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CQ383

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NEPA Task Force
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To Whom it May Concern:

I am writing to provide input into the Administration's review of the National Environmental Policy Act (NEPA). There are several important changes that can be made to help the law function more smoothly and effectively.

First, 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.

Second, 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. I strongly urge that the NEPA task force use this opportunity to better define the connection between over-arching plans and individual projects, to provide for a seamless process of public involvement, thereby possibly unlocking the potential for truly collaborative and adaptive resource management. 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.

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Third, new regulations should provide for a more meaningful and less arbitrary evaluation of indirect impacts and those of connected connections. 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.

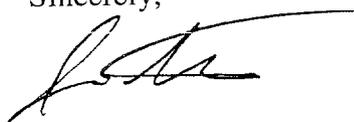
Fourth, any new regulations must reaffirm that Categorical Exclusions must be used only when impacts will truly be minimal. The federal land management agencies in particular have flagrantly abused the CE procedure, spawning yet more lawsuits. The situation regarding CE's demonstrates the general principle that lawsuits derive from a lack of public participation, not from an abundance of it. The Task Force must state clearly and emphatically that abuse of CE provisions will not be tolerated, and recognize that such abuse only causes more "process gridlock" in the long run.

Fifth, 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.

Finally, 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.

Thank you for the opportunity to comment.

Sincerely,



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