



THE WILDERNESS SOCIETY

September 20, 2002

Submitted via email to ceq_nepa@fs.fed.us.

NEPA Task Force
P.O. Box 221150
Salt Lake City, Utah 84122

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Dear NEPA Task Force:

The Wilderness Society (TWS) and its 200,000 members thank you for the opportunity to comment on the implementation of the National Environmental Policy Act (NEPA) by federal agencies. In addition to the comments that follow, TWS endorses and incorporates the group comments submitted by the Natural Resources Defense Council and other conservation groups titled "NEPA Works When Done Right." TWS's mission is directly related to the management of our public lands and in particular to the activities of the Department of the Interior and Department of Agriculture. Our comments focus primarily on our experiences with these two agencies.

NEPA is a sound and flexible statute. When implemented correctly, NEPA requires agency managers to identify and confront the consequences of their actions and consider the full range of options their effect on the environment. Further, NEPA opens the decision-making process to public scrutiny. Too often, however, agencies seem to view NEPA as an obstacle to be overcome rather than a process that will result in informed and balanced management decisions. Increasingly, agencies substitute quantity for quality, producing large, costly and uninformative documents. As the Council on Environmental Quality has previously recognized, "NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action." We find that agencies frequently do not heed this direction. Instead, they attempt to avoid the NEPA process through such means as frustrating public involvement and relying on unenforced and unmonitored

mitigation measures or categorical exclusions to exempt damaging actions from environmental review.

Fortunately, there are examples of the NEPA process working successfully and we highlight several such examples here in an effort to illustrate that utilized correctly, NEPA is an asset to the public and land managers. For example, a recent project in the Boise National Forest demonstrates how one of the cornerstones of NEPA—input from a diverse number of persons and organizations—can ensure that land management agencies reach the best result. The Boise National Forest’s Silver Creek project began as a typical fuel reduction effort in a roadless area, with plans to harvest ponderosa pine to pay for the project. During the NEPA process, the agency was receptive to public comments which helped identify the project’s shortcomings before resources were futilely expended. The public comment and dialogue after the draft environmental impact statement (EIS) was issued resulted in the Forest Service developing and ultimately adopting a new alternative that avoided the construction of new roads in the roadless area and focused on the most pressing problems of illegal ATV stream crossings and the need for fire reduction near a private resort. This change in outcome represented the best application of the Forest Service resources and would not have been possible without extensive public involvement.

Similarly, the NEPA process for the development of the Sierra Nevada Framework and the Yosemite National Park management plan, represent NEPA successes. In both examples, two essential principles were respected and adhered to. First, agency decision-makers did not view NEPA as a process to justify a pre-determined “preferred alternative.” Rather, the agencies used NEPA as it was intended—a tool to disclose expected consequences of agency action *before* decisions are made. Second, both processes were fluid, transparent, and flexible and provided many opportunities for comment and interaction from interested parties throughout the process. The Sierra Nevada Framework process in particular excelled in opportunities for the decision-makers and the interested public to gather information through public meetings and website and electronic tools.

However, NEPA is too often viewed and implemented as only a procedural impediment that results in flawed and unsatisfactory results for all involved. A dramatic case in point is the Bush Administration’s “Healthy Forests Initiative.” Secretaries Veneman and Norton recently submitted legislation to Congress directing the Forest Service and BLM to conduct forest thinning and other fuel reduction activities “notwithstanding the National Environmental Policy Act of 1969.” Unfortunately, the Administration seems to view the NEPA process as “needless red tape” that only serves to delay needed action. This misguided view fails to appreciate the value of environmental review and public participation in federal agency decision-making.

The remainder of these comments address the specific questions raised by the Task Force.

Technology, Information Management and Information Security

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NEPA at its most fundamental is about the gathering, dissemination and analysis of information. The efficiency and effectiveness of NEPA is greatly curtailed by the failure of agencies to develop a consistent information management system. In our experience, no land management agency maintains a comprehensive, publicly accessible database of NEPA and planning documents. These documents are frequently difficult or, as is the case with many environmental assessments, impossible to obtain in a timely manner. Without reliable access to planning and NEPA-related documents, public participation and the effectiveness of NEPA is severely limited.

The following example illustrates the difficulty faced by many interested persons when trying to obtain NEPA documents. In Fall 2001, the Pinedale, Wyoming field office of the Bureau of Land Management (BLM) received notice from a seismic exploration company of their intent to start exploration activities. The agency ignored the repeated written requests of interested parties asking BLM for notification of all NEPA projects in the resource area. The BLM failed to distribute copies of the scoping notice and did not mail copies of the Finding of No Significant Impact and Record of Decision until two days *after* the exploration project had begun. Even then, the BLM provided documents to only one organization and requested that it, rather than the agency, copy and distribute the documents to other interested parties.

Similar experiences can be avoided if agencies make all NEPA and planning documents easily available, either online or from a central source. Ideally, the agencies should assemble and maintain a searchable database of all NEPA documents, including environmental assessments. In addition to facilitating public involvement, such a database would help agencies evaluate their practices agency-wide and assist them in identifying best practices.

Recently some agencies have attempted to encourage public participation by allowing comments on proposed actions to be submitted electronically. While their efforts are appreciated, agencies using this method must identify and address potential technical and processing problems before soliciting comments. In several instances, agencies using this method were unprepared to process the large volume of comments received. This was the case when the National Park Service solicited comments for the Assateague Island National Seashore's Personal Watercraft Use Environmental Assessment, published on April 2002. The public was asked to send comments to a personal email account. Unfortunately, the account was not set up to receive such a large volume of responses and comments were bounced from the system leaving hundreds of potential commenters—as well as agency personnel—frustrated and disenchanted with the NEPA process. Because of the agency's poor planning, many of our organization's members were unable to successfully submit their comments.

Federal and Inter-governmental Collaboration

While collaboration with state and local governments is essential to a well-informed decision, a collaborative arrangement can frustrate the purposes of NEPA when special

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interests are allowed to dominate the process. Perhaps the most blatant example of improper reliance on non-federal agency collaborators is the Supplemental Environmental Impact Statement (EIS) process for the Yellowstone and Grand Teton National Parks winter snowmobiling rule. After a much-publicized lawsuit, the Park Service agreed to “supplement” its EIS, which had already been ten years in the making. The State of Wyoming, co-plaintiff in the lawsuit, was granted cooperating agency status. Because political pressures were permitted to influence the NEPA process, what in theory should have been an opportunity for inter-governmental collaboration, quickly collapsed into a situation of the lead agency, the NPS, being substantially left out of the process and not being correctly consulted in the formation of new alternatives. This fact became especially evident when months after the process was initiated the NPS planning staff was forced to inquire *through a public meeting* about the basic tenets of the State’s preferred alternative.

Programmatic Analysis and Tiering

Tiering can be a valuable management tool, but it can also be counter-effective when the tiered plan takes years to develop and the primary planning document fails to provide sufficient guidance for protective interim management. Both of these problems have plagued the BLM’s management of Utah’s San Rafael Swell. Recognizing that unrestricted off-road vehicle (ORV) use was causing significant damage to fragile cultural and natural resources, BLM’s Price Field Office developed a resource management plan (RMP) that recommended the creation of a travel management plan (TMP). The TMP was to be completed within two years and would designate ORV routes to minimize damage to resources. Eleven years later no routes have been designated and the entire area is still open to ORVs. In the interim, the status quo ORV policy—which allows ORV users to travel anywhere—has remained in place. Successful tiering is contingent on timely development and implementation. Additionally, the RMP should have specified a protective management standard for the interval before the completion of the TMP.

Adaptive Management

Agencies have a tremendous opportunity to utilize the information processing capacity of modern data collection, mapping and information technologies to rigorously monitor the actual consequences of their decisions. An increased focus on post Record of Decision monitoring will increase the decision-makers’ ability to learn from and adjust to their decisions over time. The proper use of adaptive management would increase NEPA’s effectiveness by ensuring that the post-decision short-, mid-, and long-term repercussions are considered and addressed. We are concerned, however, that adaptive management may be used by agencies merely as a means of sidestepping NEPA’s requirements.

Adaptive management techniques are often utilized in so-called mitigated Finding of No Significant Impacts (FONSIs). Again, if utilized properly there is a potential place for mitigated FONSIs in agency decision making. However, in the absence of adequate follow-up monitoring, including the proper designation of personnel and financial

resources to complete such monitoring and enforcement, there is no assurance that the mitigation measures upon which the mitigated FONSI is based will turn out as anticipated.

In establishing an adaptive management regime, agencies must be careful to give the public the same treatment and opportunities for input as government and industry interests. If task forces are established to participate in the monitoring process, the agency should ensure that all interests are fairly represented. Note that, unlike the government and industry interests, members of the public who participate in the NEPA process typically do so in a voluntary and uncompensated capacity. If adaptive management is to be effective, the agencies must make certain that the public can participate in the monitoring process in a meaningful way by ensuring that the process is not so time and labor-intensive as to be prohibitive.

An example of this problem is the adaptive environmental management planning process adopted by the BLM's Pinedale Field Office. The plan was developed to mitigate the impacts of an industrial gas project in a crucial wildlife area. Various task groups comprised of agency, industry and public representatives were established to draft monitoring plans, analyze the results of the monitoring and recommend changes to management practices. In theory this plan is praiseworthy. In practice, however, some members of the task group found that the process was too time-intensive to enable non-agency and non-industry participation.

Categorical Exclusions

Categorical exclusions are a useful tool in ensuring that relatively routine actions with insignificant impacts are not overly costly or time-intensive. Too often they are used to inappropriately circumvent the NEPA planning process. In August 2002 the Forest Service issued an interim directive on the use of categorical exclusions that increases the potential for abuse. The Forest Service has given local officials considerable latitude to determine on a case-by-case basis when a proposed action may be categorically excluded even if extraordinary circumstances such as endangered species or wetlands are present.

Categorical exclusions were originally envisioned to authorize minor administrative actions such as trail and building maintenance. The Forest Service has loosened its regulations in order to facilitate activities with clear resource implications such as cross-country ORV races and oil and gas exploration in roadless areas. Overly broad use of categorical exclusions contravenes NEPA's intent by removing the public from the decision making process for actions in ecologically and culturally sensitive areas.

Using categorical exclusions is also inappropriate when cumulative impacts are a key factor. For example, the Prescott National Forest used a categorical exclusions to redesignate a relatively obscure trail as part of a much-publicized Canada to Mexico ORV trail. The potential cumulative effects of including an independent trail segment in a much larger trail system are much greater and distinguishable from the original trail designation.

Additional Areas for Consideration

Agencies regularly fail to consider the cumulative effect of related actions.

As is mentioned above, one of the problems with the Prescott trail designation is that the Forest Service failed to consider their actions in the context of similar actions being taken by other land management districts. Although the cumulative effects of this designation are likely to be significant, the Forest Service has allowed the project to continue without considering cumulative impacts. The oil and gas development in Alaska's North Slope is a similar, albeit more egregious situation. In the past few decades thousands of individual permits have been issued for oil and gas development in the Arctic. Not only have the cumulative impacts rarely been analyzed, but the agencies have also consistently failed to prepare EISs to address the effects of the development and consider alternatives. The agency's failure to adhere to the NEPA process and consider the cumulative effects of related projects has resulted in the development of more than 1,000 square miles of public land with little public participation.

Conflicts of interest.

Another obstacle to the successful implementation of NEPA is the growing problem of apparent and actual conflicts of interest. A good example of this is BLM's draft EIS regarding coalbed methane development in Wyoming's Powder River Basin. The draft EIS was prepared by a coalbed methane industry consultant, Greystone Environmental Consultants, whose work consists largely of helping coalbed methane companies obtain drilling permits. Although the contractor had an interest in the outcome of the NEPA process, it was still selected to prepare the draft EIS. The draft EIS received an unsatisfactory rating from the Environmental Protection Agency because it failed to adequately consider the project's impacts on water quality, one of the most critical environmental issues associated with coalbed methane development.

Inadequate follow-through and dedication of resources.

NEPA is a successful statute that works not by mandating a result, but by requiring a procedure that if followed can identify the best result. There are fewer problems with NEPA itself than with the way the agencies implement it. As is discussed in the examples below, NEPA often seems burdensome not because the process is inherently flawed, but because it often appears to have little or no effect on the ultimate management of federal lands due to agency apathy or a lack of financial and managerial support.

A case in point is that of the Interior Columbia Basin Ecosystem Management Project (ICBEMP). The ICBEMP was created to develop a scientifically-sound and ecosystem-based strategy for the management of forest and rangelands in the interior Columbia River basin and portions of the Klamath and Great Basins. The scientists and land managers working on the ICBEMP generated a thorough study of the Columbia Basin's ecosystem and the resulting analyses and recommendations were incorporated into a final environmental impact statement issued in December of 2000. To date, however, no Record of Decision has issued.

The land management agencies in the Columbia Basin have been unable to effectively address many of the problems identified in the ICBEMP. For instance, the ICBEMP identified invasive weeds as one of the fastest growing threats to the area's ecosystem. Despite the ICBEMP's showing that the problem requires preventative action, field offices, like the Wallowa-Whitman National Forest, have had insufficient support and funding to adequately address the problem. Although the office prepared a comprehensive weed control strategy, its actions are currently limited to herbicide applications. The ICBEMP is a good example of how an otherwise successful NEPA process was frustrated by a lack of follow-through and subsequent support. This result strengthens critics' argument that NEPA is merely a procedural hurdle and waste of resources.

The perception of NEPA as a superfluous process is also reinforced whenever agencies use the NEPA process to justify an already-determined decision. Two of the examples discussed previously also illustrate this significant downfall. The BLM's Pinedale Field Office's refusal to publish a scoping notice for seismic exploration operations coupled with their decision to permit the company to stake the project prior to approval so that the exploration began immediately the morning after the FONSI issued, strongly suggests that the decision to allow the exploration activities was made before the NEPA process was begun. It is exactly this type of situation that leaves the public feeling that their input has little or no impact on an agency's decisions and obliterates NEPA's intent.

Conclusion

In closing, it is important to emphasize that we do not believe that any changes must be made to NEPA's current regulatory or statutory scheme to increase the statute's efficiency and effectiveness. The CEQ can make significant progress towards these goals by ensuring that agencies carry out NEPA's intended purpose to use the straightforward process that's required to better inform its options and actions as they relate to the environment. Please contact me or Leslie Jones at 202/833-2300 with any questions.

Sincerely,

/s/

Linda Lance
Vice President for Public Policy