

WALLOWA COUNTY  
BOARD of COMMISSIONERS  
State of Oregon

CQ480

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NEPA Task Force  
PO Box 221150  
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Re: *Federal Register* Notice and request for comments, July 9, 2002

Please accept these comments on behalf of the Wallowa County Board of Commissioners. Public land management affects the economy of our county. Sixty-five percent of our County is managed by the Federal government. Timber, livestock and recreation industries are our largest sectors of our economy. As such, Wallowa County is directly affected by Federal environmental and land management policies, which are determined by adherence to, the National Environmental Policy Act (NEPA).

These comments present opportunities to streamline NEPA procedures to implement federal agency projects more promptly and less expensively while at the same time reducing the risks of courts delaying projects based on deficiencies in the NEPA documents. The comments discuss current impediments to a smoothly functioning NEPA process, and identify areas in which the NEPA process can be improved. The recommendations focus on the power of the CEQ to reform the NEPA process administratively, and discuss possible amendments to CEQ's NEPA regulations. Amending the NEPA statute is unnecessary to achieving any of the improvements identified below.

Our experience with NEPA has been largely with management of the Wallowa-Whitman National Forest and the Hells Canyon National Recreational Area. The NEPA process as it applies to federal land management planning and resource management decisions is broken. Projects take too long to complete and are too easily challenged based on current regulations of failure to meet the Council on Environmental Quality (CEQ).

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.

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. Our experience is that Federal agencies possess tremendous technological capabilities including Internet access, networking, integrated databases, natural resource environmental effects models, Geographic Information Systems (GIS), etc. Despite this access to technologies, or perhaps because of them, the NEPA process has become more cumbersome—not less.

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

Wallowa County is involved as a cooperating partner with the USDA Forest Service, the State of Oregon, and the Nez Perce Tribe in watershed planning. This is truly collaborative planning.

We have been and still are concerned that for collaborative planning to be successful, there must be a high degree of certainty that projects will come out of the planning effort. Collaboration must start by clearly stating the parameters, and by all parties involved "buying in" up front. We have witnessed far too many instances of federal collaborative processes breaking down after months, even years, of negotiations because some portion (always a minority viewpoint) becomes unhappy with the outcome. To fix NEPA and to achieve successful collaborative planning, there must be more guarantee at the onset of a planning process that all parties will support the final outcome.

**C. Programmatic Analysis and Tiering.**

CEQ regulations embrace a good 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 are more narrow in scope and would not have to duplicate the extensive environmental analysis contained in the programmatic EIS. Programmatic EISs should be prepared only on those programs that 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 implement projects. Because 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.

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

Adaptive management is a good concept but it needs to be used properly. Management decisions should be made with the best available information and the project then implemented, monitored and adapted to meet the end objective. The feedback from monitoring is to be applied to the next iteration of the project. 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 supplemental document, increased analysis, and not be subject to appeal and/or judicial review.

**E. Categorical Exclusions.**

CEQ should fully reconsider 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," and more clearly define to what degree of "controversy" they are referring. This is due to the fact that basically everything that has to do with natural resources is "controversial" at this time. 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. Categorical exclusions should be used in place of the more expensive and time-consuming EIS or EA whenever possible.

**F. Additional Areas for Consideration.**

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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.

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 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 both experienced and 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. All of this has resulted in "analysis paralysis," as stated by USFS Chief Bosworth. Many worthwhile and environmentally-friendly agency projects are delayed for years and experience large cost increases solely as a result of required NEPA procedures that ultimately add nothing of value to a project's design or utility.

**CONCLUSION**

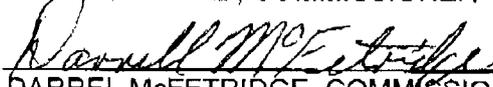
CEQ has the power to streamline the NEPA process, and to eliminate most of the current agency problems with NEPA review, through amendment of its regulations or by issuing additional non-regulatory guidance, with no action required by Congress.

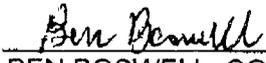
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These comments present opportunities to streamline NEPA procedures to implement federal agency projects more promptly and less expensively while at the same time reducing the risks of courts delaying projects based on deficiencies in the NEPA documents. The comments discuss current impediments to a smoothly functioning NEPA process, and identify areas in which the NEPA process can be improved. The recommendations focus on the power of the CEQ to reform the NEPA process administratively, and discuss possible amendments to CEQ's NEPA regulations. Amending the NEPA statute is unnecessary to achieving any of the improvements identified

If you have any questions or would like to discuss these comments further, please call the Wallowa County Board of Commissioners at 541-426-4543 ext. 11

  
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Fax Transmittal

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PAGES INCLUDING COVER PAGE: 5

MEMORANDUM: