



CassandraBotts@Boi
seBuilding.com

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To: <ceq_nepa@fs.fed.us>
cc:

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

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

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

I work in the timber industry and for many years have been directly affected by federal environmental and land use policies including the National Environmental Policy Act. Please enter my input into the official record for the NEPA reformation.

My experience with NEPA has been mostly negative, even though this law was intended to protect the environment and provide for public input in government projects. NEPA decisions by both the Forest Service and to a lesser extent the BLM, have greatly affected my employment and way of life. In this area, sawmills have closed, grazing allotments gone unfilled, and outfitter-guide permits lost. The NEPA process is badly flawed to the point of being broken. Projects that should take a few weeks or months now take years to complete and are most often appealed and litigated. Often the planning process takes so long that environmental conditions on the ground have changed drastically, and are generally further degraded by the time a decision is reached.

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. I believe that not only should NEPA be streamlined. CEQ regulations should be amended as well. Otherwise, identifying "case studies" and "best practices" and implementing NEPA under the current regulations will be an exercise in futility. Without the amendment, we will continue on as is, managing our federal properties essentially by "non-management."

I've listed my input according to the major headings listed in the above referenced Federal Register notice.

A. Technology, Information Management, and Information Security.

The CEQ has placed too much emphasis on technology and information management. Federal agencies already have vast technological capabilities. However, even with access to advanced technologies, the NEPA process is ever more problematic. Agencies need to be able to implement, not analyze and then re-analyzed based on new technology.

B. Federal and Inter-governmental Collaboration.

Even though a collaborative process is well intended in that it is an avenue for public input, collaboration as defined in the NEPA process has failed miserably. "Collaboration" is a popular way to do business in today's world, but by its very nature is too time consuming. The biggest problem with the collaboration process is that radical environmentalists are using it as a stall tactic. They come to the table, profess to be negotiating in good faith, then basically walk away and appeal or litigate the project. Their tactic has allowed them to further their agenda! Most of us in industry are burned-out, tired, and no longer have the energy to participate. This stalling tactic works to radical preservationists' agenda locales with degraded forest conditions. By the time the project is worked through the current exhaustive process, on-the-ground conditions have further degraded to the point that wood is no longer merchantable, grazing is no longer available,

or the entire area has burned in catastrophic wildfire. Often so much time has gone by that the final planning product cannot be implemented.

If "collaboration" is retained in the revised NEPA, there must be included a much higher degree of certainty that a proposal or modification will be implemented in an economically viable manner. Those that choose to participate in collaboration and then appeal or litigate, or simply don't like the outcome must face a larger penalty for their actions.

C. Programmatic Analysis and Tiering.

CEQ regulations have indicated that "tiering," designed to streamline the implementation of projects by allowing programmatic EIS's followed by more site specific EISs or EAs would not have to repeat environmental analysis included in the programmatic EIS. 40 C.F.R. § 1508.28. In reality, agencies have continued with excessive environmental analysis that further delays the site-specific environmental analysis necessary to support on-the-ground implementation. Programmatic documents often take years to complete and by the time the document is finally finished, information in the programmatic EIS is outdated and cannot be used in the project level environmental document. We need to ensure that programmatic EIS's can be completed in a short enough turn-around that the viability of the project on-the-ground is not jeopardized.

D. Adaptive Management/Monitoring and Evaluation Plan.

Unfortunately, the "adaptive management" concept has proven to be weak at best. Decisions have to be made with information available at the time. Science is continually churning out new research findings and we can't wait for "complete information" because it is never truly completed. NEPA needs to be changed so that a decision can be made on current scientific information and then implemented, not postponed because someone "thinks" new information may be forthcoming.

E. Categorical Exclusions.

The Forest Service and BLM (generally) have good people working with them that are experts in their various scientific/biologic fields. Each agency should be allowed to trust their employees and therefore decide which projects should be categorically excluded. Data intensive studies are not necessary to create a new categorical exclusion(s). The CEQ should set an acceptable level of minimal information needed to establish a categorical exclusion so the courts cannot question agency decisions. If an agency is establishing a similar categorical exclusion that already exists in another agency the level of detail needed to justify the second CE should be incrementally less. The agency should utilize information involved with establishing the first CE.

The process used in establishing a CE should be simplified and streamlined. NEPA should be revised to ensure that a CE can be obtained in a simplified, streamlined and less time consuming manner.

F. Additional Areas for Consideration.

NEPA currently dominates every 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." 42 U.S.C. § 4332(2)(c). From this brief direction sprang the extensive, time consuming, and expensive environmental impact statement ("EIS") that every federal project is centered upon.

NEPA also implemented the CEQ as an agency within the Executive Office of the President with its role of coordinating decisions among federal agencies. The

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CEQ is responsible for adopting and amending regulations under NEPA. Congress did not provide CEQ with regulatory authority but President Carter granted CEQ authority to issue regulations through Executive Order 11991, 42 Fed. Reg. 26967 (May 24, 1977). CEQ thereafter adopted regulations that give agencies NEPA implementation guidance and outline when and how an agency must prepare an EIS. 40 C.F.R. § 1500-1517.7.

This guidance goes far beyond the words included in the statute. It delineates an extensive, time-consuming process for deciding whether an EIS is required for a project, or a separate document, and environmental assessment ("EA") is required. The EA and accompanying Finding of No Significant Impact ("FONSI") have become the accepted form of NEPA compliance. The CEQ regulations require the preparation and publishing of a draft document, accept, review and response to public comments on the draft, prepare and publish a final document (sometimes with a second public comment period) and then, at least 30 days later, to publish a decision on a project (record of decision) restating the major findings of the EIS. This duplicity is redundant, a ridiculous waste of tax dollars, and ultimately leads to burn-out by those of the public that are brave enough to participate! If government agencies are truly interested in the public's input, they would make the process much easier, less time consuming and certainly less repetitive.

It should be noted that most of the NEPA cases that have choked the courts in recent years are based on violations of the CEQ regulations. (Someone forgot to dot an "I" or cross a "t" and has little to do with actual environmental conditions on-the-ground.) NEPA was intended to ensure environmental protection, but has actually created an involved, repetitive, time consuming decision-making process that requires years of analysis and document preparation and millions of dollars of staff time. The result is "paralysis by analysis," with little on-the-ground activities as compared to in-the-office planning activities.

CONCLUSION

CEQ has the authority to fix the NEPA process through streamlining it. NEPA can be and must be reformed administratively, as getting any amendment through Congress at this point will only bring more finger-pointing, accusations of "destroying the environment" and political posturing. Please reform NEPA so that we can actually get something done on-the-ground and stop this downward spiral of environmental degradation.

Sincerely,

Cassandra Botts
83374 Airport Lane
Joseph, OR 97846
Cbotts@eoni.com