CQ213

Christopher Krupp
<krupp@westlx.org>

08/22/02 11:59 AM

To: ceq_nepa@fs.fed.us
cc:
Subject: NEPA Task Force Comments Attached.

I have attached the Western Land Exchange Project's requested comments to the NEPA Task Force. The attached file is in Adobe Acrobat (.pdf) format. Please respond to this message to confirm that you received it and were able to view the attached file. Thank you.

--
--

Christopher Krupp, Staff Attorney
Western Land Exchange Project
P.O. Box 95545
Seattle, WA 98145-2545
ph 206.325.3503
fx 206.325.3515
www.westlx.org

NEPA Task Force Comments.doc

CQ213

Western Land
Project
P.O. Box 95545 Seattle, WA
(206) 325-3503 / fax (206)
325-3515
web: www.westlx.org

NEPA Task Force
Council on Environmental Quality
P.O. Box 221150
Salt Lake City, Utah 84122

August 22, 2002

Re: Comments to the NEPA Task Force

To whom it concerns:

The Western Land Exchange Project is a non-profit membership organization that monitors federal land trades and conducts research, outreach, and advocacy for reform in federal land exchange law and policy. This letter serves as our comments to several of the questions published in the Federal Register on July 9, 2002. We have only responded to those questions that were applicable to our work involving NEPA and our interactions with federal agencies.

Section A, Question 2. What are the barriers or challenges faced in using information technologies in the NEPA process? What factors should be considered in assessing and validating the quality of the information?

We often have difficulties accessing the data or documents cited in environmental assessments and impact statements. Too often, an agency is unable to provide important data or documents until after the comment period for a proposed action's NEPA analysis has passed. To reduce this barrier, agencies should provide more online information. As a start, the Forest Service should publish the forest plans for all national forests on the web. This would allow the public to evaluate whether a proposed action conforms to the relevant forest plan. U.S. Fish & Wildlife Service-prepared biological opinions used to support Findings of No Significant Impact (FONSIs) should also be published on lead agency web sites. In short, documents and data that may be used to support Decision Notices or Records of Decision should be available for viewing on agency web sites.

Section A, Question 5. What are your preferred methods of conveying or receiving information about proposed actions and NEPA analyses and for receiving NEPA documents (e.g., paper, CD-ROM, website, public meeting, radio, television)? Explain the basis for your preferences.

We prefer to receive *notice* of proposed actions and publication of NEPA analyses by standard U.S. mail or e-mail. Agency updating of web sites with notices of proposed actions and publication of NEPA analyses is not sufficient because the non-standard nature of agency web sites makes it difficult to find such notices on different sites. Once we have received notice of proposed actions/NEPA analyses, we prefer downloading NEPA analyses

from agency web sites, provided we have been given the entire URL for the document we need to download. This allows us to preview the document in its electronic format and then decide whether to print a paper copy.

Section A, Question 6. What information management technologies have been particularly effective in communicating with stakeholders about environmental issues and incorporating environmental values into agency planning and decision making (e.g., web sites to gather public input or inform the public about a proposed action or technological tools to manage public comments)? What objections or concerns have been raised concerning the use of tools (e.g., concerns about broad public access)?

We would benefit from having the ability to view the comments that other interested parties have submitted, prior to the end of the comment period. While this information is sometimes included with Records of Decision/Decision Notices, but we would prefer viewing the comments on-line, as the agency receives them, rather than reading them all at once after the comment period has expired.

Too often NEPA documents are difficult to find on an agency's website. Worse, there is no standard, even within a single agency, for posting NEPA information on-line. For example, some national forests post schedules of proposed actions ("SOPAs") on their web sites and others do not. Similarly, some BLM field offices post environmental assessments and impact statements on-line while others do not. A further problem is that intra-agency web sites (e.g., individual national forest sites) have different designs. The result is that we waste too much time clicking through web sites trying to learn whether and where NEPA documents are posted on-line.

Section A, Question 7. What factors should be considered in balancing public involvement and information security?

Agencies must not present vague, unsubstantiated concerns about information security as justification for limiting public involvement in proposed actions or the release of documents under the Freedom Of Information Act (FOIA). A primary purpose of NEPA is to cultivate public participation in agency decision-making. Information security should trump public involvement only in the narrowest of circumstances.

Section D, Question 2. How can environmental impact analyses be structured to consider adaptive management?

In our experience, environmental impact analyses that have considered adaptive management have not instituted quantifiable management measures. Instead, the adaptive management measures have included indefinite objectives that have made it difficult to determine whether environmental degradation has occurred.

A related problem with adaptive management measures is that they are essentially unenforceable by the public. NEPA, of course, is a procedural statute and does not require an agency to take any particular action once it has properly analyzed the impacts of a proposal. A cynical view of adaptive management would have agencies increasingly relying on adaptive management measures to support FONSIs and assuage public concerns, proceeding with a proposed action, and later realizing that significant impacts have occurred but refusing to implement the proposed adaptive management measures. NEPA, unfortunately, does not provide any protection against this sort of agency mischief.

Section D, Question 3. What aspects of adaptive management may, or may not, require subsequent NEPA analysis?

Adaptive management would require subsequent NEPA analysis whenever corrective measures are needed to attain the projected environmental outcomes or parameters. The

CQ 213

fact that the projected or predicted environmental outcome was not achieved suggests the initial analysis was flawed or inadequate.

Section D, Question 4. What factors should be considered (e.g., cost, timing, staffing needs, environmental risks) when determining what monitoring techniques and levels of monitoring intensity are appropriate during the implementation of an adaptive management regime? How does this differ from current monitoring activities?

NEPA is an environmental statute. Therefore, environmental risk is the foremost factor that should be considered when determining what monitoring technique and level of intensity are appropriate for the implementation of adaptive management.

Section E, Question 1. What information, data studies, etc., should be required as the basis for establishing a categorical exclusion?

Categorical exclusions are only appropriate when it is well-accepted that the proposed action is of a type that protects the environment, such as designating critical habitat for a species listed under the Endangered Species Act. Categorical exclusions should not be used to dodge public participation of proposed federal actions. When used for such purposes, categorical exclusions are likely to result in a greater number of lawsuits, thereby negating the purported benefit of greater efficiency that categorical exclusions are supposed to provide.

Section F. In addition to the topics described above, the NEPA task force requests public comments on the appropriate utility of and structure of format for environmental assessment documents?

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.

Thank you for the opportunity to submit these comments.

Sincerely,

Christopher J. Krupp

Christopher J. Krupp
Staff Attorney