action and no

individual accountability exists assuring fair and equitable treatment by federal planners and authorized officers. Attitudes such as, “we do it because we can” and “so sue me” develop as a result. (Individual, Kanab, UT - #537.5.10200.XX)

Include within the NEPA process a clear way to stop federal proposals, other than relegating the matter to the courts. (Individual, Nashville, TN - #513.20.10200.XX)

#### **494. Public Concern: The CEQ Task Force should consider legal and procedural reforms that protect developers from ongoing legal challenges.**

We . . . hope the NEPA Task Force will consider important legal and procedural reforms that protect developers from ongoing legal challenges intended only to harass and delay development projects. It is essential that the public has confidence that the process will lead to sound decision making and environmental protection, but also to finality of decisions made through the process. (Business, Washington, DC - #517.2.10200.XX)

#### **495. Public Concern: The CEQ Task Force should encourage development of a non-appealable “Core Plan” for public land management.**

##### **WHICH IS DEVELOPED THROUGH THE EIS PROCESS BUT IS NOT SUBJECT TO EXECUTIVE, LEGISLATIVE, OR JUDICIAL REVIEW**

A “timely” Decision Document (Plan) is essential for efficient forest management and effective planning by public-stakeholders dependant on the Decision. Current NEPA vulnerability to the “appealable process” and “political bias” has circumvented “timeliness”. Such vulnerability is by default, altering established public policy congressionally adopted during the Muir/Pinchot era differentiating National Parks and National Forests in the Early 1900s. Congress is the single mechanism to establish public policy, and must act to prevent the circumvention of public policy by default through conflicting laws.

Proposed Solution:

“Non-Appealable Core Plan”. The proposed Core Plan is a science-based product containing “time-certain” duration. The Core Plan is derived from the grass-roots application of empirical knowledge and local familiarization of the environment generated at the District field level. The “accumulative sum” of all districts within the designated forest becomes the forest-wide Core Plan. At the Supervisory (SO) and Regional (RO) level, a discretionary limited adjustment may be permissible though it is vulnerable to bias. The Core Plan provides the essential, perhaps minimum, management criteria needed to sustain forest health and serve its chartered mission for the interests of the public. The Core Plan is a Decision Document authorized by new or existing powers under the category exclusion rule. The Core Plan is developed through the EIS process, but immunized from Executive, Legislative, or Judicial review. (Individual, Spearfish, SD - #360.2.10520.C1)

The Decision-making Process should incorporate Alternatives beyond the Core Plan. Alternatives include more aggressive criteria leading to the “ideal” condition of sustainable forest management to accomplish long-range goals and objectives. Such Alternatives are established through existing EIS procedures and review. Alternatives recognize the dynamics of science and environmental conditions that stimulate worthy national debate.

Decision: The Decision incorporates the Core Plan and an Alternative. Illustration: Though forest management issues are interrelated and multifaceted, Sustain Timber Yield is used for best illustration because of current top-of-mind forest fire events and national debate.

Allowable Sale Quantity (ASQ) in USFS Decision Documents has increased steadily from 60 MBF in the early 1960s to 145 MBF in recent times. (1) (2)

Actual yields have decreased from 120 MBF in the late 1980s to 60 MBF in 2001 and 70 MBF in 2002. Significant political pressures from industry and the Executive increased ASQ and yields during the 1970-late 1990s periods. Counter pressures to reduce yield through appeals by the Greens have been successful in recent years.

A USFS/Black Hills National Forest brochure published in 1962 states: “The Black Hills National Forest is managed to supply a continuous flow of 60 million board feet of timber year after year—forever.” In 1999, the ASQ from the accumulative sum of Districts was 65 MBF. The Supervisor’s Office (SO) and Regional Office (RO) adjusted the yield to 84 MBF.

ASQ and Sustained Timber Yield have been erratic in the last several decades. The pendulum of power has swung severely both left and right as the Greens push for “Zero-Harvest” and industry seeks sustained yield in increasing numbers. Each opposes the success of the other, and, ultimately prevents timely Forest planning.

During this political activity, the Forest Service at the District level appears to represent a consistent science-base yield of 65 MBF over a notable period of four decades.

(One) In 1984, Spearfish Planning and Zoning Board was concerned on the reliance of sustained growth from the forest products business sector and its impacts on the municipal infrastructures of roads, schools, fire and police service, etc.

(Two) In 1987 the Spearfish Economic Development Corporation debated the proposed yield of 120 MBF. Concerns were expressed that elevated yields that were not sustainable would generate a “false economy” to the community.

Summary:

As the illustration points out, there are consistent findings of forest management practices that contain locally determined objective and science-based elements. Such “time-creditable” elements are found in other programs (recreation, range, roads, lands, fire, etc.) within the forest management view that are worthy of inclusion in a “non-appealable” Core Plan. (Individual, Spearfish, SD - #360.4.40100.C1)

#### **496. Public Concern: The CEQ Task Force should require NEPA lawsuits to be heard in a corresponding district court.**

Venue for Lawsuits. NEPA lawsuits should be allowed to be removed to the District Court where the property at issue is located, rather than requiring that all cases be heard in Washington, D.C. Requiring the project proponents to travel to Washington, D.C. to participate in a legal action concerning their project is a huge burden and puts them at a distinct disadvantage. It makes sense to allow these cases to be removed to the venue where the property is located. (Business, Washington, DC - #517.20.10500.XX)

#### **497. Public Concern: The CEQ Task Force should encourage the elimination of the appeals process.**

The process has been written to support delays. . . . eliminate the appeals process (it has become only another means of delay) . . . . (Special Use Permittee, Naches, WA - #71.5.10200.XX)

### *Revision of the Appeals Process*

#### **498. Public Concern: The CEQ Task Force should address the use of the appeals process to delay or halt projects.**

##### **SHOULD NOT ALLOW ENVIRONMENTAL GROUPS TO TIE UP THE PROCESS**

I would like the nine-member task force assigned to review and update NEPA to modify the appeal process so that environmental groups can’t simply tie up a project in court if they can’t stop it through normal political processes.

Environmental groups are not just making sure all logging laws are followed, for example. They are using NEPA, the ESA, the Clean Water Act, the Clean Air Act, etc. to stop projects in the field and to further their agenda of “preservation through no-use”. NEPA and other environmental laws must not be used in this manner. (Individual, Lewiston, ID - #380.1.10520.XX)

There is a part of the process that I have never seen addressed. That is the fact that in the case of the Forest Service, especially, with their Appeal Reform Act requirements hanging over them, the entire NEPA process is designed to defeat the citizen who is in favor of the agencies proposed work.

For example:

Let's say that the Forest Service proposes a badly needed hazardous fuel-thinning project. They do the NEPA process and analysis from Notice of Intent to scoping, issue development (as if they didn't know that to begin with) draft statement, comment period and agency response, final EIS and finally a Record of Decision. Suppose that I as a citizen have tediously hung in there through all this, and at last a decision that I feel is reasonable and responsive is documented in the Record of Decision. Good! Right??

Hardly.

The next phase is the appeal phase. These are usually carefully timed to create the greatest possible delay. They are filed at the end of the period allowed for appeals, etc. (Remember that here in Region One 100% of these projects have been appealed). Now I, and my part of society are walled out of the process! We can "intervene", but we are not really players any more. We have no tool with the standing and stopping power of the appeal process with which to attempt to influence the decision. We could file our own appeal if there were something the agency was doing that we objected to, but that just wastes their time and ours. Now, we're into the waiting game. If the problem is insects they are happily chewing their way to heaven while the litigants object, complain and delay. But finally the decision is reached and the original decision is upheld.

Good again, we can get going, right? Not usually, here in Region One.

Now it's time for the lawsuit—and the general public is still shut out of any real meaningful part of the process. And the project is still stalled.

You get the picture. With the delays there is the very real chance that by now it is too late to actually do any good on the ground. If it's burnt timber it may have checked or decayed to the point of being unusable, if it's bugs they may well be into the second, third or later cycle and have spread, and the winner—the litigants who wanted nothing more than to stop the project to begin with. And the judge usually awards them a good part of their legal costs!

The losers are the bulk of the American people, the affected landscape and its specific denizens, often the local communities, and our industries and marketplace.

NEPA could use a little work to clarify some of the subjective language, but it is those certain citizens that have made NEPA and the decision-making process the bureaucratic, horrendously costly, unworkable nightmare that it is.

The point is that this unbalanced playing field disenfranchises most of us ordinary citizens. We don't have the seemingly unlimited financial resources that the green teams do. (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.45-46.10330.XX)

#### **SHOULD NOT ALLOW LAWSUITS TO CRIPPLE THE NATURAL RESOURCE BASE**

Lawsuits are crippling our natural resource base. The agencies started it by encouraging sweetheart deals, like the one in the California desert and other places, to the point where now they cannot do the right thing when the rare occasion arises that they want to do the right thing.

I am about to sue because of safety issues on tree thinning, sue the individuals that are threatening public safety and natural resource health. These green groups have all but burned up the west, they have all but decimated the cattle industry, and rural cleansing has been the only goal of the federal agencies, a very sickening reality in my area in Nevada. (Individual, Pioche, NV - #342.1.10520.F1)

#### **499. Public Concern: The CEQ Task Force should revise the appeals process to restrict or discourage litigation.**

With the good intentions that Congress intended for NEPA to accomplish, Environmental groups have undermined by abuse of the law in challenging everything that they are personally opposed to seeing in the management of federal lands. The intent of the law is to invite public comment on land management issues. The environmental movement has taken this liberty to impose their concept upon the entire

country against the will of the mass majority of the people. It is time the law was amended to restrict the use of lawsuits by overzealous, but well meaning, individuals and put common sense into land management by trained professionals instead of land management by judicial decree through unqualified lawyers and less qualified judges. (Individual, No Address - #278.1.10520.XX)

Forest Service Appeals Process. Some improvements that would alleviate gridlock in the current appeals process include:

The automatic stay that is in the current process encourages frivolous appeals and should be removed.

Limit appeal rights to those who have commented in writing on each specific issue that is to be appealed. Otherwise, some appellants will simply keep raising new issues in order to either delay or otherwise disrupt the process.

Provide deadlines for appeal decisions and include a provision that if the decision is not rendered within the prescribed time, the appellant must file suit immediately. This will also help limit the use of the appeals process simply for delay.

Require the agencies to consider and balance environmental and economic issues when deciding whether to issue a stay during an appeal.

Establish significant fees for Freedom of Information requests to discourage frivolous requests. This will help discourage appellants from “fishing” for issues to appeal. (Timber or Wood Products Industry, Ketchikan, AK - #524.7.10520.XX)

#### **SHOULD NOT ALLOW APPEALS UNDER 36 CFR 215 TO RESULT IN AN AUTOMATIC STAY**

Appeals under 36CFR215 should not result in an automatic stay. (Individual, Unity, OR - #216.8.10520.XX)

#### **SHOULD LIMIT APPEALS TO PROPOSED ACTIONS CONSISTENT WITH A LAND USE PLAN**

Appeals in site-specific NEPA analyses should be limited to whether the proposed action is consistent with any applicable land use plan. (Agriculture Industry, Susanville, CA - #441.14.10520.XX)

#### **SHOULD REQUIRE THE APPELLANT TO EXHAUST ADMINISTRATIVE REMEDIES BEFORE THE APPEAL IS CONSIDERED**

Exhaustion of Administrative Remedies. For any project approval, permit, or agency decision for which public notice is provided, NEPA should require participation during any public comment period and exhaustion of administrative remedies by the party filing of the lawsuit. To exhaust remedies, the litigant should be required to participate in the NEPA process by submitting comments on the proposed action under NEPA, and the litigant should be required to actually raise the issues later sued on during the comment period. In addition, NEPA should expressly mandate that all comments must be received by the end of the comment period. Comments are routinely submitted after the expiration of the comment period, and while courts are divided, the agency is often required to have considered and addressed the comments anyway. (Business, Washington, DC - #517.22.10500.XX)

#### **SHOULD REQUIRE APPEALS TO CONTAIN SUBSTANTIVE GROUNDS BEFORE BEING CONSIDERED**

Regulations should provide that appeals must contain specific and substantive information regarding the grounds for the appeal before it may be considered. . . . Appeals should contain specific and substantive information regarding the grounds for the appeal, and reasons why the agency decision should be overturned. This type of process would hopefully limit appeals to those that demonstrate some merit and are not filed strictly to delay a proposed action. (Business, Washington, DC - #403.14.10520.XX)

#### **SHOULD INCLUDE MINIMUM INFORMATIONAL STANDARDS FOR APPEALS**

The requirements for filing an appeal in NEPA cases are minimal. It has been said that “anyone with the price of a postcard” can file an administrative appeal of an agency decision. The administrative appeals process needs to be amended so that minimum informational standards for appeals are set in order to preclude the postcard appeals. (Business, Washington, DC - #403.14.10520.XX)

### **SHOULD ALLOW EXCLUDED DECISIONS TO PROCEED WITHOUT THE POSSIBILITY OF ADMINISTRATIVE APPEAL**

What began as a good law to protect the environment has become a regulatory maze that complicates even the simplest government action. The process is so complicated that much of the litigation brought against the government is based upon the government's failure to adequately follow the NEPA process. The process needs to be simplified and more thought given to what can be excluded from NEPA documentation. Agency appeal processes must be streamlined to allow excluded decisions to proceed without the possibility of administrative appeal. (NEPA Professional or Association - Private Sector, Rolla, MO - #625.1.10200.XX)

#### **SHOULD REQUIRE SHORT AGENCY RESPONSE TIME AND OUTSIDE SCIENTIFIC REVIEW**

I believe there is a disproportionate reaction to appeals and slow NEPA processes. Statistics show that the majority of NEPA documents sail through and the projects are implemented (assuming the money's still there). The small percentage of projects that are time-sensitive and slowed by appeal are the ones that need to be focused on. Minor modifications of the appeals process would resolve most of the issues, such as requiring a short agency response time and/or outside scientific review. (Other, Helena, MT - #412.1.10520.XX)

#### **SHOULD INCLUDE A STATUTE OF LIMITATIONS IN NEPA**

The NEPA Task Force should also consider the following legal and procedural reforms to the NEPA process:

**Statute of Limitations.** NEPA should include a statute of limitations, preferably thirty (30) days, commencing upon issuance of the Record of Decision. This would mirror the California Environmental Quality Act's (CEQA) statute of limitation and would help instill public confidence in the fairness and ultimate finality in the process. (Business, Washington, DC - #517.19.10200.XX)

**Time Limits to Legal Challenges:** A reasonable time limit should apply to the filing of legal actions that challenge the environmental process (90 days seems reasonable). (Business, Washington, DC - #470.11.10520.XX)

## **500. Public Concern: The CEQ Task Force should address the cost of appeals.**

### **SHOULD NOT ALLOW SPECIAL INTEREST GROUPS TO FILE LAWSUITS THAT ARE ULTIMATELY PAID FOR BY THE AMERICAN PUBLIC**

The idea that anyone from anywhere can block, via a lawsuit, a proposed power plant or any other matter is totally insane. Who is going to compensate the public who is the ultimate bearer of the costs involved with lengthy legal battles? For instance environmental groups have historically added billions to the costs of building nuclear power plants because of incessant lawsuits even to the point where construction has been permanently ended prior to completion. The utility customers end up having all the costs passed down to them in the form of higher rates. The idea that small groups of special interests can cause such costs to be born by the people of America is not right. (Individual, Dracut, MA - #247.1.10320.A7)

#### **SHOULD REQUIRE APPELLANTS TO BEAR THE COST OF APPEALS SHOWN TO BE FRIVOLOUS**

Appellants should have to post a non-refundable bond, which they will lose if it is shown that their appeal is frivolous. (Individual, Unity, OR - #216.8.10520.XX)

Appellants should bear financial responsibility for the negative effects of lawsuits that are shown to be frivolous or to be considered as a "nuisance". This could be in the form of a posted bond, which could be used to offset the costs to the involved agency or community after the disposition of the lawsuit. (Bob Cope, Commissioner, Lemhi County Board of Commissioners, Salmon, ID - #70.26.10520.F1)

In order to purchase a timber sale, timber companies are required to put up a bond in order to place a bid. We feel that if an organization wishes to appeal an EIS or Environmental Assessment, [it] should also be required to put up a bond. (Timber or Wood Products Industry, - #217.2.10520.XX)

#### **SHOULD REQUIRE APPELLANTS TO PAY FOR THE ADMINISTRATIVE RECORD**

Plaintiffs Should Pay for Administrative Record. NEPA should require that plaintiffs pay the cost of preparing the administrative record (either in advance, such as with the California Environmental Quality Act (CEQA), or, if unsuccessful, following trial. This would greatly discourage frivolous lawsuits designed simply to delay or interfere with a project. It would also greatly reduce cost burdens of the agency. (Business, Washington, DC - #517.23.10500.XX)

### *Appeal Standing*

#### **501. Public Concern: The CEQ Task Force should establish criteria for becoming an interested party.**

Within NEPA and the regulations resulting from it establish criteria for becoming an interested party. (Individual, Winslow, ME - #126.3.10400.XX)

Narrow the definition of “affected interests” who can appeal NEPA decisions to those who are actually affected. Another issue impacting the NEPA gridlock is the fact that for the price of a postcard, anyone can file an administrative appeal of a NEPA analysis. There are people who file appeals on every governmental action, regardless of where it is or what it does. The agencies are clogged with administrative appeals, filed for no other purpose than to delay implementation of a project. The appeals process needs to be amended to focus on people or entities that are actually impacted by a proposal, not to anyone who philosophically disagrees with a project.

While this suggestion does not directly relate to the processes under the National Environment Policy Act, it has important indirect implications. The Forest Service and other agencies iterate that NEPA documents are geared toward an appeals officer or a judge, and not for sound agency decision-making. Requiring some impact from the proposal might limit the process to those who are going to be actually affected by an action. (Business, Washington, DC - #403.13.10520.XX)

#### **502. Public Concern: The CEQ Task Force should amend the definition of interested party to include only those who are economically affected.**

Another way to improve NEPA and safeguard against unnecessary litigation is to amend the definition of “affected interest”. Currently, anyone can appeal a federal agency decision during the NEPA process, regardless of how the agency decision may affect them. Only individuals who have an economic stake in the outcome of a NEPA decision, or those who are directly affected, should be given such consideration. (Domestic Livestock Industry, Boise, ID - #576.10.10330.XX)

#### **503. Public Concern: The CEQ Task Force should give economic interests the same standing to challenge NEPA actions as that given to environmental interests.**

Economic interests must be given standing to challenge NEPA actions to the same extent as environmental interests. A number of federal courts, most notably in the 9th and 10th federal circuits comprising the area where most NEPA analyses are conducted, have held that people whose economic interests are impacted by NEPA analyses do not have standing to challenge those analyses. These courts reason that NEPA is an environmental statute, and economic interests are not within the “zone of interests” to be protected by NEPA.

These cases make a process that is already biased against social and economic concerns even more so. As indicated in the Forest Service’s report entitled “How Statutory, Regulatory, and Administrative Factors Affect National Forest Management,” action agencies routinely over-analyze impacts and attempt to tailor their products so they will withstand legal challenges. If economic interests are

excluded from this review process, agencies can ignore the social and economic impacts of an action without fear of challenge. By the same token, they over-emphasize the natural environmental impacts of an action to insulate them from lawsuits from environmental interests. The result is a process that completely and unfairly shuts out one important part of the total “environment” from a critical part of the NEPA process.

A regulatory recognition of the inclusion of social and economic interests as part of the “human environment”—like Congress intended—would help to restore some semblance of balance to this process. NEPA regulations should take the further step of explicitly recognizing social and economic interests—as part of the “human environment”—have standing to challenge NEPA analyses to the same extent as other interests. (Business, Washington, DC - #403.4-5.10800.XX)

#### **504. Public Concern: The CEQ Task Force should treat project applicants as indispensable parties to any litigation.**

The NEPA Task Force should . . . consider the following legal and procedural reforms to the NEPA process:

Treat Project Applicants as Indispensable Parties to Any Law Suits. NEPA should require that any applicant and/or recipient for federal permit or approval that is challenged under NEPA be considered an indispensable party and must be named in any NEPA lawsuit. Current case law is divided on this issue, and therefore NEPA law may not allow intervention by applicants/recipients. (Business, Washington, DC - #517.21.10200.XX)

#### **505. Public Concern: The CEQ Task Force should create filing dates requiring interested parties to express their concerns up front during the comment period.**

##### Appeal Standing

Under current NEPA rules any individual or organization can establish standing at any point in the public involvement process. To derail projects, individuals and organizations opposed to the original mission of the National Forests, use NEPA to obtain interested party status early in a project and wait until a project is near approval before filing their concerns and objections. A recent example of this occurred in New Hampshire where the Conservation Action Project (CAP) failed to provide input on a timber sale during the EA only to raise their environmental concerns after a management decision had been made. Had CAP filed their concerns during the Environmental Assessment the Forest Service could have addressed them in the its management decision (July 26, 2002 letter from Regional Forester Randy Moore to Conservation Action Project’s David Carle on appEA1 2002-09-0042 A215. file code: 1570-1)

NEPA and its associated regulations must contain filing dates that require an interested party to express all their concerns with a project up front during the public comment period. (Timber or Wood Products Industry - #63.3.10400.XX)

NEPA and its associated regulations must contain filing dates that require an interested party to express all their concerns with a project up front, during the public comment period. (Timber or Wood Products Industry, Concord, NH - #24.4.10400.XX)

In particular, we are concerned when other Federal agencies and states do not participate in the process from the beginning, and then raise issues at the end of the process, greatly delaying the decision. We’d like to recommend that agencies with an interest in a proposal be required to participate from the beginning. (Oil, Natural Gas, or Coal Industry, Washington, DC - #61.4.10400.XX)

## Regulatory Requirements

### 506. Public Concern: The CEQ Task Force should tighten NEPA implementation regulations.

The regulation implementing the law should, if anything, be tightened. Yes, some regulations need to be simplified, and those that actually countermand the intent of the law should be struck down! NEPA is among the shortest word-count laws on the record. Its implementing regulations should not be padded with obfuscations and efforts to amend its intent. (Individual, Lakeview, OR - #233.2.10520.XX)

### 507. Public Concern: The CEQ Task Force should integrate NEPA with other regulatory requirements.

Although there are many examples of successful EAs/FONSIs, we have identified . . . common problems with EA/FONSI practice and offer recommendations to improve each. While not all projects experience all of these problems, they are all too common throughout the federal government.

Failure to integrate other laws into the NEPA document

Summary of problem—The requirement to integrate NEPA with other laws and regulations is misunderstood and poorly implemented by many agencies. One reason for this problem is that the relevant section of the CEQ NEPA regulations (1502.25) only refers to EIS preparation when, in practice, integration should occur for all proposed actions. Thus, the concept of integration either gets overlooked during EA preparation or not addressed until the NEPA process is almost completed. Such failure to coordinate and integrate early in the process inevitably leads to duplication and delay.

Recommended solution—Provide clear guidance that the integration requirements of NEPA apply to EA preparation, not just EIS preparation. Provide a more complete list of laws and regulations that must be integrated with NEPA and provide specific suggestions as to when and how to achieve successful integration with other laws. (NEPA Professional or Association - Private Sector, No Address - #530.15.10520.XX)

Federal agencies must coordinate with a myriad of federal laws and regulations in their environmental documents. A specific example is the Threatened and Endangered Species (TES) Act and National Forest Management Act (NFMA). Consultation with USFWS under TES considerations generally requires a Biological Evaluation (BE) for the preferred alternative of the EIS. BEs are not required for the remainder of the alternatives considered. Under NFMA, the Forest Service is required to display “viability” effects for forest planning considerations for each alternative considered. USFS forest planning decision-makers do not have a full display of the consequences under NFMA. Both are frequently dealing with the same basic considerations and may be redundant. Agency personnel could probably develop extensive examples of similar NEPA coordination problems. In order to evaluate effective recommendations for CEQ regulations, the task force must look into these kinds of problems and develop effective CEQ regulations or recommendations for consideration by the affected agency(ies). (Other, Sacramento, CA - #509.16.10520.XX)

States are caught between federal agencies’ implementation of NEPA. Such was the case in Michigan where a proposed land exchange involving Federal Aid funding required NEPA compliance. An EA was prepared by the airport authority who desired the exchange and was reviewed and approved by the Federal Aviation Administration, only to have the FWS [Fish and Wildlife Service] determine the EA was insufficient to approve the exchange. (Michigan Department of Natural Resources, Lansing, MI - #563.10.10500.XX)

**508. Public Concern: The CEQ Task Force should encourage practices that adequately respond to state and local agency regulatory and proprietary concerns on new project proposals.**

The Washington State DNR encourages the NEPA implementation process to adopt practices that satisfactorily respond to state and local agency regulatory and proprietary concerns on new project proposals. Recognizing state and local concerns, and successfully implementing mitigation practices to address these concerns, are characteristics that lead to an effective cooperative agency relationship/process that realizes project proposals without costly delays. (Washington State Department of Natural Resources, Olympia, WA - #128.21.10200.XX)

**509. Public Concern: The CEQ Task Force should grant states the flexibility to demonstrate compliance with the Environmental Protection Agency within the parameters of federal programs.**

The Environmental Protection Agency's (EPA) enforcement approaches, "Command and Control" and deterrence models are too draconian and are increasingly ineffective at achieving compliance. Command and Control has a tendency to stifle innovation, creativity and "Good Old Fashion American Know-How." Overemphasis on enforcement is counter-productive and consumes significant resources and costs, and results in delay in resolution. The EPA should analyze success based on results, and must administer policy and legislation accordingly.

Suggested Action:

All states should be granted the flexibility to demonstrate compliance within the parameters of federal programs. All parties are best served by EPA benchmarking environmental compliance rather than by employing the current approach, which is an over-simplified accounting of total penalties. (Business, Concord, NH - #16.9.10520.XX)

**510. Public Concern: The CEQ Task Force should require NEPA planning in coastal zones to include a Coastal Zone Management Act Consistency Determination.**

Federal projects taking place in any state's coastal zone, as defined pursuant to the Coastal Zone Management Act and the State's program, the agency should include an identifiable CZMA Consistency Determination (if a federal agency action) or Certification (if a federally funded or permitted action) pursuant to the Federal Consistency Regulations implementing the Act. These Regulations (15 CFR Part 930) allow for interaction between the consistency review process and the NEPA process (see 15 CFR Part 930, section 930.37). In this regard, the EA or EIS may contain several pages constituting the Consistency Determination or Consistency Certification; the conclusions in these statements may be based, in part at least, upon the material in the rest of the EA or EIS.

Federal agencies usually require a 30-day comment period, and non-public hearings, for an Environmental Assessment. The NEPA rules do not specify a time frame for public and agency comments on EAs, although they require that 45 days be allowed for comments on Draft EISs (CEQ NEPA Rules, section 1506.1(c)).

Consistency review procedures under the Coastal Zone Management Act allow 60 days for state coastal agencies; review of consistency determinations (15 CFR Part 930, section 930.41(a)); these reviews include a public notice component. Accordingly, inclusion of a consistency determination in an EA or EIS may make it necessary to provide additional review time; but such inclusion will typically also preclude a separate review effort by the federal agency and the affected state agencies. The longer review period will allow a more thorough review by states and local governments. More to the point, it will do the same for the public, whose schedules do not easily incorporate short review times. Some will complain about efficiency and urge the need for speed; but NEPA's purpose is to foster decisions, based on understanding of environmental consequences, that protect, restore, and enhance the environment (see CEQ NEPA Rules, section 1500.1 (c)). (Individual, Washington, DC - #503.8.10520.F1)

**511. Public Concern: The CEQ Task Force should address the over-application of NEPA to the Federal Aid in Fish and Wildlife Restoration Programs.**

The Association has a particular concern with overapplication of NEPA to the Federal Aid in Fish and Wildlife Restoration Programs. Attempts during the previous administration to apply NEPA to ongoing wildlife restoration, particularly habitat management, have influenced state decision making. Not only have scarce resources that could have been deployed in the field been diverted to needless and costly environmental documentation, many states have restricted federal funding to “plain vanilla” projects for which there could be no conceivable allegation of NEPA noncompliance. In the process, the intent of Congress that the Secretary of the Interior cooperate with states in wildlife restoration is thwarted, financial resources apportioned to the states have been siphoned into needless environmental documentation, and the Federal Aid in Fish and Wildlife Restoration Acts abridged de facto. (Other, Washington, DC - #506.1.10200.XX)

**512. Public Concern: The CEQ Task Force should assess how the Office of Management and Budget information quality guidelines will affect timely decisions under the NEPA process.**

It would be helpful for the Task Force to address process delays due to requirements for information quality, especially in light of the Treasury and General Government Appropriations Act for Fiscal Year 2001 and related Office of Management and Budget (OMB) government-wide guidelines. Quality of information is already addressed in the CEQ regulations, requiring that agencies “shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements.” The regulations also state that NEPA procedures must insure that environmental information must be of “high quality.” The OMB guidelines pose procedures and findings to be addressed relative to information quality before decisions can be made and implemented. The task force should assess how the OMB information quality guidelines will affect timely decisions under the NEPA process, especially in light of new and evolving information and circumstances. (United States Department of Agriculture, Washington, DC - #110.3.10520.XX)

**513. Public Concern: The CEQ Task Force should address the conflict between NEPA demands for disclosure of alternatives and statutory prohibitions against disclosure of proprietary and competition sensitive information.****AND PROVIDE GUIDANCE REGARDING THE NECESSARY LEVEL OF PUBLIC DISCLOSURE**

The issue of procurement sensitive data first arose when the United States Coast Guard (USCG) drafted an environmental impact statement (EIS) for the Integrated Deepwater System Program. The USCG’s current “Deepwater” assets (those which operate more than 50 nm from shore) are aging and technologically obsolete. They lack essential speed, interoperability, sensor and communication capabilities, which in turn limits overall mission effectiveness and efficiency. To address these shortfalls, the USCG established the Integrated Deepwater System Program to replace and modernize its aging force of cutters and aircraft, and their supporting command-and-control and logistics systems. These new assets, which possess common systems and technologies, common operational concepts, and a common logistics base will give the USCG a significantly improved ability to detect and identify all activities in the maritime arena, a capability known as “maritime domain awareness,” as well as the improved ability to intercept and engage those activities that pose a direct threat to U.S. sovereignty and security. The USCG rejected the traditional “one-for-one” asset replacement approach because it would introduce significant risk of timely asset delivery due to the need to establish individual asset acquisition new-starts, which would require the near simultaneous establishment of multiple program acquisition offices for which key management expertise is not available. Significant analysis and mandating of asset capabilities and interfaces would be required, thereby shifting all Deepwater system performance risk to the government. The USCG would lose the system synergy, component and infrastructure commonality, and system implementation control and flexibility that are seen as key benefits of the intended Integrated Deepwater System approach.

The Integrated Systems approach differs from the traditional approach in that the agency buys a system of systems rather than a very narrowly described item. For example, the traditional approach would have the USCG describe, with great precision, the size, speed and other characteristics of the specific ship to be replaced. Several entities would offer to sell the USCG a ship that meets the carefully drafted specifications. Rather than describing the specific proposals, the USCG would only need to describe the impacts created by the narrowly drawn specifications to meet NEPA's demands for alternative analysis. In other words, all proposals would have the same environmental impact. In the case of an integrated system, the USCG seeks a much broader category of proposals that might involve a differing number and type of ship, airplane and satellite all designed to meet its mission. Here, the separate proposals could clearly have very different environmental impacts and, it would appear, that the USCG would be forced to describe them. The description of a proposal during the competition stage of a government solicitation creates some very real conflicts between laws designed to ensure fair competition and protect business sensitive information [and laws] that strongly encourage public disclosure. Clearly, NEPA (at 5 U.S.C. 552 and CEQ rules 1506.6(f) does not establish any basis for belief in a statutory conflict. The agency proponent is free to withhold all information from NEPA public disclosure that it might withhold from a FOIA requestor. The problem the USCG experienced is the uneven treatment of the subsequent disclosure.

NEPA requires an EIS be prepared by federal agencies on "proposals for legislation and other major Federal actions significantly affecting the quality of the human environment." Where the EIS evaluates the consideration of competing bids among contract offerors, the acquisition community becomes concerned that some of the information contained in the EIS is procurement sensitive information because the disclosure would enable other bidders to identify critical information about their competitor's bid. In addition to competition sensitive information, there is proprietary information, which the offeror will assert is critical to the offeror's company's future.

NEPA requires all Federal agencies to comply therewith to the fullest extent possible, 42 U.S.C. [section] 4332, unless existing law applicable to the agency's operations prohibits or makes compliance impossible, 40 C.F.R. 1500.4(a)(1). We are directed by CFR 1506.6(f) to: Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (FOIA)(5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action.

There are several categories of information that might generally be exempt from disclosure. The Council on Environmental Quality (CEQ) guidance urges a federal agency to refrain from claiming the interagency privilege with regard to comments by other agencies about the EIS. Where the information to be withheld is classified based upon national security demands, the path is clear. In *Catholic Action of Hawaii/Peace Education Project v. U.S.*, 468 F. Supp. 190, the plaintiff sought to enjoin the Navy from using certain newly constructed facilities at the West Loch Branch of its Pearl Harbor Naval Base in Honolulu, Hawaii because the Navy failed to issue a formal EIS before making a finding of no significant impact (FONSI). The court held that the submission of a public EIS would conflict with security data provisions of the Atomic Energy Act, 42 U.S.C. [section] 2014(y); with security classification guides prepared jointly by the Department of Defense (DOD) and the Department of Energy (DOE), CG-@-4, Joint ERDA/DOD Nuclear Weapons Classification Guide; and with United States Navy (USN) implementation of the joint guide, SWOP 55-1, Navy Security Classification Guide for Nuclear Weapons.

Both FOIA and other laws protect certain information. The aforementioned national security data is one example. Another would be proprietary data. We note: CEQ Guidance Section 1502.21 Incorporation by reference. Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data, which is itself not available for review, and comment shall not be incorporated by reference.

In *Atchison v. Alexander*, 480 F. Supp. 980 (1979), proprietary data was held to have been correctly withheld from the defendant's final EIS. The issue involved the legality of the United States Army Corps of Engineers' (The Corps) efforts to add a new "step" in the series of dams and locks that descend

from the headwaters of the Upper Mississippi River and which, together with dams and locks on the Illinois River, comprise the Upper Mississippi River Navigation System. The railroads and the environmental groups claimed that the United States Army Corps of Engineers acted arbitrarily and capriciously in preparing an EIS, in selecting a recommended plan, and in deciding to go forward with the proposal. The Corps used the data at issue to calculate the rate savings shippers would receive with the expansion of Lock 26's capacity. The Corps' positive findings on this point added to the projected benefits of the proposal. Therefore, the validity of the rate saving figures was a crucial matter to those in opposition to the construction. The Corps argues that this data was confidential proprietary information that could not be included in the final EIS.

Unfortunately, the case law does not begin to advise an agency on how to write an EIS that must include proprietary data. We speak here of the situations where an offeror provides certain information in response to a solicitation for bids, clearly labeling and asserting statutory privilege against disclosure. In the somewhat similar, but far easier situation where the agency discovers (by its own act) certain information that a landowner asserts to be proprietary, [the "NEPA call in" website] was somewhat uncertain. [Footnote 2[2]]: Excerpt from "NEPA Call-In" web site: NEPA Call-In contacted GSA Commercial Broker, to determine if GSA had established policy or guidance on disclosure of contamination found during an EA or EIS. The Broker stated GSA has not developed a policy on this issue. We then recontacted the Environmental Attorney, who stated they were not aware of formal GSA guidance. The attorney further stated there is disagreement within GSA on disclosure of information, such as environmental contamination, that GSA learns of and that the property owner may consider proprietary information.] We may safely presume, based upon CEQ guidance, that where there are statutory prohibitions against disclosure, one may safely withhold the data from the public EIS. Unfortunately, nothing precludes EPA from disregarding this limitation in reviewing the EIS. If the proprietary and procurement sensitive information may well be a critical portion of the EIS, the United States Environmental Protection Agency (EPA) could well conclude that the statement is "inadequate."

[3 (Inadequate) The draft EIS does not adequately assess the potentially significant environmental impacts of the proposal, or the reviewer has identified new, reasonably available, alternatives, that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. The identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. This rating indicates EPA's belief that the draft EIS does not meet the purposes of NEPA and/or the Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS.]

Under Section 309 of the Clean Air Act, EPA is required to review and publicly comment on the environmental impacts of major federal actions including actions that are the subject of EISs. If EPA determines that the action is environmentally unsatisfactory it is required by Section 309 to refer the matter to CEQ. The EPA may assume, in the absence of better guidance, that it must evaluate only the EIS that is publicly released. The inevitable result would be that EPA will condemn the document as incomplete.

A far better result might be to ask EPA to act as an honest broker in the situations where protected material has been deleted. In doing so, it could reassure the public that a sufficient EIS has been completed and that the agency in question has disclosed all that they are legally permitted to disclose. The current situation leaves a federal agency in the position of going forward with a clear possibility that EPA will publicly condemn the EIS as inadequate because the proponent has withheld certain information and analysis which public law compels it to withhold. While this is not a clear "conflict of laws" since it is not a violation of law to issue an inadequate EIS, we suggest that clearer guidance might assist the EPA in its statutory duty to evaluate an EIS which contains proprietary or competition sensitive data.

We suggest that federal agencies be encouraged to write an EIS that contains, where necessary, protected information. Protected information is any information that cannot be released to the public because of one or more lawful restrictions. The proposed practice would encourage federal agencies to examine all environmental impacts of a proposed action, not just those which can be described publicly. It would allow the general public to be reassured that a third party has reviewed the actual document and graded it accordingly. The alternative would be that practiced in the USCG IDSRP [Integrated Deepwater Systems Replacement Project] whereby the agency blurs the description of impacts to avoid

details that cannot be disclosed. Either approach gives the public less than full disclosure of data and information. As compared to the USCG experience the proposed approach is much closer to the statutory intent of all other aspects of NEPA (consideration of all impacts, evaluation of alternatives, etc.) and at least as true in the area of public disclosure. We urge its adoption.

Fortunately, the Integrated Deepwater Systems Replacement Project evaded the dilemma described above. When the objective measures of the three proposals were compared, they were similar. Thus, by happy coincidence, all three proposals were close enough in character to be described by a broad general range of environmental impacts. The EIS contained a very broad range of emissions and other objective criteria that encompassed each of the three proposals. In so doing, the CG [Coast Guard] was able to avoid describing the individual proposals. If the impacts associated with any one of the three proposals had been sufficiently outside the broad range of objective criteria, the laws (discussed above) that prohibit disclosure of one competitive proposal would have forced the CG to withhold the fruits of its environmental impact analysis from the public review. Even though the USCG was able to create an EIS that covered the subject, one could certainly agree that the document we wrote is not as good, from a NEPA standpoint, as the one we might have written. Indeed, one could argue that rolling up the alternatives made for a more ambiguous document that did not discuss clearly and specifically some of the real differences in the alternatives. Moreover, the next group may not be lucky enough to find that all three systems have similar impacts. If the new trend in acquisition continues, the next major program may not be as fortunate.

Challenges overcome: What impediments were overcome to make this more efficient or effective. By sure coincidence, the CG was able to overcome the conflict between NEPA demands for disclosure of alternatives and statutory prohibitions against disclosure of proprietary and competition sensitive information. The next “out of the box” solicitation might not be as fortunate. We suggest that CEQ revisit its guidance with a view towards describing the level of public disclosure necessary in light of the above statutory prohibitions. (United States Coast Guard, No Address - #600.5-14.20700.XX)

## American Indian Interests

### **514. Public Concern: The CEQ Task Force should determine who is an interested American Indian.**

Figure out who is an interested Indian. (Individual, Idyllwild, CA - #312.2.10600.F1)

### **515. Public Concern: The CEQ Task Force should address the preservation of American Indian sacred sites as a function of NEPA.**

NEPA [should not] be enlisted in enforcement of federal policy unrelated to the environment. One of the department-wide exceptions proposed by USDI in August 2000, proposed new exception 2.13, would have required environmental documents for [all] actions which may “Restrict access to and ceremonial use of Indian sacred sites by Indian religious practitioners or adversely affect the physical integrity of such sacred sites (EO 13007).” 65 Fed. Red. 52211 (August 28, 2000). We have nothing against sacred sites, but doubt whether the preservation of religious practices is a proper object of NEPA. (Other, Washington, DC - #506.24.10600.XX)

### **516. Public Concern: The CEQ Task Force should address the effects of the NEPA process on the Pine Ridge Reservation.**

It is my understanding that NEPA is an environmental law for the people to keep them informed on issues and projects being done by the federal government. I understand that there is more to NEPA than what I will be addressing. What needs to be understood is that almost all of the actions in Indian country, and more specifically on the Pine Ridge Reservation, are federal actions which then kicks in the NEPA process. As you are aware, tribes work closely with a number of federal agencies. For example, the Indian Health Service provides what is known as individual services, which are basically water and sewer services to individuals. Since these are federal actions, then NEPA needs to be complied with. The fact that we must address the NEPA on such small scale projects costs money—money that could be used by the project, and time—time that our people must go without water or sewer. This is just one of

the many problems or barriers that we must address. (Oglala Sioux Tribe Environmental Protection Program, Pine Ridge, SD - #455.1.10600.XX)

## Environmental Considerations of Planning

### Summary

This section includes the following topics: Environmental Considerations General, Air, Water, Agricultural Land, Wildlife/Habitat, Vegetation, Emergency Circumstances, Forest Health Management, Fire Management, and Natural Resource Development.

**Environmental Considerations General** – Many respondents offer comment regarding environmental considerations of planning. Some request that the Task Force require lead agencies to select alternatives that minimize environmental effects. Others assert that the Task Force should encourage agencies to make substantive environmental progress by advising them to utilize and follow NEPA procedures.

According to some respondents, some agencies deliberately drag out the analysis process in order to avoid taking actions to prevent environmental damage; these respondents ask the Task Force to caution against such practices. In much the same vein, one recreational/conservation organization asserts, “The ecological ramifications of agency inaction must be substantively incorporated into planning and decision-making processes to enable a thorough assessment.”

Some of the other suggestions for the Task Force include advising agencies to consider only environmental risk, not monetary cost, and to address environmental concerns at the site-specific level; encouraging agencies to consider the potential negative environmental effects of changing land allocations; establishing thresholds of significance for each environmental resource, and providing thresholds or parameters where staged requirements can be implemented based on magnitude of effect; requiring NEPA analysis to include the synergistic effects of chemicals and hazardous materials in the air, water, or in soil at various pH levels; and requiring the Department of Housing and Urban Development to include radon in its environmental review procedures.

**Air** – A number of respondents express concern that inadequate attention is paid to air quality in NEPA analysis. According to one state agency, “The majority of the time, there is very little to no information in the NEPA document on the air quality analysis, or the analysis is erroneous.” This agency asserts that the “the level of analysis and disclosure should relate directly to the level of potential impact.” Others suggest that the Task Force should require agencies to satisfy NEPA requirements by analyzing “localized CO hotspots,” and evaluating “the short and longer term impacts of major projects on land use, regional air quality, and air toxics which cause cancer and other health problems.” Along the same lines, some charge that the Federal Highway Administration (FHWA) does not “give adequate consideration to the effects of air toxics exposures and health impacts caused by highway system expansion.” These respondents assert that the Task Force should require the FHWA to “take steps to comprehend, avoid, and mitigate these impacts as part of the transportation project review and approval process.

Other suggestions for the Task Force to consider include encouraging various actions to reduce mobile emissions; requiring that upwind sources of pollution meet Clean Air Act requirements through enforcement of the Environmental Protection Agency’s State Implementation Plan; and encouraging congressional hearings to focus awareness on interstate ozone transport issues.

**Water** – A number of respondents comment on the importance of protecting and enhancing water quality. One individual advises that water quality regulations should be “more stringent and aggressive to assure the American public pure water for drinking and recreation.” Another respondent comments that federal water programs have multiplied “to the point of being redundant, and many of these programs contradict each other,” and that therefore the Task Force should “encourage periodic review or institutionalized performance audits of federal water programs to insure that their effectiveness and policy focus remains sound and that limited resources are well spent.”

Other respondents state that the Combined Sewer Overflow infrastructures need to be updated or replaced, and call on the Task Force to support increased federal funding for water infrastructure improvements. Some respondents assert that the Task Force should encourage the preservation of threatened rivers; while others assert that the “United State’s lakes, rivers and ponds are approaching their capacity to sustain recreation and tourism” and suggest that the Task Force “support federal funding for management study of lakes to determine the optimum way to manage diverse activities on public water bodies.”

Additionally, several respondents state that the Task Force should include the marine environment in NEPA requirements. One preservation/conservation organization remarks, “Our sovereign ocean resources, held in the public trust, are entitled to the same level of protection as the other natural resources belonging to the United States and its people. To do less is to put at risk a significant part of our nation’s natural and economic heritage.”

**Agricultural Land** – An agriculture industry representative comments that “approximately one million acres of prime and unique agricultural lands are being converted irreversibly to non-agricultural uses each year. Actions by federal agencies such as construction activities, development grants and loans, and federal land management decisions frequently contribute to the loss of prime and unique agricultural lands directly and indirectly.” This respondent requests that the Task force require agencies to consider farmland loss as part of their determination of “significance” and that it clarify that “agricultural resources includes both land and water.”

**Wildlife/Habitat** – Comments relative to wildlife/habitat include the suggestion that agencies should use sector professionals early in the project development phase when identifying important habitat areas, and that the Forest Service should “rework its process for viability and the related ‘well distributed populations’ issue” inasmuch as its current viability and sustainability requirements are costly, time consuming, and vulnerable to litigation.

Additionally, some ask the Task Force to encourage the participation of the Fish and Wildlife Service in the preparation of state documents regarding threatened and endangered species. One state agency explains: “DOI-FWS is directed to take all practical means to restore threatened and endangered species, yet state projects designed to benefit listed species are hamstrung by an endless litany of paperwork before projects can begin. The unintended result is that many projects that would benefit listed species are never undertaken because limited resources have to be directed to those areas requiring less administrative overhead. More progress toward species recovery would be made if DOI-FWS took a more cooperative and participatory role in the preparation of the documents they require of the states.”

**Vegetation** – Respondents who comment on the topic of vegetation express concern regarding vegetative structure and composition of forest stands, and the management of invasive weeds and exotic plants. One individual states that the Task Force should require agencies to consider the

big picture and “exchange some precision at the stand level for more general information about landscape vegetative structure and composition and how these interact with other resources in both the short and long term.” Others believe old growth forests should be preserved and that agencies should manage harvested land through reforestation. Several respondents comment on the effect of NEPA on the management of invasive weeds. Their concern is that timely action is crucial when trying to “eradicate, manage or contain disruptive biological pest invasions,” and that the time and expense of NEPA planning prevents such timely action.

**Emergency Circumstances** – Respondents commenting on the topic of emergency circumstances feel that the present emergency provision under CEQ regulations is unwieldy and virtually useless, requiring every decision under it to be made individually without guiding criteria. They ask the Task Force to “develop a better process for determining when circumstances are ‘emergencies’ and selecting the ‘alternative arrangements’ for NEPA compliance for the responsive federal actions.” In much the same vein, some request that the Task Force consider mechanisms to clarify accelerated environmental review of important projects through the use of “arrangements” under 40 CFR 1506.11 to deal with emergencies.

**Forest Health Management** – Some respondents comment that federal agencies are unable to effectively address rapid declines in forest health because they are hindered by statutory, regulatory, and administrative frameworks. Specifically, they assert that agencies are unable to treat insect infestations in a timely manner due to NEPA requirements.

**Fire Management** – Some who comment on fire management assert that implementation of joint State and Federal National Fire Plan projects are delayed because federal agencies are unable to complete NEPA documents in a timely manner. Others suggest that CEQ regulations should be amended to permit timely projects, such as hazardous fuel reduction, that are beneficial to the environment. One agriculture industry representative comments, “CEQ regulations should be amended to either exempt hazardous fuel reduction projects in class 3 fire areas from NEPA requirements, or streamline the process so they may be conducted in a timely manner.”

**Natural Resource Development** – A number of respondents direct their remarks to the development of natural resources. Some comment on development activities in general, some address timber resources, and some address mineral resources.

Of those who comment on development activities in general, some feel that environmental protection laws are being dismantled in favor of developers of all sorts. These respondents request that the Task Force maintain restrictions on development and consider the consequences of “allowing developers to do as they wish” on federal lands. On the other hand, some believe the Task Force should encourage development of federal lands. One individual writes, “I think we should develop our own land and oil to use for ourselves before selling it to other countries!” Others suggest that the Task Force should advise against designating permanent roadless areas to allow for sustainable resource management.

Of those who comment on timber resources, some say the Task Force should consider the environmental effects of timber harvest. Others suggest that the Task Force should encourage the Forest Service to adopt a national policy to manage National Forests as a sustainable, renewable resource. One individual writes, “As a minimum, our National Forests should provide at least 100% of our harvestable timber needs; the USA should be a net exporter. This should be the national policy and guiding overall objective, combined with sustainable management.” A wood

products industry representative further suggests that the Task Force should “streamline the appeals process in order to place timber up for sale before it loses its value.” Others suggest that the Task Force should address the effects of NEPA on salvage harvest, encourage selective timber harvesting rather than clearcutting, and discourage subsidization of timber harvest. Finally, some suggest that the Task Force should encourage the use of NEPA to eliminate unnecessary timber harvest. “I have been to South America,” writes one individual, “and have seen the ruined rain forests. Use this law to stop the unnecessary cutting in this land.”

Most who address the topic of mineral resource development believe that the NEPA process is important for mining permit decisions and mining effects analyses. One preservation/conservation organization writes, “NEPA and its accompanying regulations are critical for ensuring that the public has input into mining permit decisions and that those decisions are based upon adequate scientific review and analysis.” Some comment that the Task Force should encourage agencies with jurisdiction over mining operations to cooperate in scoping and preparation of EISs for new mines. Others urge the Task Force to require agencies to include bonding calculations and justifications in NEPA documents on mining projects, and to clarify that agencies cannot selectively use uncertainty to disregard alternatives in mining projects.

Some respondents, however, charge that the NEPA process is used by agencies to delay or halt legitimate mining operations by lessees. One mining industry representative explains, “These people in the Forest Service know nothing about what we in the mining field have to do and they don’t care. I make trips to Vancouver, B.C. to try to promote my mining project. Lately I have been told how promising my property is in its present state of development. However, when they find out about the U.S.F.S. involvement I’m told ‘We will not work in Idaho, but we will work in Nevada.’ After 12 years or so of being involved with these NEPA-related bureaucrats, it’s time to repeal the NEPA law. Anyone who uses it is entirely directing their efforts to shut us down and the whole country eventually will suffer.”

## Environmental Considerations General

### 517. Public Concern: The CEQ Task Force should encourage protection of the environment.

The needs of the wildlife and other environmental concerns should take precedent over logging and other commercial interests. Commercial endeavors can always find another way. The environment and nature cannot. If we don’t protect the planet, ultimately there will be no need for manufacturing, developing, etc. We are polluting, overpopulating, and destroying our home.

There will be nothing left for future generations if Bush and his cronies and their selfish, ruthless interests aren’t halted (through proper legal channels) immediately. (Individual, Palm City, FL - #310.1.10700.A7)

#### SHOULD ENCOURAGE LEAD AGENCIES TO SELECT ALTERNATIVES TO MINIMIZE ENVIRONMENTAL EFFECTS

In our experience, NEPA results in an informational document with insufficient direction for an outcome that avoids, eliminates or lessens a project’s environmental impacts. We recommend changes to NEPA that create an analytical process that not only results in good information on environmental impacts and mitigation, but also the impetus for an outcome that results in the best feasible project for the environment.

More specifically, NEPA requires consideration of mitigation measures and alternatives that address project impacts. In contrast, California’s NEPA counterpart, the California Environmental Quality Act,

requires that significant project impacts be mitigated unless the lead agency is able to make findings that there are overriding considerations that warrant approval of the project.

Therefore, we recommend that changes to NEPA be considered that would require lead agencies to mitigate project impacts, or select project alternatives that avoid or lessen the impacts, unless other public values override the need to mitigate the adverse environmental impacts, as documented by substantiated findings related to the public interest. (California Department of Food and Agriculture, Sacramento, CA - #566.1.10700.XX)

### **518. Public Concern: The CEQ Task Force should require agencies to make substantive environmental progress.**

#### **NEPA Demands Substantive Environmental Progress**

NEPA's ultimate purpose is "to foster excellent action" at both the programmatic and site-specific levels. 40 C.F.R. [section] 1500.1(c). As the CEQ regulations state, "The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment." *Id.* This is why Congress emphasized the federal agency duty to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. [section] 4332(E).

For example, federal agencies such as the Department of Transportation (DOT) are clearly on notice that road construction and maintenance can cause a number of environmental problems—from ecosystem fragmentation and alien species invasions to various forms of pollution and direct wildlife kills. By reducing the impact of surface transportation on healthy wild habitats through avoidance and enforceable minimization or mitigation, by supporting environmentally-friendly transportation alternatives that reduce harmful road construction and usage, and by incorporating wildlife and natural resource conservation into transportation planning, DOT and other agencies could achieve win-win scenarios—but only if there is a genuine desire to do so. Otherwise, the Administration can attempt to weaken NEPA requirements for transportation through "streamlining" or other mechanisms, but the negative environmental impacts will accumulate, and transportation problems themselves will only accelerate as more roads become more congested with an even greater backlog of maintenance projects. (Preservation/Conservation Organization, Washington, DC - #465.16.10700.XX)

#### **FEDERAL COMMUNICATIONS COMMISSION**

"Excellent action," or lack thereof, is also at issue with some other current examples:

whether the Federal Communications Commission will utilize and follow NEPA procedures in approving and placing cell towers, which are known to have deleterious impacts on migratory birds, certain bats and other wildlife species and environmental values. (Preservation/Conservation Organization, Washington, DC - #465.20.10700.XX)

#### **UNITED STATES BORDER PATROL**

"Excellent action," or lack thereof, is also at issue with some other current examples:

whether the Border Patrol will utilize and follow NEPA procedures in attempting to make our borders with Mexico and Canada safe for our citizens without causing permanent environmental damage (e.g., habitat loss, wildlife takes, pollution impacts). (Preservation/Conservation Organization, Washington, DC - #465.21.10700.XX)

#### **DEPARTMENT OF THE INTERIOR**

"Excellent action," or lack thereof, is also at issue with some other current examples:

whether the Interior Department will utilize and follow NEPA procedures in issuing habitat conservation plans and agreements under the Endangered Species Act, with associated "take" permits, and revisit those permits when new ecological information is presented. (Preservation/Conservation Organization, Washington, DC - #465.22.10700.XX)

#### **DEPARTMENT OF AGRICULTURE**

"Excellent action," or lack thereof, is also at issue with some other current examples:

whether the Agriculture Department will utilize and follow NEPA procedures in shaping the new conservation and subsidies programs under the Farm Bill in order to maximize benefits for the environment and sustainable farming practices. (Preservation/Conservation Organization, Washington, DC - #465.23.10700.XX)

#### DEPARTMENT OF TRANSPORTATION

“Excellent action,” or lack thereof, is also at issue with some other current examples:

whether the Department of Transportation and other agencies will utilize and follow NEPA procedures in constructing a 21st century transportation network that is both effective and environmentally sustainable. (Preservation/Conservation Organization, Washington, DC - #465.24.10700.XX)

#### PUBLIC LAND AGENCIES

“Excellent action,” or lack thereof, is also at issue with some other current examples:

whether the nation’s public land agencies and managers will utilize and follow NEPA procedures to take actions that advance native biological diversity conservation, pursuant to their different organic statutes and authorities, including those actions associated with massively increased oil and gas proposals throughout the country (on private and public lands alike). (Preservation/Conservation Organization, Washington, DC - #465.25.10700.XX)

#### ARMY CORPS OF ENGINEERS AND ENVIRONMENTAL PROTECTION AGENCY

“Excellent action,” or lack thereof, is also at issue with some other current examples:

whether the Army Corps of Engineers and E.P.A. will utilize and follow NEPA procedures to sufficiently protect locally, regionally and nationally important wetlands. (Preservation/Conservation Organization, Washington, DC - #465.26.10700.XX)

### **519. Public Concern: The CEQ Task Force should discourage agencies from using NEPA to avoid taking immediate action to prevent environmental degradation.**

To speak directly of the issue of “analysis paralysis,” we are currently experiencing a situation here in the Southwest where a federal agency itself is using NEPA to avoid taking immediate action, thereby failing to prevent environmental degradation to the lands under its jurisdiction. On the Coronado National Forest in Arizona, and a small part of New Mexico, resource damage is occurring due to the ever-increasing proliferation of wildcat road creation by riders of off-road vehicles. After years of failing to take any action to rein in this illegal activity, the Forest Service now holds the position that it must engage in a full environmental impact statement analysis for the closure of these illegal roads and trails, thus slowing down the process of stopping illegal resource damage by what will likely be several years.

In the meantime, the illegal roads and trails are creating problems with soil erosion, increased sedimentation into ephemeral streams (some of which are designated critical habitat), habitat fragmentation for many species of wildlife, and increased roadkill of wildlife, among others. Illegal roads also facilitate poaching of wildlife, and other resource damage from wildcat camping, garbage dumping, etc. (Preservation/Conservation Organization, Tucson, AZ - #538.7.10310.XX)

### **520. Public Concern: The CEQ Task Force should require the ecological ramifications of agency inaction to be substantively incorporated into planning and decisionmaking processes.**

Current NEPA direction requires the preparation of an Environmental Impact Statement for any “major Federal actions significantly affecting the quality of the human environment.” This direction has at times been interpreted by the courts, federal agencies, and interested publics to apply to virtually any proposed action.” This interpretation is seriously flawed in significant respects.

With regard to the manipulation of natural systems (e.g., Forests, wetlands, grasslands), there is no recognition that a decision to NOT implement a management action is, in itself, a management action that has very real and far reaching consequences. This is particularly relevant where past and current actions have altered natural disturbance regimes.

The above is a fundamental flaw of existing requirements. Many species of plants and animals exist only where disturbance is allowed to play its natural role on the landscape. Man's interruptions of natural disturbance regimes have in some instances placed these species and entire ecological systems at risk. The ecological ramifications of agency inaction must be substantively incorporated into planning and decision-making processes to enable a thorough assessment. (Recreational/Conservation Organization, Rice Lake, WI - #105.2.10700.XX)

**521. Public Concern: The CEQ Task Force should advise agencies to consider only environmental risk, not monetary cost.**

Environmental risk should be the only factor(s) considered. Cost should not be an issue. (Individual, Coolville, OH - #179.1.10700.A1)

**522. Public Concern: The CEQ Task Force should advise agencies to address environmental concerns at the site-specific level.**

NEPA should recognize that federal agencies should not be in the business of creating environmental impact [statements] or environmental assessments. It is worthwhile to consider a source that is not controlled by politicians.

There are hundreds of ways to bias these documents and that is generally what is done (Forest Service!). Collectively, we need to drop back and look at alternatives for studying environmental concerns at the site specific level. We need to incorporate peer review into the local considerations—not simply accept a notion or policy from government officials. For example, when did we reach the conclusion that forests must be cut down in order to preserve them? Also, when did we reach the conclusion that air pollution from over 100,000 acres of intentional burning on the Ouachita NF each year will not be harmful to humans and to different aspects of the environment? When did we reach the point where we consider the economy to be more important than our environment? When did federal agencies reach the point where public trust became unimportant, especially in the NEPA process? Finally, when did we reach the point where no or little information is preferable when making federal decisions? (Individual, Nashville, TN - #513.14.10230.XX)

**523. Public Concern: The CEQ Task Force should establish thresholds of significance for each environmental resource.**

Although there are many examples of successful EAs/FONSIs, we have identified . . . common problems with EA/FONSI practice and offer recommendations to improve each. While not all projects experience all of these problems, they are all too common throughout the federal government.

Failure of agencies to clearly identify the “significance” level of environmental effects in an EA.

Summary of problem—According to Sec. 1508.9 of the CEQ NEPA regulations, the primary purpose of an EA is to provide sufficient evidence and analysis for determining whether to prepare an EIS or a FONSI. The triggering threshold for preparing an EIS is whether the proposed actions would “significantly affect the quality of the human environment.” Given the importance of this phrase, one would expect an EA to clearly spell out, for each affected resource, whether or not the environmental effect exceeds or does not exceed the threshold for being considered “significant.” Yet, in practice this is rarely done—leaving the reader of the EA to wonder what factors the agency used in arriving at its conclusions. Some agencies completely avoid using the word “significant” in their environmental assessments, instead using a broad variety of confusing terminology.

Recommended solution—Require each federal agency, as a part of its NEPA procedures, to establish “thresholds of significance” for each environmental resource. With such established thresholds, the public and decision-makers will know precisely what criteria an agency used to determine whether or an environmental effect “significantly affected the quality of the human environment” and will create a more disciplined approach to EA/FONSI practice. By relying on “thresholds of significance,” agencies are less likely to act arbitrarily in concluding that impacts are, or are not, “significant.”

The Guidelines implementing CEQA encourages agencies to adopt thresholds of significance. (14 Cal. Code Reg. 15064.7) Those agencies that have done so typically use the thresholds as “presumptions” of

significance, but can still introduce project-specific data to rebut the presumption. This would appear to be a good approach to apply to the NEPA process. Information about CEQA, including the above Guidelines section, may be found at <http://ceres.ca.gov/ceqa/>. (NEPA Professional or Association - Private Sector, No Address - #530.6-7.10200.XX)

**524. Public Concern: The CEQ Task Force should encourage agencies to consider the potential negative environmental effects of changing land allocations.**

CEQ should consider appropriate direction to the agencies that acquisition of land and property rights has the potential to have significant negative impacts to the environment and some level of planning must be accomplished to factor in this. For example, changes from farm ground to unmanaged habitat can reduce wildlife food supplies, increase noxious weeds and predators and change water patterns. (Willy Hagge, Supervisor, Modoc County Board of Supervisors, No Address - #636.19.10700.XX)

**525. Public Concern: The CEQ Task Force should provide thresholds or parameters where staged requirements can be implemented based on magnitude of effect.**

It would help if NEPA Task Participants could:

Consider providing thresholds or parameters where staged requirements could be implemented based on magnitude of impact. (Imperial County Department of Public Works, El Centro, CA - #15.3.10700.XX)

**526. Public Concern: The CEQ Task Force should require agencies to establish the non-existence of ecological interdependencies associated with proposed activities.**

The fundamental scientific requirement here is to establish the non-existence of ecological and environmental interdependencies associated with any set of activities/policies/programs, both in the short run and in the long run. These interdependencies need to be assessed with due consideration of relevant exogenous and endogenous factors, ex-post and ex-ante. (Other, Lawrenceville, NJ - #409.1.10700.E1)

**527. Public Concern: The CEQ Task Force should require NEPA analysis to include the synergistic effects of chemicals and hazardous materials in air, water, or in soil at various pH levels.**

CCNS strongly urges the Task Force to consider the need for the NEPA process to include analyses of the cumulative effects of federal activities that impact the environment, including the synergistic effects of chemicals and hazardous materials in air, water, or in soil at various pH levels. (Preservation/Conservation Organization, Santa Fe, NM - #571.7.10000.F1)

**528. Public Concern: The CEQ Task Force should require the Department of Housing and Urban Development to include radon in its environmental review procedures.**

RE: Docket No. FR-4523-P-01 Environmental Review Procedures for Entities Assuring HUD's Environmental Responsibilities Comments for Proposed Rule Revisions to 24 CFR 50

The American Association of Radon Scientists and Technologists, Inc., is writing to request that the Department of Housing and Urban Development amend the proposed regulations set forth by 24CFR50 by including radon in the environmental review and abatement procedures and protocols of your agency.

To be more specific, Sec.50.3(i)1 (Code of Federal Regulations) "Environmental Policy" states, "It is HUD policy that all property proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property." Sec.50.1d states,

“These regulations apply to all HUD policy actions and to all project actions”. (Other, Alstead, NH - #370.1.10520.XX)

**529. Public Concern: The CEQ Task Force should encourage examination of recent books on ecosystem management, diversity, and sustainability.**

There are some excellent recent books on ecosystem management, diversity, and sustainability that ought to be required reading for those in leadership positions that are making the calls. Let's all get on the same page. (Individual, McCall, ID - #34.2.30500.B2)

**530. Public Concern: The CEQ Task Force should advise the Administration to participate in the Kyoto Accords.**

We must join in the Kyoto accords and become a world partner in reducing emissions and aiding our third world neighbors. (Individual, No Address - #262.2.70500.XX)

**531. Public Concern: The CEQ Task Force should advise the Administration to participate in Earth Summit II.**

I believe firmly that this president and the US government should take a leadership role in the Earth Summit II; specifically forcing industry to meet more stringent pollution standards, [requiring] cars and energy consuming devices to burn less petroleum through incentives, and in general conserving the planet's natural resources. It's the only one we have and we should leave it in the best condition possible for our heirs. (Individual, No Address - #264.2.70500.XX)

## Air

**532. Public Concern: The CEQ Task Force should address the adequacy of air quality analysis in NEPA documents.**

I have tracked and reviewed hundreds of project and plan level NEPA documents. The process has been very time consuming and frustrating. The majority of the time, there is very little to no information in the NEPA document on the air quality analysis, or the analysis is erroneous. Often, the response to comments is unsatisfactory. Air quality is a highly technical field. Federal agencies conducting the NEPA analyses lack expertise. There are too many projects and plans to review given state resources. It is even more difficult to find the time to assist federal agencies with the analyses. The level of analysis and disclosure should relate directly to the level of potential impact. And the review process needs to be streamlined. (Idaho State Division of Environmental Quality, Boise, ID - #300.1.10200.XX)

NEPA Analysis Relies on Inadequate Conformity Process for Air Quality Impact Analysis. It is common practice for NEPA analyses of major highway projects to completely avoid a regional air quality impact analysis of the proposed action and meaningful alternatives to that action, claiming that because the project is drawn from a conforming transportation plan its air quality impacts are of no consequence. Yet the same conformity analyses are routinely based on inadequate computer models insensitive to induced traffic and land use impacts, and the analyses frequently assume that the transportation investment will have no impact on land use patterns. Because of long delays in meeting requirements for adoption of State Implementation Plans for air quality and added delays in designating non-attainment areas under the new National Ambient Air Quality Standards, the motor vehicle emission budgets to which conformity is being demonstrated are often clearly inadequate to protect public health. When environmental advocates question these problems, they are routinely met with the rejoinder from the road building lobby and transportation agencies that “cleaner technology will solve these problems, so don't worry about it.”

Satisfying NEPA's requirements demands more than such assurances. It requires sound technical analysis of not just localized CO hot spots, but also thorough routine evaluation of the short and longer term impacts of major projects on land use, regional air quality, and air toxics which cause cancer and other health problems. (Preservation/Conservation Organization, Washington, DC - #535.16.10240.XX)

**533. Public Concern: The CEQ Task Force should amend NEPA to protect air quality.**

Today is the first day in approx. eight weeks I have been able to take my daughter outside as she has a Trach, and has been unable to enjoy this whole summer. Why has this two year old little girl been house bound for so Long? We have suffered because of these Damn Environmental Laws that have made our Air Quality unbearable to take her outside. We have been under the threat of Smoke (Air Pollution) because of Environmentalists tying up the clearing of Trees and under brush, in which Southern Oregon has lost almost 800,000 acres of Land. This air pollution [is] caused by Environmentalists who do not give a Damn about the people that live here in Southern Oregon. Last year they tied up the Water supply to a Southern Oregon Community for a Damn Sucker Fish. So 230,000 acres of land didn't get water. This land FEEDS PEOPLE and CHILDREN. Again, Environmentalists don't give a Damn about PEOPLE, only their own pockets, as they SUE FEDERAL AGENCIES under the guideline of an ancient law that they have lined their own pockets from. It is time to amend this Law, as I want Clean air for my daughter and the rest of my Family, we shouldn't have to be placed in this HELL of Air Pollution again. (Individual, No Address, - #281.1.10700.XX)

**534. Public Concern: The CEQ Task Force should require the Federal Highway Administration to conduct NEPA analysis of air toxics and induced traffic.**

NEPA Analysis of Air Toxics and Induced Traffic Needed to Protect Health. The Federal Highway Administration (FHWA) has refused to give adequate consideration to the effects of air toxics exposures and health impacts caused by highway system expansion despite strong new evidence linking these factors. NEPA and other law requires FHWA to take steps to comprehend, avoid, and mitigate these impacts as part of the transportation project review and approval process.

Travel demand and growth management strategies, pricing incentives, and other actions related to the operation, management, investment in transportation systems and related community systems can often provide very cost-effective approaches to reduce exposure of communities to air toxics and the cancer and other health risks associated with these exposures. Indeed, expansion of highways where unacceptably high air toxic exposure problems already exist will likely increase the scope of the problem by inducing traffic growth and exposure to air toxics. Cleaner technology and better fuels are not the only or best way to reduce most of these health risks, although these are an important part of the solution. While a reduction in cancer risk from 1990 to 1997 is documented in the Multiple Air Toxics Exposure Study (MATES-II) issued by the South Coast Air Quality Management District, the cancer risk in 1997 is many times higher than the level at which EPA and FHWA are required to take actions to safeguard public health from such documented risks.

Diesel emissions are indeed the largest source of toxic air pollutants emitted from mobile sources and the EPA heavy-duty diesel rule will eventually reduce those emissions substantially.

But because of the long-delayed timeframe for implementation of the heavy-duty diesel rule and the very long lifetime of diesel engine equipment, barring major new pollution control initiatives, it will take decades to achieve the substantial emission reductions required to protect public health from toxic air pollutants from these motor vehicles. While technology and fuels will do a lot to reduce these risks, public health will be best protected by a program that combines such initiatives with better strategies to manage the demand and use patterns of motor vehicles—both diesel and non-diesel—and to manage exposure of the public to these emissions. This must include consideration of how changes in transportation investments—such as highway expansions—will affect the amount of traffic emitting toxic air pollutants, and whether alternative investments might better satisfy mobility objectives while avoiding or mitigating these adverse health impacts. As the example in Washington, DC, cited above shows, reducing highway system expansions can—at least at times—produce both cost savings and substantial reductions in pollution. There are many ways to better manage the system to minimize air toxics while meeting mobility needs, including promotion of faster adoption of cleaner technologies and alternative transportation investment and management strategies. But FHWA is refusing to face core issues related to health impact assessment in its project approval and transportation plan and program approval process.

The health risks from transportation related air toxics remaining after the emission reductions of the last decade far exceed federal criteria for unacceptable health risks, and will continue to be unacceptably high even if further reductions in per-vehicle emissions are achieved in the foreseeable future. (Preservation/Conservation Organization, Washington, DC - #535.27-28.10520.XX)

**535. Public Concern: The CEQ Task Force should address mobile emissions.**

Even with significantly cleaner cars and truck technologies, Smart Growth strategies offer the promise of avoiding at essentially no cost as much as one-quarter of the potential motor vehicle emissions in 2020, thus helping to achieve more timely attainment at less cost. If Smart Growth strategies are ignored in NEPA analyses and sprawl and highway building advance without any accountability for impacts on emissions, society will need to invest billions of dollars more in pollution abatement technologies to clean up mobile and non-mobile sources so we can achieve healthful air quality. (Preservation/Conservation Organization, Washington, DC - #535.17.40200.XX)

**536. Public Concern: The CEQ Task Force should encourage various actions to reduce mobile emissions.**

Traditionally small stationary sources have been the target of state and federal legislation and rulemaking pertaining to air pollution. This is a misguided approach to air pollution control because vehicular emissions account for 44.1% of the human health risk from air toxins. A Suggested Action:

Encourage diesel engine retrofits with emissions through voluntary, federally funded programs.

Link a percentage of federal highway funding to intersection and traffic pattern improvements, which will help mitigate idling and improve overall vehicle emissions.

Fund an on-road remote sensor study, specific to New Hampshire, which will improve the basis of predictions of on-road vehicle emissions and will help validate computer models.

Support flexibility for New Hampshire and regional Methyl Tertiary-Butyl Ether alternatives.

Encourage development of state/regional transportation plan, addressing rail infrastructure improvements. (Business, Concord, NH - #16.5.10700.XX)

**537. Public Concern: The CEQ Task Force should require upwind sources of pollution to meet Clean Air Act requirements through enforcement of the Environmental Protection Agency's State Implementation Plan.**

Upwind sources of air pollution often cause downwind states to be in violation of the National Ambient Air Quality Standard for ozone. Upwind sources should be required to meet applicable Clean Air Act requirements and reduce their emissions like New Hampshire sources. Upwind states and their polluters must be held accountable for the pollution that they cause in downwind states.

Suggested Action:

Support enforcement of the Environmental Protection Agency's State Implementation Plan (SIP), as modified by recent court decisions, including implementation of SIP action as approved by EPA. (Business, Concord, NH - #16.6.10520.XX)

**538. Public Concern: The CEQ Task Force should encourage congressional hearings to focus awareness on interstate ozone transport issues.**

Upwind sources of air pollution often cause downwind states to be in violation of the National Ambient Air Quality Standard for ozone. Upwind sources should be required to meet applicable Clean Air Act requirements and reduce their emissions like New Hampshire sources. Upwind states and their polluters must be held accountable for the pollution that they cause in downwind states.

Suggested Action:

Congressional hearings should be conducted so as to focus awareness on interstate ozone transport issues. (Business, Concord, NH - #16.6.10520.XX)

## Water

### **539. Public Concern: The CEQ Task Force should advise the strengthening of water quality regulations.**

Water quality regulations have been weakened by this Administration and need to be more stringent and aggressive to assure the American public pure water for drinking and recreation. Our rivers and streams should flow clean. (Individual, No Address - #262.2.70500.XX)

### **540. Public Concern: The CEQ Task Force should encourage periodic review or institutionalized performance audits for federal water programs.**

#### **TO DEMONSTRATE THAT POLICY FOCUS REMAINS SOUND AND THAT LIMITED RESOURCES ARE WELL SPENT**

Federal water programs have provided the funding, technical data and policy direction to safeguard water. However, the number of programs has multiplied to the point of being redundant, and many of these programs contradict each other. The business community is concerned that duplicative programs and programs of questionable technical or societal value have not been continually reviewed to ensure that federal spending is matched to meet societal needs.

Suggested Action:

Encourage periodic review or institutionalized performance audits of federal water programs to insure that their effectiveness and policy focus remains sound and that limited resources are well spent. (Business, Concord, NH - #16.15.10520.XX)

### **541. Public Concern: The CEQ Task Force should require peer review for actions affecting water delivery.**

Sound science: Whenever possible, federal agency NEPA actions which affect water deliveries should undergo peer-review in the science and data gathering process of any NEPA decisions. (Association of California Water Agencies, Sacramento, CA - #657.2.10240.XX)

### **542. Public Concern: The CEQ Task Force should encourage increased federal funding for water infrastructure improvements.**

Water and wastewater infrastructure exists in large part due to federal investments. Business and industry rely on this infrastructure to support expansion of business activity and job growth. Combined Sewer Overflows (CSOs) is currently a striking need. Much of the present system is antiquated and/or aging, and requires significant reinvestment. The Environmental Protection Agency has consistently underestimated the cost of infrastructure and proposed inadequate federal funding. Consequently, there is a need to update or replace systems that have been continually and neglectfully under-funded.

Suggested Action:

Support increased federal funding for water infrastructure improvements.

Increase flexibility in use of the funds allowed to be applied to innovative delivery of water infrastructure. (Business, Concord, NH - #16.16.10800.XX)

### **543. Public Concern: The CEQ Task Force should standardize the definition of wetland.**

#### **TO AID INTERAGENCY COOPERATION**

Different Resource Agencies have different and conflicting definitions of what constitutes a wetland. Federal determinations of a wetland seem to rely on the presence of all of three factors being present: hydrophytic vegetation, periodic inundation, and soil saturation in the root zone. California agencies define a wetland when only one of these factors is present. Marginal, degraded wetlands are afforded protections that may be reserved for only the most productive, contiguous wetlands. The federal

Cooperating Agency directives are therefore diluted, as some federal agencies will participate in early consultation/cooperation on federal issues while knowing a proposal will have problems with state interpretations. (California Department of Transportation, No Address - #661.1.20110.XX)

#### **544. Public Concern: The CEQ Task Force should encourage the preservation of rivers.**

##### **THE MATTAPONI RIVER**

We as concerned citizens of this immediate area are trying to preserve the natural fisheries and pristine condition of our . . . special river, the Mattaponi. Please support us in our very valuable cause. Your attention and actions will be greatly appreciated. (Individual, Mechanicsville, VA - #290.2.70500.XX)

I have been to the Mattaponi reservation myself on a couple of occasions and I have seen how the culture of these original Americans revolves around this river. These people's homes and lives will forever be changed in an adverse way if the reservoir is built. The chief of the Mattaponi Tribe has a son who is currently on active duty with the US Marine Corps. These are true Americans who have already been treated unfairly by the US government and yet still love this country dearly (enough to die for it). When you consider the "environmental" impacts, forget the over-used and misused word "environment" and consider that this issue is really about people and the homeland that they love. The Mattaponi need their river to be unaltered more than a few rich developers need a reservoir. (Individual, Chesterfield, VA - #294.2.70500.XX)

Please honor our commitment to the Mattaponi tribe and don't allow a state-sanctioned theft of their water by Newport News. (Individual, Richmond, VA - #291.2.70500.XX)

##### **THE PAMUNKEY RIVER**

We as concerned citizens of this immediate area are trying to preserve the natural fisheries and pristine condition of our . . . special river, the Pamunkey. Please support us in our very valuable cause. Your attention and actions will be greatly appreciated. (Individual, Mechanicsville, VA - #290.2.70500.XX)

#### **545. Public Concern: The CEQ Task Force should support federal funding for management study of lakes to determine the optimum way to manage diverse activities on public water bodies.**

The country's rivers and lakes are under increasing stress to support the public recreation in a safe and sustainable manner. There is growing evidence that the United States' lakes, rivers and ponds are approaching their capacity to sustain recreation and tourism. There is a need to more fully understand how to manage the competing demands on lakes and rivers,

Suggested Action:

Support federal funding for management study of lakes to determine the optimum way to manage diverse activities on public water bodies. These studies will assist the state in appropriately managing their resources. (Business, Concord, NH - #16.18.10700.XX)

#### **546. Public Concern: The CEQ Task Force should include the marine environment in NEPA requirements.**

Exempting the oceans from NEPA flies in the face of President Reagan's 1983 Proclamation that claimed for the United States "sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, both living and non-living" within the EEZ [Exclusive Economic Zone]. Federal courts have consistently applied NEPA where the United States has exerted sovereign control. Our sovereign ocean resources, held in the public trust, are entitled to the same level of protection as the other natural resources belonging to the United States and its people. To do less is to put at risk a significant part of our nation's natural and economic heritage.

We understand that this seriously misguided policy proposal seeks to substitute review of activities in the EEZ under NEPA with review under Executive Order 12114. However, this executive order is a poor substitute for NEPA. Under the order, unlike under NEPA, citizens have no recourse if agencies ignore the Executive Order and fail to consider the environmental impacts of major federal projects or fail to consult with affected citizens and members of the public prior to making key decisions. Limiting opportunities for concerned citizens, coastal states and local governments to participate in decisions about federal projects that affect ocean resources undermines deep-rooted support for greater government accountability and civic involvement.

We call on you to reject this radical proposal so that our vital ocean waters, wildlife, habitats, and resources are protected and public involvement in environmental decision-making is respected. (Preservation/Conservation Organization, No Address - #443.3.10400.XX)

Our organizations are very concerned about a reported Administration proposal to exclude NEPA review for federal and federally permitted activities in the U.S. Exclusive Economic Zone [EEZ] and High Seas. (NY Times, August 9, 2002; LA Times August 9, and 10, 2002; the Times Picayune, August 16, 2002). In our view, such a proposal would not improve NEPA analyses; it would do quite the opposite.

The NEPA process, when properly executed, works well to help ensure that public resources and environmental decisions are well managed. NEPA requirements inform the public and agency decision-makers about federal activities, provide the public an opportunity to comment on the potential environmental consequences of agency actions, and provide the right to ensure that the government does its job correctly. Any effort to exempt ocean activities from the requirements of NEPA would undermine public participation, accountability, and oversight of agency actions that affect the marine environment.

The impacts of important ocean activities and decisions should continue to be reviewed under NEPA. These activities include, among others, fisheries management, ocean dumping, oil and gas leasing, laying of pipelines, and the protection of marine mammals. NEPA provides procedure for requiring environmental reviews and exerts oversight of actions already authorized under other federal laws, thereby minimizing conflicts with the laws of other nations outside the U.S. territorial sea (0-3 miles offshore). More importantly, within the U.S. EEZ (3-200 miles offshore), the U.S. exerts exclusive control and exercises sovereign rights for the purposes of exploring, exploiting and managing natural resources, and protecting and preserving the marine environment. Proclamation 5928, December 27, 1988, 54 Fed. Reg. 777 (1989).

Last Thursday, a U.S. District Court held that, "However, it is undisputed that with regard to natural resource conservation and management, the area of concern to which NEPA is directed, the United States does have substantial, if not exclusive legislative control of the EEZ. Because the U.S. exercises substantial legislative control of the EEZ in the area of the environmental stemming from its "sovereign rights" for the purpose of conserving and managing natural resources, the Court finds that NEPA applies to federal actions which may affect the environment in the EEZ," *Natural Resources Defense Council v. U.S. Department of the Navy*, Case No. CV-01-07781CAS, Summary Judgment; Order (C.D. Cal, Sept. 19, 2002).

The U.S. is therefore legally obligated to apply NEPA to activities affecting the EEZ. (Preservation/Conservation Organization, No Address - #442.1-2.10500.XX)

#### **547. Public Concern: The CEQ Task Force should advise the City of Newport News to recover water from existing sources.**

Newport News needs to understand that it should solve its own problems internally, as do other jurisdictions in America. Look at all the costs that have taken tremendous energy and dollars away from the various agencies and private citizens, such as myself.

If Newport News set about a process of recovering water from nearby existing sources, such as that which exists at or very near them, their needs would at this point likely have been met.

What they are about is stealing quality of life from someone else.

Maintaining quality of life is what the various acts and legislation are about, I thought. (Individual, Richmond, VA - #288.2.70500.XX)

## Agricultural Land

### **548. Public Concern: The CEQ Task Force should reissue guidance regarding the loss of agricultural resources.**

#### **AND CLARIFY THAT AGRICULTURAL RESOURCES INCLUDE BOTH LAND AND WATER**

On August 30, 1976, CEQ, in cooperation with the Department of Agriculture, issued a memorandum to federal agencies informing them of the need to consider farmland loss a potentially significant environmental impact. On August 29, 1980, the CEQ issued additional guidance to the heads of agencies as losses of agricultural lands had continued:

Approximately one million acres of prime and unique agricultural lands are being converted irreversibly to non-agricultural uses each year. Actions by federal agencies such as construction activities, development grants and loans, and federal land management decisions frequently contribute to the loss of prime and unique agricultural lands directly and indirectly. Often these losses are unintentional and are not necessarily related to accomplishing the agency's mission (Federal Register, Vol, 45, no 175, 9/8/80, (attached)).

Farm Bureau applauds CEQ for its early recognition that agricultural resources are "limited and valuable." We believe CEQ's guidance on the issue is invaluable; particularly, CEQ's guidance that farmland loss must be a part of an agency's determination of "significance." CEQ states further:

If an agency determines that a proposal significantly affects the quality of the human environment, it must initiate the scoping process to identify those issues, including effects on prime or unique agricultural lands, that will be analyzed and considered, along with the alternatives available to avoid or mitigate adverse effects . . . The effects to be studied include "growth inducing effects and other effects related to inducing changes in the patterns of land use cumulative effects . . . mitigation measures . . . to lessen the impact on . . . agricultural lands (Id.)

We believe, however, that it may be appropriate for the CEQ to re-issue its guidance on this issue because we have observed federal agencies returning to the belief that impacts to agricultural resources are purely economic, thus the loss of these resources does not impact the physical environment. Any new guidance, however, should further clarify that "agricultural resources" includes both land and water. Our nation's agricultural prosperity will be lost if we do not have water. This is particularly true in the west, but water supply issues are gaining in importance nationwide. (Agriculture Industry, Sacramento, CA - #589.12-13.10800.XX)

## Wildlife/Habitat

### **549. Public Concern: The CEQ Task Force should encourage agencies to use sector professionals early in the project development phase to identify important habitat areas.**

The Benefit of utilizing sector professionals is that important habitat areas can be identified very early during the project development phases. Steps can then be taken by the property owner/developer to avoid or minimize impacts. If the project developers know that the determinations and recommendations of their third-party professionals are equivalent to, and will be accepted by the regulatory community, they are more willing to accept such determinations. (NEPA Professional or Association - Private Sector, Philadelphia, PA - #345.3.10700.XX)

### **550. Public Concern: The CEQ Task Force should encourage the Forest Service to revise its process for viability and the related "well-distributed populations" issue.**

The viability or sustainability requirements the agency has developed since the 1982 planning rule probably causes more than half the total cost and delay and exposure to litigation when doing

programmatic planning. The USFS needs to rework its process for viability and the related “well-distributed populations” issue. (Timber or Wood Products Industry, Ketchikan, AK - #524.8.10200.XX)

**551. Public Concern: The CEQ Task Force should encourage the participation of the Fish and Wildlife Service in the preparation of state documents regarding threatened and endangered species.**

DOI-FWS is directed to take all practical means to restore threatened and endangered species, yet state projects designed to benefit listed species are hamstrung by an endless litany of paperwork before projects can begin. The unintended result is that many projects that would benefit listed species are never undertaken because limited resources have to be directed to those areas requiring less administrative overhead. More progress toward species recovery would be made if DOI/FWS took a more cooperative and participatory role in the preparation of the documents they require of the states. (Michigan Department of Natural Resources, Lansing, MI - #563.15.10700.XX)

## Vegetation

**552. Public Concern: The CEQ Task Force should encourage better understanding of vegetative structure and composition principles.**

As we move away from timber production as the main objective we need to exchange some precision at the stand level for more general information about landscape vegetative structure and composition and how these interact with other resources in both the short and long term, a big-picture approach. Hint: If we approach forest management as managing vegetation to provide sustainable wildlife habitat, visuals, avoidance of wildfire, and so on, there will be timber outputs. This idea going around that all we need to do is cut/burn small trees shows a total lack of understanding about diversity, sustainability, historic vegetative conditions and silvicultural principles. (Individual, McCall, ID - #28.3.20200.A2)

**553. Public Concern: The CEQ Task Force should encourage the preservation of some old growth forests.**

Every National Forest (NFS or BLM) should have some old-growth forest in every forested state. Young and growing forests reduce greenhouse gas, while an old forest does not. However, we should be able to “afford” some old-growth forests in every forested state. Just 1-3% would be significant. In some states, it may take hundreds of years to create new old-growth forests. (Individual, Minneapolis, MN - #404.7.70500.XX)

**554. Public Concern: The CEQ Task Force should direct agencies to manage harvested land through reforestation.**

In regards to lumber, many logging companies have already admitted they have all the land they need, and it is a matter of effectively managing that land through reforestation, which is a relatively new practice. (Individual, Lynnwood, WA - #175.3.10800.F1)

**555. Public Concern: The CEQ Task Force should address the effect of NEPA on management of invasive weeds.**

A recurring comment was that it takes too long to complete Environmental Impact Statements (EISs) and Environmental Assessments (EAs) for vegetation management activities. Responses indicated it typically takes several years to get all of the required documents from cooperating agencies. In one case, management of a weed infestation has been delayed for over ten years due to a failure of one agency to complete their consultation responsibilities.

Timely action is crucial when trying to eradicate, manage or contain disruptive biological pest invasions, whether they are weeds, insects, diseases or other organisms. Delayed action favors the pests. It allows the size of infestations to grow, thereby increasing the cost and risks associated with control efforts. Delay allows pests to become entrenched and more resistant to management efforts so that more

treatments will be required and for longer periods. Delay also increases the probability that the invasive pest will spread and establish many new infestations. In practice, delayed action has repeatedly cost us the opportunity to contain, control or eradicate serious new ecological, economic and public health pests before they get firmly entrenched and widely dispersed. Consequently these pests will cause long-term, widespread damage that will require substantial ongoing management.

Several reasons for these delays were cited. These include lack of budget to perform the required analysis, lack of specific guidance, lack of consistent requirements, lack of cooperation from associated agencies, philosophical opposition to the proposed activity by agency staff and “shifting goal posts” wherein additional information is continually requested. (Other, Washington, DC - #585.3.10230.XX)

#### **NEPA EXPENSE IS RESULTING IN THE INABILITY TO TREAT INVASIVE WEEDS**

Regarding costs, members cited cases when the cost of NEPA analysis was higher than the cost of the invasive plant treatment that it ultimately allowed. In one case permitting delays caused the final treatment cost to be several times higher than it would have been if treatment had taken place in a timely manner. This drain on resources is extremely troublesome to land managers who are struggling with woefully inadequate weed management budgets. They recognize invasive weeds as a serious threat to the land that has been entrusted to their care and they resent seeing their meager funds used up on analysis rather than weed management. (Other, Washington, DC - #585.4.10210.XX)

### **556. Public Concern: The CEQ Task Force should advise agencies to control exotic plants.**

Members voiced strong support for the purposes and intentions expressed in the NEPA statute. They have dedicated their careers to improving agricultural and natural resources management and they also strive to “fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.” In this vein we are very concerned that many plant species such as kudzu, yellow star thistle, purple loosestrife and Eurasian water milfoil cause significant environmental damage and effective management of these types of plants is badly needed. (Other, Washington, DC - #585.1.70500.XX)

## **Emergency Circumstances**

### **557. Public Concern: The CEQ Task Force should improve the process for determining emergency circumstances.**

Emergencies.

CEQ should develop a better process for determining when circumstances are “emergencies” and selecting the “alternative arrangements” for NEPA compliance for the responsive Federal actions. 40 C.F.R. 1503.11. The present emergency provision of the CEQ regulations is so unwieldy as to be virtually useless—every decision under it is made individually and with no guiding criteria or templates.

CEQ’s emergency provision should be broadened to include any circumstances where delay would result in failure to respond in a timely manner to adverse environmental consequences resulting from fire, windstorms, disease or insect infestations or other natural causes. (Timber or Wood Products Industry, Deer River, MN - #377.11 and 12.10200.XX)

#### **BY CREATING A CATEGORY FOR SIGNIFICANT ACTIONS NEEDING URGENT REVIEW**

Expand the availability of abbreviated procedures by creating a new category of significant action called “Significant Action Needing Urgent Review.”

Agency emergencies can justify alternative NEPA procedures under the current CEQ regulations only in very narrow circumstances. 40 C.F.R. 1506.11. On average there have been only two actions a year where alternative arrangements have been allowed. Yet throughout the country there are far more than two emergency agency actions needing prompt NEPA approval. CEQ should create a new category of “significant actions needing urgent review” that would allow a NEPA process to be completed in less than six months. This could apply to many actions following natural disasters such as fires, floods,

hurricanes, and windstorms, which may not rise to the level of a narrowly defined emergency but still require prompt remedial action. (Timber or Wood Products Industry, Portland, OR - #454.54.70400.XX)

**558. Public Concern: The CEQ Task Force should consider mechanisms to clarify accelerated environmental review of important projects.**

**THROUGH USE OF “ARRANGEMENTS” UNDER 40 CFR 1506.11 TO DEAL WITH EMERGENCIES**

You should consider mechanisms to clarify accelerated environment review of important projects through the use of “Arrangements” under 40 C.F.R. [section] 1506.11 to deal with an emergency situation. Since 1980 the emergency provision of the CEQ regulations has been rarely used but would be particularly useful for USFS projects requiring prompt action to avoid further significant effects on the quality of the human environment. This is particularly true for fire salvage logging where the immediate removal of burned trees (during the winter following the fire) can not only expeditiously recover the value of the burned timber, but also facilitate necessary erosion control measures before the first runoff season following the fire.

As a practical matter, President Bush could issue an executive order directing CEQ to streamline the NEPA process, to more actively use its powers to develop alternative arrangements for satisfying NEPA requirements in emergencies, or to develop procedures to promptly process “actions needing urgent review” that are short of emergencies. (Timber or Wood Products Industry, Kalispell, MT - #462.10.10200.XX)

## Forest Health Management

**559. Public Concern: The CEQ Task Force should address the effect of NEPA on forest health treatments.**

Unfortunately, the Forest Service operates within a statutory, regulatory and administrative framework that has kept the agency from effectively addressing rapid declines in forest health. This same framework impedes nearly every aspect of multiple-use management as well

Management inefficiencies—poor planning and decision making, a deteriorating skills base, and inflexible funding rules—[are] problems that are compounded by the sheer volume of the required paperwork and the associated proliferation of opportunities to misinterpret or misapply required procedures. (Agriculture Industry, Sacramento, CA - #589.4.10210.XX)

**AGENCIES ARE UNABLE TO TREAT INSECT INFESTATIONS IN A TIMELY MANNER**

It has been our experience that federal agencies are seldom able to respond to natural resource crises in a timely manner due to NEPA requirements. For example, we recently experienced two consecutive years of Douglas Fir Tussock Moth outbreak. Our agency was able to respond to the outbreak in the form of a spray treatment programs within months of determining the severity of the outbreak. The adjacent FS lands were “monitored” to determine the degree of infestation. Had the monitoring turned up the level of infestation experienced on state lands, the FS would then begin the NEPA process, with no hopes of spraying for at least another year. FS staff knew that by the time the necessary federal paperwork was complete, the infestation would have cycled out and the damage already incurred. (Idaho Department of Lands, Coeur d’Alene, ID - #46.3.30210.B2)

Project delays on Federal land have . . . led to the spread of insect and disease outbreaks from untreated Federal land to adjacent non-Federal lands, with the spread of the southern pine beetle in Texas providing just one example. (Other, Washington, DC - #587.1.10200.XX)

**560. Public Concern: The CEQ Task Force should address the need for states to comply with the NEPA process in order to procure federal funding for forest health treatments.**

State natural resource agencies receive federal funds each year to assist with monitoring for insect and disease outbreaks, however, to receive federal funds to treat detected outbreaks, states must comply with the NEPA process. Fortunately, our agency was able to receive special programmatic insect suppression funds through the FS to assist our spray treatment efforts in the second consecutive year of the tussock moth infestation. We were only able to do this through the “programmatic” agreement, whereby funds received would be used for our overall pest control program rather than for a specific project. (Idaho Department of Lands, Coeur d’Alene, ID - #46.4.30220.B2)

## Fire Management

**561. Public Concern: The CEQ Task Force should address the effect of NEPA on fire plan projects.**

There is no doubt that the existing process has put a real burden on our Federal partners and at times their inability to complete NEPA documents in a timely manner has delayed action in implementing joint State and Federal National Fire Plan projects. (Other, Washington, DC - #587.1.10200.XX)

**562. Public Concern: The CEQ Task Force should consider that NEPA requirements result in the inability to thin fuel loads in a timely manner.**

The problems with NEPA are only now receiving media attention. The devastating wildfire season has brought to light both the need for thinning our nation’s forests and the difficulties encountered in accomplishing it. Most of the difficulties center around navigating the NEPA process. The U.S. Forest Service recently published a report entitled “The Process Predicament,” which describes the stranglehold red tape, such as NEPA, has on the ability of the agency to perform its responsibilities. (Business, Washington, DC - #403.2.10200.XX)

CEQ regulations must be amended to permit timely projects beneficial to the environment, such as hazardous fuel reduction projects. In an ironic twist to the whole NEPA issue, NEPA red tape has been used to thwart projects that are actually beneficial to the environment. Of course, this is not what Congress intended.

The most recent example of this relates to wildfires. The past few years have seen record fire seasons, both in intensity and the number of acres scorched. These wildfires burn hotter than normal fires, sterilizing the soil so regrowth takes decades instead of years.

There is general agreement that a major contributing cause of these devastating fires is the undergrowth and fuel loads that have been allowed to build up over the past several years. It is imperative that these excess hazardous fuel loads be removed in order to restore our nation’s forests to a healthy state and to minimize the devastation caused by wildfires. Hazardous fuel reduction projects suffer the same costly delays from NEPA as other projects.

CEQ regulations should be amended to either exempt hazardous fuel reduction projects in class 3 fire areas from NEPA requirements, or streamline the process so they may be conducted in a timely manner. There were several such projects that had been proposed in areas devastated by fires this summer, but those areas burned before the projects could be completed. (Agriculture Industry, Bozeman, MT - #451.20.10700.XX)

**563. Public Concern: The CEQ Task Force should consider that wildfires are an indication of the lack of agency land management and failure of decisionmaking processes.**

[We] feel the huge wildfires throughout the west this year were caused by the Forest Service’s lack of management in implementing grazing and logging which could help reduce fuels. Our skies were

thickened with smoke these last 2 summers and millions of acres of the west burned. This demonstrates that current decision making processes are not functioning properly as these devastating fires are having huge negative environmental impacts. (Agriculture Industry, Susanville, CA - #441.2.10700.XX)

**564. Public Concern: The CEQ Task Force should encourage appropriately conducted timber harvest and controlled burns.**

Tens of thousands of acres of land are burned out of control, affecting hundreds of homes and families, costing millions of dollars. Burning and logging in the right way is a necessary part of controlling our environment and probably South Africa. (Individual, Olive Hill, KY - #144.1.70500.A1)

## Natural Resource Development

### *Natural Resource Development General*

**565. Public Concern: The CEQ Task Force should consider the consequences of allowing developers free reign on public land.**

Since the Bush administration took office, we have seen numerous environmental protection laws, policies, and efforts be dismantled in favor of developers, loggers, miners, and other industries. Laws such as NEPA require that these industries follow rules and regulations that protect public health and the future of our natural resources. The only changes that would be made on a study by President Bush's council will no doubt favor industry and cause more setbacks in progress towards land stewardship. I ask that you consider the consequences of allowing developers to do as they wish on our lands, as we are faced with enormous problems already. (Individual, Dyer, IN - #224.2.10700.XX)

I find it highly concerning and disheartening to see this Administration considering steps which would limit even further attempts to protect the natural environment in which we live. I have supported the Bush administration but am concerned and discouraged over the seeming lack of concern for the long-term impact of continuing to pollute and destroy the world around us. Easing the restrictions on development which seems to be under consideration is shortsighted and dangerous. An assessment of our actions' impact on the environment is reasonable and mandatory if we wish to continue to have a healthy world to live in. We are already destroying the world's forests at an incredible rate and to consider logging an appropriate form of fire control is absurd. You cannot control the forces of nature and thinning our stock of oxygen-producing trees isn't going to make any significant difference. Education of people, the cause of most wildfires is the appropriate response. (Individual, No Address - #261.1.10700.XX)

**566. Public Concern: The CEQ Task Force should encourage the development of federal lands.**

Unlock the land. I want to be able to use it. As it stands now I am locked out of most federal land. Over two-thirds of my own state is totally inaccessible to me and anyone else who has any kind of disability. It reminds me of feudal Europe, where the land only belonged to the nobility. Are you the new nobility?

New development is totally stymied by red tape. Many people here are fed up with the rest of the union telling Alaskans what we cannot do in our own state. Many people want to secede from the United States because more and more opportunities are lost to red tape. Please relent. (Individual, Palmer, AK - #131.1.70500.A3)

#### TO UTILIZE NATURAL RESOURCES

I think we should develop our own land and oil to use for ourselves before selling it to other countries! Take care of ourselves FIRST and then others! (Individual, No Address - #273.1.70500.XX)

**567. Public Concern: The CEQ Task Force should advise against designating permanent roadless areas.****TO ALLOW SUSTAINABLE RESOURCE MANAGEMENT**

We already have designated Wilderness Areas. We don't need permanent "Roadless Areas" established, making active forest management impossible. Most Roadless Forests are simply in the late stages of growth, and are likely mature enough to be logged again. By managing forests as a sustainable, renewable resource, then there is no real place for 60,000,000 acres of permanent Roadless Areas. The forest is constantly evolving, constantly growing. Let the forest managers manage. (Individual, Minneapolis, MN - #404.5.70500.XX)

*Timber***568. Public Concern: The CEQ Task Force should consider the environmental effects of timber harvest.**

I live in an area where clearcutting is fairly destructive. We must balance the natural environmental impact that logging imposes on humans and the environment. The TRUE cost of logging needs to be considered! By the way, we don't need more logging roads. (Individual, Seattle, WA - #157.1.70500.A7)

**569. Public Concern: The CEQ Task Force should encourage the Forest Service to adopt sustainable timber management as its guiding philosophy.**

Our National Forests need to be managed as a sustainable, renewable resource, and not as a limited resource. As a minimum, our Nat'l Forests should provide at least 100% of our harvestable timber needs; the USA should be a net exporter. This should be the national policy and guiding overall objective, combined with sustainable management. (Individual, Minneapolis, MN - #404.3.10110.XX)

**570. Public Concern: The CEQ Task Force should streamline the appeals process for timber sales.**

Our mill depends on timber from federal, state and local lands. It is extremely important that we are able to streamline the appeals process in order to place timber up for sale before it loses its value. (Timber or Wood Products Industry, No Address - #217.1.10520.XX)

**571. Public Concern: The CEQ Task Force should address the effects of NEPA on salvage harvest.**

Lengthy procedures have delayed the salvage of dead or damaged timber until the project was no longer economical. (Other, Washington, DC - #587.1.10200.XX)

**572. Public Concern: The CEQ Task Force should encourage selective timber harvest.****RATHER THAN CLEARCUTTING**

I would whole-heartedly support a movement to clean up the forests and maintain them as growing, thriving forests, without the undergrowth problem. Selective cutting would be highly beneficial.

Please tell me that clear cutting is not an option and will not be used to pad the pockets of the logging companies while reeking havoc with the soil, fauna, and water systems. (Individual, No Address - #210.1.70500.XX)

**573. Public Concern: The CEQ Task Force should discourage subsidization of timber harvest.**

I do not think the government should pay private businesses to cut timber with public funds and then allow the private businessmen to make a profit selling the lumber. If our tax money is used to cut timber then the government should get the money back when the timber is sold. I think the "Bush plan" that he called a partnership is nothing but a fancy way to give federal money to private businessmen, but let's not call it government assistance. (Individual, No Address - #270.1.70500.XX)

**574. Public Concern: The CEQ Task Force should use NEPA to prohibit timber harvest.**

I have been to South America, and have seen the ruined rain forests. Use this law to stop the unnecessary cutting in this land. Stop using it as a club to keep wild life safe. Start using it as a tool to prevent, and control wild fires. Don't touch another redwood, ever. (Individual, Laredo, TX - #129.1.10700.D2)

## *Mining*

**575. Public Concern: The CEQ Task Force should recognize the importance of the NEPA process for mining.****FOR MINING PERMIT DECISIONS**

The Committee on Hardrock Mining on Federal Lands believes that the NEPA process and its various state equivalents provide the most useful and efficient framework for evaluating proposed mining activities for three reasons.

The NEPA process provides the most comprehensive and integrated framework for undertaking these evaluations. The NEPA environmental assessment process includes the full range of environmental concerns, whether or not they are specifically addressed by some other regulatory program, as well as cultural and other concerns. It allows for clear identification of tradeoffs between different and sometimes competing values, and promotes a better understanding by all stakeholders of the implications of the many decisions involved in the preparation and approval of a mine's operating plan. It also provides a framework for coordinating the diverse information requirements, concerns, and permitting decisions of the many regulatory agencies and other stakeholders. No other regulatory program provides such a comprehensive, integrated mechanism for decision making. (Individual, Reno, NV - #449.5.10700.XX)

NEPA and its accompanying regulations are critical for ensuring that the public has input into mining permit decisions and that those decisions are based upon adequate scientific review and analysis. (Preservation/Conservation Organization, Durango, CO - #523.1.10500.XX)

**FOR MINING EFFECTS ANALYSES**

The NEPA process aids in the process of making decisions which deal with the impact mining has on an area for a period that reflects geologic time, rather than the biologic time we are accustomed to dealing with. Since people are unaccustomed to making decisions with such long-term implications, the NEPA requirements that the impacts be fully evaluated prior to making the decision, allows for impacts which are beyond our individual experience to be considered more accurately than would otherwise likely occur. Some of these type of issues are discussed below, including long-term monitoring and mitigation needs that can last in perpetuity. As the National Research Council (NRC) noted in its Hardrock Mining on Federal Lands report:

Unlike many other kinds of industrial point-source emissions, releases from mining operations may take years to develop (e.g., acid drainage) and may continue for many years after a mining operation has closed. So far, the success of modeling long-term water quality and quantity impacts has been fragmented, and the concordance of predicted and actual outcomes has not been adequately reviewed. (Preservation/Conservation Organization, Durango, CO - #523.3.10700.XX)

**BECAUSE IT PROVIDES FOR ANALYSIS OF SITE-SPECIFIC CONDITIONS**

The Committee on Hardrock Mining on Federal Lands believes that the NEPA process and its various state equivalents provide the most useful and efficient framework for evaluating proposed mining activities . . . . The NEPA process ensures that the decisions are based on careful analyses of site-specific conditions. For example, ore deposits occur in every conceivable type of geographic and geologic location from arid deserts to tropical rain forests to high mountains. The values and sensitivities associated with diverse types of environmental and cultural resources can vary at least as widely. An operating plan for mining activities must adapt and respond to these specific conditions and sensitivities. The NEPA process allows this responsiveness; regulatory programs relying on inflexible, technically prescriptive standards often do not . . . . (Individual, Reno, NV - #449.6.10240.XX)

**576. Public Concern: The CEQ Task Force should encourage agencies with jurisdiction over mining operations to cooperate in scoping and preparation of EISs for new mines.**

One of the key findings of the NRC Report is that the NEPA process is ideally suited to evaluate the environmental impacts associated with mineral exploration and mining projects on federal land. However, the NRC Report makes the following recommendations for improving the way in which federal agencies participate in the NEPA process:

“The NEPA process is the key to establishing an effective balance between mineral development and environmental protection. The effectiveness of NEPA depends on the full participation of all stakeholders throughout the NEPA process. Unfortunately, this rarely happens in a timely fashion. Recommendation: From the earliest stages of the NEPA process, all agencies with jurisdiction over mining operations or affected resources should be required to cooperate effectively in the scoping, preparation, and review of environmental impact assessments for new mines. Tribes and nongovernmental organizations should be encouraged to participate and should participate from the earliest stages.” (Individual, Reno, NV - #449.2.10220.XX)

**577. Public Concern: The CEQ Task Force should require agencies to include bonding calculations and justifications in NEPA documents on mining projects.**

It is common for bonding calculations and justifications to be omitted from NEPA review on mining projects.

The preamble to the year 2000 revised 3809 regulations specifically anticipates that the amount and adequacy of the financial assurance be subject to the NEPA process. “BLM will respond to comments made on the reclamation cost estimate at the same time and manner as they respond to comments made on the NEPA analysis of the plan of operations.” 65 Fed. Reg. at 70045 (Nov. 21, 2000). Although the current Administration substantially revised the 3809 regulations after their initial revision in 2000, the preamble and requirements for bonding and public review were unchanged. “BLM has concluded that we should retain the financial guarantee provisions of the 2000 regulations to ensure that sound financial guarantees will exist.” 66 Fed. Reg. 32571, 32573 (June 15, 2001).

Yet, an FEIS released after the 2001 regulations for the SOAPA project does not contain the required financial assurance (or bond) amount. Further, there is no evidence in the FEIS or ROD that BLM conducted the required independent review of the adequacy of any financial assurance or bond that would be required. The only mention of full bonding is a simple statement that “before any surface disturbing activities are initiated, Newmont shall provide good and sufficient financial surety for post-mine closure reclamation to BLM, in a manner consistent with the regulations for the Nevada Division of Environmental Protection governing financial surety for reclamation (NRS and NRC 519A).” ROD at Mitigation 8. However, neither the ROD nor the FEIS contain any analysis as to BLM’s review of the supposed bond amount—nor whether such a bond would meet BLM standards in addition to Nevada standards. Such a delayed review of financial assurance bypasses public review, comment, and appeal rights under NEPA.

Bond amounts, and the rationale for those amounts, must be included in the NEPA documents in order for the public to be allowed to comment, since it is the public that will be directly harmed should the

bond be insufficient should the operator abandon the site. (Preservation/Conservation Organization, Durango, CO - #523.50.10500.XX)

**578. Public Concern: The CEQ Task Force should clarify that agencies cannot selectively use uncertainty to disregard alternatives in mining projects.**

Another approach seen in mine project EISs is the selective use of uncertainty to disregard alternatives. . . . In South Pipeline FEIS, the BLM rejects a partial pit backfill alternative due to modeled/predicted water quality impacts. Yet elsewhere . . . they defend permitting actions predicted to not meet state legal requirements due to the uncertainty in those predictions. An agency cannot pick and choose what modeling or prediction results it can rely on, nor can it dismiss a reasonable alternative due to uncertainty when the same uncertainty holds for the Preferred Alternative. (Preservation/Conservation Organization, Durango, CO - #523.44.10230.XX)

**579. Public Concern: The CEQ Task Force should consider that NEPA is used by agencies to delay or halt mining operations by lessees.**

I am in the final phases of completion of a total approval of a Plan of Operations to do 10,000' of diamond drillings and 2,000' of mechanized trenching on my 9 unpatented mining claims near Dixie, Idaho. The Nez Perce National Forest located at Elk City, Idaho is the local U.S. Forest headquarters.

Let me reiterate the sequence of events. This is the second time around to do the same project. The first time P.O.O. #1 was submitted 4-10-93 and took until 5-11-95 to be approved. The timeframe to do this work was to be 3 years or terminate 5-11-98. However, at the very end—and never discussed until the date of approval—17 changes and additions were included. Many of these were terribly detrimental to being able to operate efficiently and effectively:

1. No permanent bridge allowed.
2. Cut no trees within 300' of a creek.
3. One year out of three to do project.

5-11-98 approached so I filed P.O.O. #2 on 10-24-97 in hope of approval for the same project but including a permanent bridge 55" wide x 40' long to cross Big Creek. The project requires parking and fording Big Creek with a 1-mile hike or ATV or trail bike ride to the diggings. During the first P.O.O. I was, by myself, only able to do trail or future road work, so at this point after waiting 4 1/2 years for the U.S. Forest Service to approve my P.O.O. #2, it has finally been approved. As before, however, they, unannounced, waited to drop about a dozen outrageous mitigation points into the project.

The P.O.O. #1 only required a bond of \$3,500, based on the reclamation. P.O.O. #2 in 7 years and now covering the same project requires a \$40,000 bond. Some wages are \$32 per hour plus a 35% administrative charge for their time.

They (USFS) expect the old road to be reclaimed back down to 20" or a trail.

This totally defies SR2477. On top of this, the Forest Service at Elk City . . . expects me to fill in and destroy my discoveries in the old hand-dug trenches by September of this year, 2002, or they will confiscate my old \$3,500 bond and do the work. I gave them 3 letters written by potential lessees who would like to make a field exam and inspect the property but probably cannot make it until a later date. This meant nothing to the Forest Service and, in fact, they couldn't care less, even though they agreed that getting the letters was a good idea.

If NEPA allows all of this activity, it is way overdue for a change.

These people in the Forest Service know nothing about what we in the mining field have to do and they don't care. I make trips to Vancouver, B.C. to try to promote my mining project. Lately I have been told how promising my property is in its present state of development. However, when they find out about the U.S.F.S. involvement I'm told "We will not work in Idaho, but we will work in Nevada." After 12 years or so of being involved with these NEPA-related bureaucrats, it's time to repeal the NEPA law. Anyone who uses it is entirely directing their efforts to shut us down and the whole country eventually will suffer. (Mining Industry, Blaine, WA - #344.1-2.10200.XX)

**580. Public Concern: The CEQ Task Force should examine the report “Hardrock Mining on Federal Land” to evaluate environmental effects of proposed mineral exploration and mining projects.**

I would like to suggest the NEPA Task Force examine the findings presented in a 1999 National Academy of Sciences/National Research Council (NRC) report entitled “Hardrock Mining on Federal Land.” This report includes some valuable observations regarding the NEPA process and the optimal way in which federal land managers should use the NEPA process to evaluate environmental impacts associated with proposed mineral exploration and mining projects. Although the NRC Report is focused on mining on federal land, I believe the NRC’s NEPA recommendations are applicable to the NEPA process in general, and should be considered by all federal agencies involved with preparing NEPA documents. (Individual, Reno, NV - #449.1.10220.XX)

*Other***581. Public Concern: The CEQ Task Force should advise the prohibition of construction near danger zones.**

I think that homeowners should not be able to build so close to danger zones or at least be allowed to protect their property. (Individual, No Address - #269.2.70500.XX)

## Socioeconomic Considerations of Planning

### Summary

This section includes the following topics: Socioeconomic Considerations General, Socioeconomic Analysis, Access, and Economy/Employment.

**Socioeconomic Considerations General** – Of those who offer general comments regarding socioeconomic considerations of planning, many focus on the status of humans vis-a-vis the rest of the environment in NEPA analysis. Some insist that NEPA should apply to all components of the environment, not just humans. Some suggest, further, that the word “human” be removed from NEPA. On the other hand, some suggest that the Task Force should modify 40 CFR 1508.14 to interpret the human environment to include the natural environment, and the relationship of people with that environment. One recreational organization writes that “some scholars and a few judges have determined that NEPA is focused on protecting the natural environment and they therefore assign humans a relatively trivial role in that balance. We think this logic is questionable in light of the Supreme Court’s analysis in *Bennett v. Spear*, 520 U.S. 154, 175-176 (1997), in which the Court clarified, at least in the standing analysis, that one does not focus on the overall ‘purpose’ of a statute, but rather on the interests balanced by specific statutory provisions. Thus, the proponents of a ‘physical environment’ limitation to NEPA are committing the same analytical flaw as the Ninth Circuit in *Bennett*. We ask that the Task Force clarify the inclusion of ‘humans’ in the balance required by NEPA’s reference to the ‘human environment.’”

Others suggest that it should not be assumed that human use of public lands necessarily involves a predator-prey situation, that language should be included in NEPA to protect private property rights, and that targeted tax credits should be established for the redevelopment of brownfields.

**Socioeconomic Analysis** – Numerous respondents address socioeconomic analysis in NEPA planning. Some offer general remarks on this topic, while some specifically address social analysis and others specifically address economic analysis.

At the general level, a number of respondents believe the Task Force should make it clear that “economic and social impacts should be analyzed closely” as part of the entire analysis. Many argue that this level of analysis should “begin locally and then broaden out if appropriate.” Others request that the Task Force not consider large populated areas when making management decisions because “by including urban populations, the impacts to small rural communities and counties become skewed.”

Some respondents specifically ask the Task Force to require adequate analysis of social issues. According to some, social resources should include heritage, tradition, culture and cultural resources, and historic properties. Other respondents posit that the Task Force should require agencies conducting analysis to give greater weight to the human, social and cultural elements than to “mere biological evidence.” Finally, some maintain that an adequate social analysis must include analysis of distributional effects. According to one elected official, analysis of distributional effects “is key for displaying ‘full disclosure’ in NEPA documentation. Moreover, distributional effects analysis is the way to evaluate due process procedures. And distributional effects analysis is where the impact analyst determines if there are any potential effects on civil rights, such as property rights, Takings Implication Assessment (TIA), undue burden, minorities, etc. It is also where Environmental Justice (EJ) comes into the analysis.”

Most who address the topic of economic analysis offer suggestions to increase the adequacy and usefulness of such analyses. Respondents suggest that the Task Force should ensure that economic indicators are based on cumulative effects; require economic analyses to be prepared by a qualified professional economist; require a cost benefit analysis in relation to proposed alternatives, including future costs and benefits; and require agencies to incorporate ecosystem services into the economic analysis. Some believe agencies should be required to justify their rejection of alternatives on economic grounds. One preservation/conservation organization explains, “A common rationale for rejecting alternatives, or even analyzing them, is the claim of economic infeasibility. All too often, there is no analysis of the economics used to justify this assertion. At a minimum, a full analysis of the reasons for rejecting reasonable alternatives on economic grounds should be included.” Finally, some believe funding should be encouraged for economic effects studies done by local entities.

**Access** – Respondents who comment on the topic of access feel that the NEPA process denies them access to public land. One Special Use Permittee argues that “analysis paralysis” has “ultimately cheated the public out of access to their lands.” In much the same vein, another individual writes, “The NEPA process, as it stands, has been used to lock up lands which the public owns and has a right to use.”

**Economy/Employment** – Respondents commenting on this topic feel that NEPA decisions made by land management agencies have negatively impacted local economies. Based on their experience, NEPA review has caused sawmills to close, grazing allotments to go vacant, and outfitter-guide permits to be lost. One mining industry representative argues that “NEPA creates a much greater burden on small businesses.” These respondents request that agencies consider the potential impacts to businesses, economies and individuals before any changes to management plans are made. Others remark that the NEPA process is burdensome, costly, causes delays, and imposes significant regulatory burdens.

## Socioeconomic Considerations General

### **582. Public Concern: The CEQ Task Force should apply NEPA to all components of the environment, not just humans.**

As the current Federal administration and many states become more “business-friendly”, the environment and our quality of life is quickly degrading. NEPA is one line of defense we need to keep intact. If anything, environmental law should be strengthened. With our country’s technological power, we should be better at finding methods that are compatible with the environment, rather than focusing on methods giving short-term profits and long-term destruction. NEPA, if anything should be applied to all components of the environment, not just humans. (Individual, Scotia, NY - #433.1.10000.F1)

#### **REMOVE THE WORD “HUMAN”**

I worked with NEPA since its inception. The LAW should not be amended except to remove the word “human”. The law should apply to all components of the environment, not just impacts that affect “humans.” (Individual, Lakeview, OR - #233.1.10700.XX)

### **583. Public Concern: The CEQ Task Force should modify 40 CFR 1508.14 to interpret human environment to include the natural and physical environment, and the relationship of people with that environment.**

I recommend modifying 40 CFR 1508.14 as follows:

Human environment shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of “effects” (Sec. 1508.8).) This means the economic, cultural or social effects may by themselves require preparation of an environmental impact statement.

These proposed changes would help to change the unwritten policies of some offices within the land management agencies of protecting the health of the land to the exclusion of all other human values. These changes would also encourage the agencies to be more creative in their efforts to find ways to harmonize commercial and recreational activities with conservation goals, rather than simply furthering conservation objectives to the exclusion of all other values. More important, this policy would better further the purpose of NEPA to promote “harmony between man and his environment,” 42 USC 4321`, rather than considering human activity to be the inevitable enemy of a healthy environment. (Individual, Bellingham, WA - #127.4.10200.XX)

The Task Force should take this opportunity to revisit several definitions in the CEQ Regulations. Decades of NEPA litigation have certainly suggested many ways in which the definitions of part 1508 could be improved or expanded. In particular, we would like to see the Task Force revisit the definition of “human environment.” Some scholars and a few judges have determined that NEPA is focused on protecting the natural environment and they therefore assign humans a relatively trivial role in that balance. We think this logic is questionable in light of the Supreme Court’s analysis in *Bennett v. Spear*, 520 U.S. 154, 175-176 (1997), in which the Court clarified, at least in the standing analysis, that one does not focus on the overall “purpose” of a statute, but rather on the interests balanced by specific statutory provisions. Thus, the proponents of a “physical environment” limitation to NEPA are committing the same analytical flaw as the Ninth Circuit in *Bennett*. We ask that the Task Force clarify the inclusion of “humans” in the balance required by NEPA’s reference to the “human environment.” In addition, we ask the Task Force to clarify that “human environment” necessarily includes recreational, aesthetic, and other socioeconomic factors which must be fully analyzed in any NEPA analysis. (Recreational Organization, Boise, ID - #90.19.70400.XX)

### **584. Public Concern: The CEQ Task Force should not assume that human use of public lands involves a predator-prey situation.**

One important consideration is repeatedly ignored in NEPA. That issue is a “predator-prey” situation. Hunters, wolves, or raptors pursuing wildlife create a predator-prey situation. Many other uses of the

public lands do not present a “predator-prey” situation. Examples: Using public lands—Ranchers herding cattle, mineral industry employees doing their jobs, snow machine owners riding across the landscape. It is correct that any wildlife is aware of the human presence; however, most of the time, the wildlife does not consider the human a predator. For most NEPA documents, the approach of the study is to initially assume that humans create a predator-prey situation and probably a “significant” impact. The agencies are trying to develop alternatives to minimize any “significant” impacts. For the previous examples and many other situations, perhaps a better approach to the study is not to automatically consider the human use of public lands to create a predator-prey situation. (Charles Childers, State Representative, State of Wyoming, Cody, WY - #656.7.10800.XX)

**585. Public Concern: The CEQ Task Force should include language in NEPA to protect private property rights.**

Private Property Rights and Protections Should be Paramount in Priority by Congress With Specific Protection Language Written Into the National Environmental Policy Act. Congress Builds Language into Acts for the Expressed Purpose of Property Protection. Suggested Language Based on Existing Congressional Acts:

“All actions by any State or Federal agency under the terms of NEPA are subject to valid existing rights. Any permits, habitat plans, contracts, reintroduction of species, related contracts and other instruments made pursuant to this plan shall be subject to valid existing rights. There will be no introduction or restrictions on private property. No private property will be taken for public use without due process and just compensation.” (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.41.10520.XX)

**586. Public Concern: The CEQ Task Force should encourage targeted tax credits for redevelopment of brownfields.**

Brownfields are under-utilized property. The Government Accounting Office (GAO) estimates shows that there are 450,000 such sites in America today.

It is well recognized that liability for clean-up stifles and frustrates potential activity by developers. In particular federal liability remains a significant impediment to Brownfield restoration. Federal liability results in businesses not developing brownfields, instead property in surrounding communities are used.

By not redeveloping brownfields, and opting for other communities, sprawl increases and urban redevelopment is suspended.

Sprawl can be mitigated if taxpayers could take credits against taxes for the qualifying costs of redeveloping brownfields properties in targeted urban areas. This type of tax credit solution would address clean-up issues, and would help to improve the environment. A tax credit would be great incentive for businesses to convert environmental liabilities into assets.

Suggested Action:

Provide targeted tax credits for redevelopment of brownfields property. (Business, Concord, NH - #16.12.10800.XX)

## **Socioeconomic Analysis**

### *Socioeconomic Analysis General*

**587. Public Concern: The CEQ Task Force should require analysis of socioeconomic effects.**

Socioeconomic impacts must be considered before any changes to any management plans occur. (Individual, Buellton, CA - #511.10.10200.XX)

NEPA analysis must consider the “human environment.” The NEPA statute requires a statement be included “in every recommendation or report on proposals for legislation and other major federal actions

significantly affecting the quality of the human environment.” Despite this requirement, the “human environment” rarely receives more than a perfunctory glance. These cursory reviews often are separate from any consideration of natural environmental impacts. The human element is an important part of the “environment” in which decisions are made.

Council on Environmental Quality (CEQ) and action agencies need to specify in regulations the social and economic impacts on people within a decision area and must be better addressed as part of the environmental analysis. Moreover, these social and economic analyses must be considered as part of the entire analysis.

#### AT THE LOCAL LEVEL

NEPA requires that impacts to the affected public, especially socioeconomic impacts, be considered. Before any changes to management plans take place, the potential impacts to businesses, economies and individuals need to be considered at the local level. (Agriculture Industry, Santa Fe, NM - #466.21.10800.XX)

NEPA is a procedural law and does not dictate the decision outcome, but it does tell the agencies what factors to consider. CEQ should make it clear economic and social impacts should be analyzed closely, thereby making the agencies subject to lawsuits for failing to document sufficiently the human impact.

The agencies begin the socio/economic planning by wanting it to have as little impact as possible. To accomplish this they adjust the scale of analysis. The Klamath Basin water crisis was in the news all of the summer of 2001. Several years prior to that, the Fish and Wildlife Service proposed a project that would have eliminated tens of thousands of acres of farming in the basin. This was land that traditionally had been used by young farmers trying to get established. In order to eliminate any possible economic or social impact they analyzed the production at the world market level. CEQ should provide direction that the level of analysis must begin locally and then broaden out if appropriate. (Willy Hagge, Supervisor, Modoc County Board of Supervisors, No Address - #636.17.10800.XX)

One of the barriers we face is protecting the land and the species while protecting the local economy. It is very important that when federal agencies are developing their economic impacts that they don't include large populated areas in their analysis.

By including urban populations the impacts to small rural communities and counties become skewed. (Individual, Animas, NM - #434.1.10800.A2)

## *Social Analysis*

### **588. Public Concern: The CEQ Task Force should require analysis of social issues.**

One alarming fact always comes to mind and that is: the true issues are always known before the process begins and they are often times social. Therefore, we spend an inordinate amount of time and money defending and analyzing the plethora of insignificant issues raised by an opponent in the hopes of a procedural mistake. Many times the true reason for opposing an action is never stated or analyzed because there are no regulations or laws we can attach to social reason. A good ID Team knows the true reasons behind opposition to a project and also knows what issues need to be analyzed. (Special Use Permittee, Naches, WA - #71.1.10800.XX)

The concept of categorical exclusions is a good one, allowing the agencies to decide which issues pertain to a particular issue or proposal, and not requiring them to consider issues that are not relevant. However . . . in the New Mexico public Lands Council's experience with federal land management agencies, often . . . the agency will decide an issue does not merit consideration and not include it in and Environmental Assessment, when in fact it is a very important issue. Often, in New Mexico, socioeconomic impacts to low-income and/or minority populations are not considered by the agencies. New Mexico's population is largely Hispanic and Native American, and a large number of New

Mexicans live below the poverty line, so the agencies' claim that these populations are not affected is ludicrous. Agencies must be required to consider issues that will be impacted to adequately fulfill NEPA requirements. (Domestic Livestock Industry, Albuquerque, NM - #80.21.10800.XX)

#### **INCLUDING HERITAGE, TRADITION, AND CULTURAL AND HISTORIC RESOURCES**

Cultural impacts are clearly addressed in the Kane County General plan and include ranching and agricultural pursuits, access, water and property rights, recreational activities, hunting and wood gathering; in short, the ability to enjoy a rural lifestyle. However, heritage, tradition and culture are routinely ignored in NEPA planning. (Individual, Kanab, UT - #537.1.10800.XX)

Impacts on historic properties and cultural resources should be assessed earlier in the environmental review process. All too often, cultural resources are not given adequate consideration under NEPA. In many instances, the review process under NEPA overlaps with review under Section 106, of the National Historic Preservation Act (NHOA), 16 U.S.C. 470f. Although coordination of Section 106 and NEPA responsibilities is encouraged under the Section 106 regulations issued by the Advisory Council on Historic Preservation, 36 C.F.R. Part 800, this coordination is often lacking. Federal agencies too frequently review the impacts of their undertakings on historic properties very late in the NEPA process, or indeed, sometimes after the NEPA review, once an alternative has been already selected. These two statutes need much better integration and coordination. We urge the Task Force to work with the Advisory Council on Historic Preservation in developing recommendations to address this serious problem. (Preservation/Conservation Organization, Washington, DC - #549.1.10800.XX)

#### **589. Public Concern: The CEQ Task Force should give greater weight to the human, social and cultural elements of analysis than to biological elements.**

Human, Social and Cultural elements should be given greater weight than mere biological evidence. (Individual, Prescott Valley, AZ - #315.5.10800.A4)

#### **590. Public Concern: The CEQ Task Force should require analysis of distributional effects.**

NEPA states [that its] purpose is to provide harmony between man and nature. Yet, it's rather lopsided in regards to assessing the effects on the "human environment." Most of the analyses of the human environment are on what we refer to as the biophysical, rather than on the human dimension. Both people and other life forms comprise the nature/ecosystem. Moreover, by-and-large, people and the biophysical are interrelated. Yet, federal agency staff often like to quote NEPA, that only biophysical effects initiate NEPA. One can take the restrictive interpretation but the NEPA experience and documentation during the 70s and early 80s energy boom and extraction era, many NEPAs were initiated because of potential effects on human settlements and individuals. It is hard to separate out the interrelationships between individuals and community in that ecosystem and other critters. To illustrate, when a public land rancher's livelihood is threatened because of an endangered species, the effects of the proposed action could have unintended consequences on the natural environment, say, in terms of range improvement maintenance of waterings by the rancher.

Federal agencies have poor track records when it comes to assessing social, cultural and economic impacts of proposed actions. There needs to be more guidance for agency assessment of the rate and magnitude of effects at the local level, or scale of analysis. This is another good justification for state and local involvement in the analyses, as well as the financing of such analysis. The other disciplines are relatively well funded for full disclosure of the biophysical effects.

In the area of socioeconomic effects, federal agencies do not know how to conduct distributional effects requirements (who wins and who loses)—for assessing disproportionate effects. This is key for displaying "full disclosure" in NEPA documentation. Moreover, distributional effects analysis is the way to evaluate due process procedures. And distributional effects analysis is where the impact analyst determines if there are any potential effects on civil rights, such as property rights, Takings Implication Assessment (TIA), undue burden, minorities, etc. It is also where Environmental Justice (EJ) comes into the analysis. As it is now, most NEPA documents have their standard "escape clauses" for NOT doing

EJ or TIA. This is an extremely important component to socioeconomic assessments and for reaching that “harmony” or balance when it comes to harm, health and safety and protecting rights of the individuals and avoiding disproportionate effects on rural communities and their capacity to absorb change. Hopefully, CEQ can address this component for improving intergovernmental collaboration in NEPA. (Carl Livingston, Chairperson, Catron County Board of Commissioners, Reserve, NM - #564.7-8.10800.XX)

## *Economic Analysis*

### **591. Public Concern: The CEQ Task Force should require adequate economic analysis.**

Economic impacts and the ability to utilize resources on a sustainable basis are vital to the survival of rural Americans depending on federal lands making up approximately ninety percent (90%) of their county’s geography. Economic and cultural (socio-economic) impacts are always procedurally mentioned in federal planning but seldom meaningfully considered. For example, a recent Grand Staircase-Escalante National Monument (GSENM) Environmental Assessment (EA-UT-030-02-005), in attempting to permanently eliminate 16,729 animal unit months (AUMs) of livestock grazing from the monument, analyzed only the economic loss of \$1,585.07 in grazing fees resulting from the federal planning action. The court economic consultant, however, estimated the actual annual economic loss to Kane and Garfield Counties to be from \$5.2 to \$6.8 million dollars, from 115 to 150 lost jobs and from \$295,916 to \$386,260 in lost sales tax revenues. No effort was made by the monument staff to resolve this multi-million dollar discrepancy and the EAs are in the hands of the Protest Coordinator in Washington D.C. as a result of this and other inconsistencies. (Individual, Kanab, UT - #537.1.10800.XX)

### **592. Public Concern: The CEQ Task Force should ensure that economic indicators are based on cumulative effects.**

The economic indicators are not based on cumulative impacts as the law requires, the cost benefit of some actions are never considered, and the general feeling from every document I have reviewed is ho hum, economics who cares? WE DO! The agencies don’t do economic review nor do they regard our economic review because they don’t want facts. (Individual, Pioche, NV - #336.3.10800.C1)

### **593. Public Concern: The CEQ Task Force should require economic analyses to be prepared by a qualified professional economist.**

An economic analysis must be prepared by a qualified professional economist. The current system of economic analysis where some employee states that the action will eliminate x number of jobs and that equals x dollars. They fail to take into consideration how many vehicles will not be purchased, how many vehicle repairs will not be made, how many meals will not be served at the corner restaurant, etc. (Individual, Huachuca City, AZ - #372.11.10200.XX)

### **594. Public Concern: The CEQ Task Force should require a cost benefit analysis in relation to proposed alternatives.**

Make it clear that the agencies must take a “hard look” at economic and cultural impacts of their decisions.

The U.S. Court of Appeals for the Ninth Circuit and other federal courts have ruled that a party claiming economic harm resulting from a government decision may not sue the agency for failure to perform adequate NEPA analysis as to the economic impact of the decision. E.g. Port of Astoria v. Hodel, 595 F.2d 467 (9th Cir. 1979); Nevada Land Action Association v. United States Forest Service, 8 F 3d 713 (9th Cir. 1993). These rulings have the effect of giving priority to the livelihoods of plants, animals, insects and fish over the livelihoods of human beings. While NEPA is a procedural statute and does not dictate the outcome of the decision making process, it tells agencies what factors they must consider and give weight to. However, if the agencies know that they may be subject to lawsuits for unsupported

statements in a NEPA document that no economic or cultural impact will result from a government activity, they will be more likely to take a “hard look” at such impacts, along with impacts to plants and animals.

My suggested change captures the intent of NEPA better than regulations. This should be obvious since the primary requirement of NEPA is to evaluate “major federal actions significantly affecting the quality of the human environment.” 42 USC 4332 . . . . The purposes of NEPA were originally expressed by Congress as follows:

The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality. 42 USC 4321 . . . . The act further provides that NEPA is intended “to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. Id. 4331 (a) . . . . NEPA was never intended to focus on environmental protection to the exclusion of economic and social considerations . . . :

In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may -

- (1) fulfill the responsibilities of Each generation as trustee of the environment for succeeding generations;
- (2) assure for all American safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
- (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice; 2 USC 4331 (b) . . . . These statutory provisions clearly indicate that economic and cultural considerations are important considerations in NEPA analysis. Yet the courts have often interpreted NEPA in an extreme fashion, considering it to be primarily concerned with the preservation of nature and not particularly concerned with the economic and cultural impacts of government decisions. These decisions defeat some important original purposes of NEPA and should be remedied through regulatory reform. Based on these observations, I suggest that 40 CFR 1502.23 be modified as follows:

A monetary cost-benefit analysis relevant to the choice among environmentally different alternatives shall be considered for the proposed action, and shall be incorporated by reference or appended to the statement as an aid in evaluating the economic, cultural and environmental consequences. Such analysis shall be based on high quality economic and anthropological research by qualified members of the interdisciplinary team. To assess the adequacy of compliance with section 102 (2) (b) of the Act the statement shall discuss the relationship between the cost-benefit analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives must be displayed in a monetary cost-benefit analysis; but the cost-benefit analysis shall indicate that it may not account for some important qualitative considerations. In any event, an environmental impact statement shall indicate those considerations, including economic and cultural factors, which are likely to be relevant and important to a decision. (Individual, Bellingham, WA - #127.1.10800.XX)

#### **INCLUDING FUTURE COSTS AND BENEFITS**

Advancement of knowledge during recent years suggests a greater role for integrating science and economics in policy formulation as well [as] implementation, especially in an adaptive governance sense. One of the critical issues in this context is the valuation of future costs and benefits, and their discounting for current assessment or calculation of present values. An important research contribution in this regard that emerged during the past five years is the role of nonlinear time-varying discount rates that assign low but non-zero discount factors for further events. Besides, economic science clarifies the

appropriateness of lower discount rates relative to the ones being used by the EPA and OMB. This is undoubtedly a critical factor and warrants further attention at all multi-stakeholder levels. (Other, Lawrenceville, NJ - #411.1.10240.F1)

### **595. Public Concern: The CEQ Task Force should require agencies to incorporate ecosystem services into the economic analysis.**

The federal government must incorporate the best available economic information into its NEPA analyses. Often the agencies claim that economic benefits and costs are not quantifiable or controversial but that is imply incorrect. The methods used by economists to estimate ecosystem service values are, in fact, generally less controversial than the methods the agencies use to estimate the benefits and costs of its programs and projects. For example, the General Accounting Office (GAO) recently concluded that “serious accounting and financial reporting deficiencies existed at the Forest Service during fiscal years 1998 and 1999 that precluded us from making an accurate determination of the total federal costs associated with the timber sales program for fiscal years 1998 and 1999. These deficiencies rendered the Forest Service’s cost information totally unreliable.” In contrast, the methods used by economists to estimate ecosystem service values have been extensively and regularly peer reviewed for decades. In making programmatic and site-specific decisions the agencies must incorporate information about economic values. For example the economic benefits associated with standing forests include:

- 1) recreational opportunities and tourism;
- 2) commercial and recreational fisheries;
- 3) habitat for important game species and hunting;
- 4) water for cities, industries, businesses, and individual households downstream;
- 5) the regulation of water flowing through rivers and streams, including flood control;
- 6) non-timber forest products such as wild mushrooms, herbs, and medicinal plants;
- 7) mitigation of global climate change through absorptions and storage of vast amounts of carbon;
- 8) enhancing the quality of life of neighboring communities;
- 9) harboring biological resources that either have value now or have as yet unknown but potentially large economic and social value;
- 10) harboring biological and genetic resources that can improve the long-term productivity of all forest land;
- 11) pest-control services provided by species that prey on agriculture and forest pests; and
- 12) pollination services provided by species that pollinate important forest and agricultural crops.

In making their programmatic and site-specific decisions the agencies must incorporate information about externalized costs passed on to communities, businesses and individuals when agencies take certain actions. For example, the direct, indirect, and cumulative economic costs associated with logging national forests include:

- 1) lost recreational opportunities and decreased tourism;
- 2) degraded commercial and recreational fisheries;
- 3) degraded habitat for important game species and loss of hunting opportunities;
- 4) increased pollution of water for cities, industries, businesses, and individual households downstream and increased costs of water filtration;
- 5) increased flooding and disruption of the normal flows in rivers and streams;
- 6) loss of non-timber forest products such as wild mushroom, herbs, and medicinal plants;
- 7) exacerbation of global warming through release of greenhouse gasses;
- 8) diminished quality of life of neighboring communities;
- 9) loss of biological resources that either have value now or have as yet unknown but potentially large economic and social value;
- 10) loss of biological and genetic resources that can improve the long-term productivity of all forest land;

- 11) diminished pest-control services provided by species that prey on agriculture and forest pests;
- 12) diminished pollination services provided by species that pollinate important forest and agricultural crops;
- 13) lost jobs and income associated with timber production on private lands;
- 14) lost jobs and income associated with the production of alternative and recycled products that is displaced by subsidized federal logging;
- 15) death, injury and property damage associated with logging; and
- 16) increased risk of wildfires caused by adverse changes in microclimate, increased human access, and slash generated by timber sales. (Preservation/Conservation Organization, Santa Fe, NM - #529.2-4.10800.XX)

**596. Public Concern: The CEQ Task Force should require agencies to justify their rejection of alternatives on economic grounds.**

A common rationale for rejecting alternatives, or even analyzing them, is the claim of economic infeasibility. All too often, there is no analysis of the economics used to justify this assertion. At a minimum, a full analysis of the reasons for rejecting reasonable alternatives on economic grounds should be included. To satisfy NEPA, “The agency must explicate fully its course of inquiry, its analysis and its reasoning.” *Dubois v. U.S. Department of Agriculture*, 102 F.3d 1273, 1287 (1st Cir. 1996). There is generally no showing that the agency has made a complete and independent analysis of the “cost” factors involved in rejecting various alternatives.

Numerous courts have rejected this approach:

“NEPA requires, where economic analysis forms the basis of choosing among alternatives that the analysis not be misleading, biased or incomplete. *Oregon Natural Resources Council v. Marsh*, 832 F.2d at 1499; *Johnson v. Davis*, 698 F.2d 1088, 1094 (10th Cir. 1983). To present a full and unbiased picture of proposed alternatives, the EIS must disclose both benefits and costs. (Preservation/Conservation Organization, Durango, CO - #523.43.10800.XX)

**597. Public Concern: The CEQ Task Force should fund economic effects studies done by local entities.**

Economic impacts, REAL economic impacts must be studied, and the money should be given to the local entity impacted by the study to do the REAL economic impacts, not to the no significant rubber stamp all agencies use to hide their activities. (Individual, Pioche, NV - #340.2.10800.E1)

## Access

**598. Public Concern: The CEQ Task Force should address the effect of NEPA on access to public lands.**

**SHOULD CONSIDER THAT LENGTHY NEPA PLANNING DENIES PEOPLE ACCESS TO PUBLIC LANDS**

The process is truly “Analysis Paralysis” and is unfair to the American public and the U.S. Government. White Pass wishes to build another chairlift, however, the frustration of the thousands of American public that have endured this process is criminal. You will never hear from them because they are not organized like opposition groups, and they never will be organized because they find this method of operation to be so contrary to their sense of decency and fair play that they cannot embrace it. However, you must realize that I could have 20,000 signatures to this letter from frustrated public looking for a process that looks at the facts, examines the issues and then makes a fair decision. The process has ultimately cheated the public out of access to their lands. (Special Use Permittee, Naches, WA - #71.4.10200.XX)

## SHOULD NOT ALLOW THE NEPA PROCESS TO BE USED TO DENY ACCESS TO AND USE OF PUBLIC LANDS

The NEPA process, as it stands, has been used to lock up lands which the public owns and has a right to use. It has been used to stop logging, mining, etc. It is time to start using common sense and scientific information and time to stop the environmentalists' adeptness at twisting NEPA to sue the government as a fund raising opportunity. (Individual, Grants Pass, OR - #366.1.10320.F1)

## Economy/Employment

### 599. Public Concern: The CEQ Task Force should consider the effects of the NEPA process on local economies, businesses, and individuals.

NEPA requires that impacts to affected publics, especially socioeconomic impacts, be considered. Before any changes to management plans take place, the potential impacts to businesses, economies and individuals need to be considered. (Domestic Livestock Industry, Albuquerque, NM - #80.20.10800.XX)

My experience with NEPA has been mostly negative, even though this law was intended to protect the environment and provide for public input in government projects, NEPA decisions by both the Forest Service and to a lesser extent the BLM, have greatly affected my employment and way of life. In this area, sawmills have closed, grazing allotments gone unfilled, and outfitter-guide permits lost. (Individual, Joseph, OR - #424.1.10000.XX)

[The Lassen County Farm Bureau] live in a small, rural northern California county that has been devastated by Forest Service lack of management in the last 10 years. Our economy has been almost eliminated by shutting down of the forests for logging and grazing. NEPA review was a part of this because of the costs it created and it opened up the forest to many baseless lawsuits designed to stop logging and grazing. (Agriculture Industry, Susanville, CA - #441.1.10800.XX)

Our experience with NEPA has been largely with management of the national forests. The NEPA process as it applies to federal land management planning and resource management is broken. Projects take too long to complete and are easily challenged for failure to meet the Council on Environmental Quality (CEQ) regulations. Because of this breakdown, sawmills have closed down, and grazing allotments are left vacant. (Timber or Wood Products Industry, Joseph, OR - #423.1.10800.XX)

Burden on small business - NEPA creates a much greater burden on small business. Ways to relieve this burden must be found and implemented. (Mining Industry, Anchorage, AK - #645.16.10800.XX)

#### MINING COMPANIES

The inconsistency in NEPA review results in uncertainty for mining companies attempting to develop a mineral deposit. There are no identified boundaries in amount of analysis required, the cost to develop an EA or EIS, or a time line in completing an EA or EIS. No business can operate in such an uncertain environment and because of this NEPA is failing to follow its directive of fulfilling the economic requirements of America. (Mining Industry, Helena, MT - #541.3.10800.XX)

#### MINERALS INDUSTRY

Impact on industry - The immediate and obvious negative impacts are the costs and delays that occur when a project goes through a NEPA process. However, another major negative impact for minerals companies is that the NEPA process becomes a disincentive to invest in the U.S. The issue is not the environmental regulations. The issue is the uncertainty of the process and the project delays that occur in the U.S. due to the NEPA process as compared to building a similar project in a foreign country with equal environmental protection requirements. (Mining Industry, Anchorage, AK - #645.12.10800.XX)

#### FARMERS AND RANCHERS

Individual farmers and ranchers are also directly impacted by burdensome NEPA processes, especially those who must obtain federal permits of some sort or who rely on some agency within the federal

government for technical or cost-sharing support. Livestock ranchers using federal lands for grazing must obtain federal grazing permits. Farmers or ranchers undertaking water projects involving either the Corps of Engineers or the Environmental Protection Agency must obtain permits. All these activities involve preparation of environmental reviews pursuant to NEPA. (Agriculture Industry, Bozeman, MT - #451.3.10800.XX)

**600. Public Concern: The CEQ Task Force should recognize that NEPA imposes significant regulatory burdens on the building industry.**

The National Environmental Policy Act (NEPA) most often affects our larger volume builders, particularly those constructing master planned communities and large multifamily developments. These entities are also subject to the broad array of state and local land use planning requirements and state NEPA-type laws that often impose overlapping and duplicative regulatory mandates on them. The cost of NEPA compliance in terms of preparation of documents and project delays can be severe. In addition, the residential construction industry can be substantially affected by NEPA in terms of road and highway construction, wetlands permitting, endangered species and critical habitat conservation, natural resources management and protection (including wildlife and fisheries). In sum, the NEPA process can impose significant regulatory burdens on our industry, and we are keenly interested in ways the NEPA Task Force can help streamline the process, reduce regulatory burdens, and serve as a model to both the federal agencies and states that are subject to the law's requirements. (Business, Washington, DC - #517.1.10200.XX)

**601. Public Concern: The CEQ Task Force should discourage laws that allow abuse by minority interests and that put jobs and companies at risk.**

Recently a timber sale in the White Mountain National Forest had gone through years of planning; through the appeals process; bids had been taken and then a lawsuit filed. This lawsuit was filed by the Conservation Action Project, which is nothing more than a fancy name for an "organization" that consists of few if any people other than David Carle. He had offered no input throughout the whole process yet found a small and fairly (as I understand) inconsequential piece left out of the Forest Service's analysis. Since this was a lawsuit based on what the Forest Service had submitted through the whole process they were not allowed to add this small addition since the case had to be heard on what was before the court. Had these concerns been raised earlier the necessary addition could have been included and the project would have moved forward. The end result of this costly and time consuming delay is that the low bidder on the project, a small sawmill owner in NH who had been counting on the quality wood from the sale, now has to scramble to be able to keep operating and keep his employees. This is wrong and needs to be corrected.

We must not be any less vigilant in our protection of the environment, but we also should not create laws and rules that allow abuse by minority interests and put jobs and companies at risk. (Gene G. Chandler, Speaker, New Hampshire House of Representatives, Concord, NH - #64.3.10800.XX)