

NEPA Modernization (CE)
Attn: Associate Director for NEPA Oversight
Council on Environmental Quality
722 Jackson Place, NW
Washington, D.C. 20503

Dear Associate Director for Modernization:

The Western Business Roundtable (“Roundtable”) respectfully submits the following comments regarding the Council on Environmental Quality’s (“CEQ”) proposed guidance “Establishing, Revising and Using Categorical Exclusions under the National Environmental Policy Act.” It is our understanding that this guidance document is intended to assist federal agencies with establishing or updating parameters that govern their development and use of categorical exclusions (“CEs”) under NEPA.

The Roundtable is a non-profit business trade association comprised of CEOs and senior executives of organizations doing business in the Western United States. Our member companies are involved in a broad range of industries, including agricultural products, accounting, chemicals, coal, construction and construction materials, conventional and renewable energy production, energy services, engineering, financial services, internet technologies, manufacturing, mining, oil and gas, pharmaceuticals, pipelines, telecommunications, and public and investor-owned utilities. We work for a common sense, balanced approach to economic development and environmental conservation, and we support public policies that encourage economic growth, opportunity and freedom of enterprise.

Roundtable’s Position

The Roundtable applauds the CEQ for the exhaustive and methodical process it has undertaken in recent years to examine NEPA implementation. The CEQ NEPA Task Force has identified a number of opportunities to improve and modernize the

NEPA process. We believe this is a very important “good government” initiative and support CEQ’s efforts.

Specific Roundtable Recommendations

CEs are a mechanism, already authorized under NEPA, for streamlining and speeding up approval of common projects and activities that pose minimal threats to the environment. The Roundtable’s member organizations have spent a good deal of time over the last several years giving consideration to how federal agencies’ uses of CEs might be clarified/improved. Here are our specific recommendations in that regard:

- **Clarify the definition of “Major Federal Actions.”**

CEQ should define “Major Federal Actions” to include only new or continuing projects that would require substantial planning, time, resources or expenditures. The definition would be further enhanced, affording greater certainty, by providing a specific definition of “substantial.”

- **Clarifying the meaning of “Cumulative Impacts.”**

The Roundtable recognizes the importance of guidance that would establish that an agency’s assessment of existing environmental conditions should serve as the methodology to account for past actions.

- **Clarify types of future actions appropriate for cumulative impact analysis.**

We believe that CEQ should prepare regulations that would modify the existing language in 40 CFR 1508.7 to focus analysis of future impacts on concrete proposed actions rather than actions that are “reasonably foreseeable.”

- **Create unambiguous criteria for use of CEs.**

We support a policy that specifically states that temporary activities, or other activities where the environmental impacts are clearly minimal, are to be evaluated under CEs.

In order to prevent redundant or duplicative NEPA analyses, a non-inclusive list of specific CEs for certain defined activities should be provided. This list should include, for example:

- Existing projects that simply need a permit or authorization renewal;
- Non-significant and temporary activities. For example, coal, oil and gas and other mineral exploration, development and/or production industries have strong track records of successfully reclaiming lands to a condition that is equal to or better than before the exploration, development, and/or production activity occurred. In many cases, these kinds of temporary activities could easily be evaluated under a CE;
- Where a project proponent has already completed mitigation or has included sufficient mitigation in the proposed action to avoid significant impacts that would normally require preparation of an EIS or, in some cases, even reduce those impacts below the threshold for preparation of an EA;
- Where a project has already undergone substantive NEPA analysis (i.e. EA or EIS);
- Where anticipated environmental impacts are similar to existing on-the-ground projects.

- **Institute specific timelines for CEs to be completed.**

Structure and focus should be added to the process by setting a specific timeframe by which a CE process must be completed. A decision memorandum should be provided within a reasonable, but specific, period of time. If the decision memorandum is not issued within the designated timeframe, the CE process should be deemed complete.

- **Assure that input from affected entities is given proper weight.**

The CE process requires that a lead federal agency consider interested and affected agencies, organizations and individuals. The Roundtable believes that public input is integral and that agencies need to give more consideration to those comments from local, state and regional

entities that will actually be affected by a decision. The Roundtable encourages CEQ to assure that federal agencies mitigate skewed comments resulting from organized letter writing campaigns by focusing more on quality and substance of the comments, rather than their quantity.

- **Utilize CEs to help prevent redundant or duplicative NEPA analysis and/or documentation.**

The Roundtable supports CEs where their use can help prevent redundant or duplicative NEPA analyses. CEs can reduce agency costs by reducing the documentation requirements for certain well-understood development activities.

- Today, a single tract of land can be put through multiple tiers of NEPA review, each requiring months or years to complete. Just one example: federal coal leasing projects in the Wyoming Powder River Basin undergo NEPA analysis covering an extensive study area which extends well beyond the proposed lease boundary, usually through an EIS. Where these actions occur within the designated Mineral Management Area of the Thunder Basin National Grassland, the Bureau of Land Management is the lead agency and U.S. Forest Service and Office of Surface Mining (at a minimum) are cooperating agencies. Once a lease is procured in this area, the project proponent must obtain necessary permits in order to mine the leased coal. These include special use permits from the U.S. Forest Service allowing for construction of ancillary facilities (roads, flood control structures, overburden removal, topsoil and overburden stockpiles, fences etc.) that support the mining of leased coal). Even though these activities on federally-managed surface have already been anticipated and analyzed in the leasing EIS, the agency is compelled to undertake duplicative NEPA analysis each time one of these types of facility is proposed for construction on U.S. Forest Service managed – land

A better system would be to create CEs for certain defined activities in the EIS on the front end. A non-exclusive list of specific CEs for certain defined activities in all planning documents should be provided. (*See the discussions above for the sorts of activities we believe*

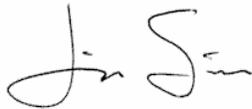
are appropriate for inclusion.) Only projects that do not fit those criteria should be forced to be put through a project-specific EA or EIS.

Further, the federal NEPA review should be considered a complete, cooperative venture so that further review under state or local NEPA processes are not required or applicable to a federally-regulated project covered under federal NEPA review.

Conclusion

The Roundtable believes that CEQ's CE guidance document is evidence that, with careful and thoughtful effort, the NEPA can be improved to work better for both the nation's economy and its environment. We appreciate the opportunity you have afforded us to provide input on the issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Sims". The signature is fluid and cursive, with the first name "Jim" and the last name "Sims" clearly distinguishable.

James T. Sims
President/CEO

cc: Vice President Dick Cheney
Interior Secretary Dirk Kempthorne
Energy Secretary Samuel Bodman
BLM Director Kathleen Clarke
House Resources Committee Members
Senate Energy Committee Members
Western Congressional delegations
Western Governors' Association
Western Governors