



CQ474

September 23, 2002

James L. Connaughton  
Chairman, Council of Environmental Quality  
c/o NEPA Task Force  
P.O. Box 221150  
Salt Lake City, Utah 84122

**Re: NEPA Task Force Request for Comments**

Dear Mr. Connaughton:

The Western Urban Water Coalition (WUWC) submits the following in response to the Council of Environmental Quality (CEQ) request for comments regarding creation of a National Environmental Policy Act (NEPA) Task Force.

The WUWC consists of the largest urban water utilities in the West, serving over 30 million western water consumers in 16 metropolitan areas in seven states, including major urban areas in California. The WUWC represents the following urban water utilities: Arizona – City of Phoenix, City of Tucson; California – East Bay Municipal Utility District, Metropolitan Water District of Southern California, San Diego County Water Authority, City and County of San Francisco Public Utility Commission, Santa Clara Valley Water District; Colorado-Denver Water Department; Nevada – Las Vegas Valley Water District, Southern Nevada Water Authority; Utah – Central Utah Water Conservancy District; and Washington – City of Seattle.

The members of WUWC generally support CEQ's efforts to "modernize" NEPA analyses, and to foster improved coordination among agencies and the public. WUWC members have extensive experience with NEPA, and with the counterpart state laws. Because they are involved in large-scale water supply projects, WUWC members frequently are involved in federal projects that are subject to NEPA. This experience gives the WUWC a wealth of experience upon which to base these comments. WUWC offers the following ideas for consideration as the Task Force moves forward.

As a general matter, the WUWC believes the following fundamental principles should guide NEPA procedures:



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Predictability. Water supply utilities are involved in major projects that entail long-term planning and therefore need certainty regarding costs and regulatory demands. Needing to revisit previously made decisions is very difficult in this context. Thus, the WUWC favors the use of comprehensive NEPA analyses that will serve as the basis for long-term planning. Reopening completed NEPA procedures on such projects is undesirable. CEQ therefore should develop procedures that provide for comprehensive NEPA reviews that do not require reconsideration absent major new developments and continuing agency involvement that establishes decision-making duties on an ongoing basis. In the WUWC's experience, "reopeners" and similar tools have been used to create new NEPA reviews for existing projects. CEQ therefore needs to carefully define when further review is appropriate and set a high threshold for this purpose.

Comprehensive Analysis. Along the same lines, WUWC members favor coordinated NEPA processes that allow all requisite federal and state actions to be covered in a single NEPA review. The NEPA guidance should put a premium on comprehensive review procedures that, in a single procedure, involve all required agencies in the most efficient manner possible. CEQ therefore should issue guidance that improves coordination between state and federal agencies.

Cost Efficiency. The NEPA process itself can be very expensive to complete. In addition, delays in decision-making can greatly add to project costs. NEPA guidance must insure timely, cost-effective review, and clear, recommended schedules for completion of various NEPA tasks. This can be done through guidance that specifies, among other issues: how interagency teams will function and establish binding timeframes; how to tier off of previous NEPA compliance; how to incorporate applicants into the process; and how to ensure that other procedures that cover the same action (e.g., consolidation under the Endangered Species Act and Fish and Wildlife Coordination Act) are coordinated with the NEPA review.

Consistent with these general principles, the WUWC has several specific recommendations. First, programmatic or strategic EISs could be utilized more effectively. Prepared early in the decisionmaking process, such EISs could be useful in formulating public policy. A programmatic EIS would provide analysis of a situation, alternatives, mitigation and necessary monitoring. Indeed, it could be the focal point for debate and the involvement of governmental bodies and the public.

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For example, currently there is debate over federal drought and fire policies. Water management agencies are forced to consider the effects of both situations. This recently has been a problem in several western states where fires are occurring. Such issues transcend local and state boundaries. Rather than focusing on one particular proposed solution, a programmatic EIS could address problems and alternative solutions appropriate to the larger issue, thereby lending assistance to the regional and national debate in formulating public policy. Similar issues can arise in the watershed planning context.

Second, there is a need for more effective involvement in the NEPA process by state and local governments, Indian tribes, and the public. We commend CEQ on its recent memorandum which attempts "to ensure that state, tribal and local governments are included as 'cooperating agencies' whenever appropriate during federal environmental reviews." (See CEQ memorandum of January 30, 2002, and related attachments). However, in addition to recognizing the benefits of enhanced cooperation among parties, CEQ should ensure that such involvement does not result in unnecessary cost or burden. It is our experience that it is preferable to have an all-inclusive process from the outset, rather than create a situation where stakeholders are in a position to claim they lacked access to the process and are positioned to raise procedural objections at a later date. WUWC members would rather invest this energy and effort at the outset and conduct a comprehensive process from the beginning. In addition, rules have to be developed to ensure the timely and constructive participation of stakeholders. They should not be allowed to use such a role for obstructionist or delaying purposes. Clear guidance needs to be developed to define the basis upon which such participation can occur.

Finally, the WUWC believes it is time for revision of the NEPA regulations. Case law played an important role in the formulation of the 1978 CEQ NEPA regulations. There would be great value in promulgating new or supplemental regulations taking into account NEPA case law since 1978, which is substantial. In addition, CEQ has issued considerable guidance, some of which should be in the regulations. Among other things, this would improve consistency in the implementation of NEPA. It is very difficult to track the very extensive body of NEPA case law as applied to a particular project. New regulations could synthesize this law and present a concise, cohesive, and up-to-date statement of the requirements

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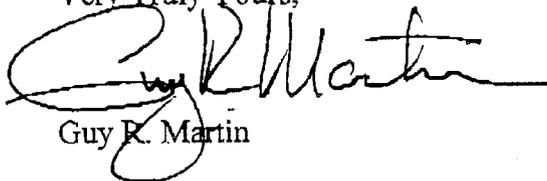
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governing NEPA analysis. Obviously, this is a major undertaking and would require considerable lead time. It is an effort the WUWC considers to be worthwhile.

At the appropriate juncture we would be pleased to discuss our views further with the Task Force and its members. Please feel free to contact Guy Martin or Don Baur to arrange such a discussion.

Thank you for giving us this opportunity to comment.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Guy R. Martin". The signature is fluid and cursive, with a large initial "G" and "M".

Guy R. Martin



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