



**Oregon Wild**

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27 March 2007

TO: CEQ c/o [horst\\_greczmiel@ceq.eop.gov](mailto:horst_greczmiel@ceq.eop.gov)

Subject: draft NEPA Modernization Citizen's Guide

Dear CEQ:

Please accept the following comments from Oregon Wild (formerly Oregon Natural Resources Council) concerning the draft NEPA Modernization Citizen's Guide dated February 9, 2007. Oregon Wild represents about 5,000 members who support our mission to protect and restore Oregon's wildlands, wildlife, and water as an enduring legacy. We use NEPA on a daily basis to become informed about environmental consequence of forest management and land management and to become involved in federal decision-making concerning public lands in and around Oregon.

Please accept the following comments on the Citizen's Guide to NEPA:

1. Categorical Exclusions should be used very rarely by federal land mgt- agencies because most activities do have significant CUMULATIVE impacts, especially the logging activities that can and will be applied in small increments across large landscapes. Our forests have already suffered a "death by one thousand cuts" bu the Bush Administration is attempting to increase the use of categorical exclusion in situations where they clearly unwarranted such as logging. Citizen's should be guided to challenge the government when it attempts to misapply NEPA.
2. Categorical Exclusions must also be carefully reviewed to determine if there are extraordinary circumstances, but agencies often develop a limited set of extraordinary circumstances which fails to recognize all ways that the project may meet the criteria for NEPA significance. The Citizen's Guide should tell citizens to look beyond the agencies

short list of extraordinary circumstances and look for any of the significance criteria set forth at 40 CFR 1508.27.

3. The public should have a chance to review and comment on CEs and the agencies review of extraordinary circumstances so that the agencies' efforts to bypass NEPA are subject to some external review and accountability. Many agencies fail to involve the public in the review and approval of CEs. The Citizens' Guide should instruct the public to request citizen involvement in CEs including pre-decisional notice and opportunity to comment.
4. These same concerns about public oversight and agency accountability apply to FONSI as well. Agencies' FONSI findings may or may not be accurate and appropriate and the public must have an opportunity to review and critique those findings before decisions are made. 40 CFR 1500.1(b).
5. The FDA fails to make many NEPA documents available until after decisions are made and redacts significant portions in order to protect trade secrets. These practices are contrary to the principles of NEPA which require public disclosure and informed decision-making based on public comment. The trade-secrets argument is often just an excuse to maintain an artificial monopoly that is contrary to the public interest and FDA plays along because they are a captured agency in the pocket of the drug companies. FDA's NEPA compliance was abysmal during the period when yew trees on public lands were being aggressively plundered and unnecessarily killed to produce paclitaxel, or Taxol. The Citizen's Guide should instruct the public to demand and open and daylight NEPA process from all federal agencies.
6. Publication of NEPA disclosure documents and NEPA decision documents should be done in ways that are readily available to the public. The Forest Service and Bureau of Land Management are terrible at this. They publish notice of NEPA documents in obscure rural newspapers so the vast majority of the public that uses their federal lands seasonally (but are just as concerned about how those lands are managed) are at a severe disadvantage as far as public notice and public involvement. These agencies internet policies are inconsistent at best. They should have consistent, continuous, and user friendly internet access to all NEPA documents and other parts of the administrative record.
7. In order to fulfill the second purpose of EAs, namely to fulfill the purposes of NEPA when as EIS is not required, agencies need to consider more than one action alternative. BLM likes to limit its consideration of alternatives to one action alternative and no action, while failing to explore alternative ways to meeting its objectives. For instance, NEPA's principles are not met when the BLM compares a proposal to clearcut old growth forests with no action, because they are excluding from consideration alternatives such as thinning young forests that have grown up following past clearcutting.
8. The Forest Service has recently been preparing and circulating "preliminary EAs" which are so short and skeletal that they fail to provide the public with enough information to enable them to provide informed comment. The courts have held that the agencies cannot "hide the ball" by providing highly abbreviated draft NEPA documents while they are nearing completion of more detailed analysis. The court said that NEPA "... require[s]"

that the public be given as much environmental information as is practicable, prior to completion of the EA, so that the public has a sufficient basis to address those subject areas that the agency must consider in preparing the EA. ... [T]he agency must offer significant pre-decisional opportunities for informed public involvement in the environmental review process by releasing sufficient environmental information about the various topics that the agency must address in the EA, such as cumulative impacts, before the EA is finalized.” Sierra Nevada Forest Protection Campaign v. Weingardt, CIV-S-04-2727 DFL KJM; CIV-S-05-0093 DFL JFM. (E.D. Cal.) June 30, 2005. Agencies must help the public to become informed so they can provide informed comments. The Citizen Guide should instruct the public to demand fully developed draft NEPA documents.

9. NEPA documents should not be designed to support a pre-determined decision. More and more we review NEPA documents that tell only half the story. Agencies must present both the benefits and risks associated with their proposed actions. The Forest Service and the BLM are both engaged in aggressive efforts to reduce forest fuels, but their NEPA analysis fail to disclose and consider how logging often removes the least hazardous large fuels, leaves behind the most hazardous small fuels, and makes the forest hotter, dryer, and windier which can make fire hazard worse instead of better. The Citizen's Guide should remind people that the agencies have an obligation to consider all sides of these issues including "credible opposing viewpoints" that may differ from the agencies preferred view.
10. Agencies often include plans for mitigating actions that end up not getting implemented. The Citizens' Guide should remind people that the agencies must follow through on the promises made in their decision documents.
11. CEQ should ensure that the ISO 14001 standards for Environmental Management Systems (EMS) are freely available to the public before requiring agencies to adopt EMS using this procedure. The government should not be "outsourcing Democracy" by forcing citizens to pay \$80 for a book explaining EMS required contents and procedures.

Thank you for the opportunity to comment.

Sincerely,



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Doug Heiken  
for Oregon Wild