

CQ423



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09/19/02 10:48 PM  
Please respond to  
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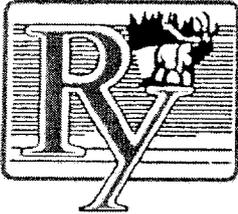
To: "Council Environmental Quality" <ceq\_nepa@fs.fed.us>  
cc:  
Subject: NEPA Task Force

Please see attached file for NEPA comments.

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bdunn@eoni.com RY TIMBER NEPA Letter.doc



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**RY TIMBER, INC.**

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NEPA Task Force  
PO Box 221150  
Salt Lake City, UT 84122

Re: *Federal Register* Notice and request for comments, July 9, 2002

RY Timber, Inc. is presenting these comments for the official record of the NEPA reformation. Public land management affects our Companies sawmill operations in Montana where we purchase Federal timber sales, and our industrial timberlands operation in Oregon where the majority of our ownership borders Federal land. As such, RY Timber, Inc. is directly affected by Federal environmental and land management policies including but certainly not limited to the National Environmental Policy Act (NEPA).

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.

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. Without the amendment, the management of our all our federal properties will continue to be "non-management".

These comments are organized according to the major headings posted in the above referenced *Federal Register* notice.

**A. *Technology, Information Management, and Information Security.***

In general, we believe CEQ is placing too much emphasis on technology and information management. The federal agencies possess tremendous technological capabilities including Internet access, networking, integrated databases, natural resource environmental effects models, Geographic Information Systems (GIS), etc. Despite these technologies the NEPA process has been more cumbersome. The federal agencies need to be able to implement projects, not be in a continuous planning mode.

**B. *Federal and Inter-governmental Collaboration.***

The process of collaboration should offer hope that common ground will be reached, however, we are concerned that collaboration is "all talk and no do" for the environmental community. For this type of planning to be successful, there must be a high degree of certainty that projects will

be implemented. Collaboration to be successful must start by clearly stating the bounds and by all parties involved "buying in" up front.

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**C. Programmatic Analysis and Tiering.**

CEQ regulations embrace a sound principle of "tiering" that was designed to streamline the implementation of projects by allowing the preparation of a programmatic EIS to be followed by supplemental EISs or EAs that would be more narrow in scope and would not have to repeat the environmental analysis contained in the programmatic EIS. Programmatic EISs should be prepared only on those programs, which the courts recognize as Federal actions subject to judicial review.

The federal agencies have created too many layers of environmental analysis, which delays the site-specific environmental analysis necessary to implementing projects. Because the programmatic documents take years to prepare, by the time the environmental document is finally prepared for the project, the information in the programmatic EIS is outdated and cannot be used in the project level environmental document. The CEQ should require that agencies develop (subject to CEQ approval) NEPA compliance strategies that result in a maximum of one layer of "programmatic" NEPA compliance above the project level.

**C. Adaptive Management/Monitoring and Evaluation Plan.**

Adaptive management is a good concept but it needs to be used properly. Decisions should be made with the best available information and the project then implemented, monitored and adapted to meet the end product. Every decision made has uncertainty and is based on limited knowledge. The problem with adaptive management is that an adjustment in one action may lead to adjustments made elsewhere. To utilize adaptive management effectively NEPA would have to allow for the adjustments to be made without having to do a supplement document, increased analysis, or be subject to appeal and/or judicial review.

**D. Categorical Exclusions.**

CEQ should reconsider fully the "kick out" criteria and develop a narrower set of criteria for excluding categorical exclusions based solely on science and the expected level or degree of adverse effects. In particular, CEQ should eliminate the confusing references to "controversial."

CEQ should consider developing a set of criteria – a checklist that is not subjective – for agencies to determine whether an action or class of actions is eligible for categorical exclusion.

The process to establish categorical exclusion should be simple and prompt.

**E. Additional Areas for Consideration.**

Since its enactment by Congress in 1969, NEPA has dominated the 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." This brief direction gave rise to the environmental impact statement ("EIS") that lies at the heart of the NEPA process.

The Act also established the CEQ as an agency within the Executive Office of the President to advise the President and coordinate environmental decisions among federal agencies. In

addition to the duties specifically listed in the Act, CEQ is responsible for adopting and amending regulations under NEPA.

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The regulations created an intricate procedural scheme that goes far beyond the bare words of the statute. They require agencies to follow a rigid, burdensome process for deciding whether an EIS is required for a project, including preparation of a separate document called an environmental assessment ("EA") that over the years has become more and more like an EIS. The EA and accompanying Finding of No Significant Impact ("FONSI") have become the dominant form of NEPA compliance. The CEQ regulations also vastly lengthened the time required to complete NEPA compliance by requiring agencies to prepare and publish a draft EIS, to accept, review and respond to public comments on the draft EIS, to publish a final EIS (sometimes with a second public comment opportunity) and then, at least 30 days later, to publish a decision on a project (called a record of decision) restating the major findings of the EIS. As a consequence of this required sequence of steps, few EISs are completed in less than 24 months.

The regulations also require agencies to expand NEPA analysis on a proposed action to study all other actions that may be "connected" to the proposed action; to analyze a large geographic range encompassing such connected actions; and to consider all "cumulative effects" of past, present and reasonably foreseeable future actions by private, state and federal entities – without providing clear guidance for deciding where and when the analysis should stop. The CEQ regulations also force agencies to redo their NEPA documents by requiring a supplemental EIS whenever new information or circumstances suggest a change in expected environmental impacts. Most of the NEPA cases that have flooded the courts in recent years are based on violations of the CEQ regulations.

NEPA has accomplished the worthwhile goal of focusing agency attention on environmental values, but it has created an arduous decision-making process that presents difficult compliance hurdles for inexperienced agency personnel, requires years of analysis and document preparation and millions of dollars of staff time, and is subject to the moving target of new information and the second guessing of the courts. The result is "paralysis by analysis" with little on the ground project accomplishment compared to in-the-office planning of the project.

## **CONCLUSION**

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.

Amend the NEPA process so that we can accomplish the work necessary on-the-ground to stop the continued degradation of our natural resources.

Thank you, for your consideration of these comments.

Sincerely,

Bruce H. Dunn  
Forester