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cc:  
Subject: NEPA Task Force Comments

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Comments on the FR Notice of July 9, 2002, 7FR, 45510<?xml:namespace prefix = o ns =  
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The NEPA Task Force

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Sent By Electronic Means Through: <http://ceq.eh.doe.gov/ntf>

Gentlemen:

We are pleased to provide input to your efforts to improve the processes of the National Environmental Policy Act (NEPA) to obtain greater efficiency, more clarity, and updated procedures. Your solicitation for comments in seven distinct areas assumes to a certain extent that these topics are separately treated under NEPA analyses. Our experiences have shown that there are as many approaches in these different topical areas, thus, we will try to comment on our experiences in general, referencing topical areas as needed.

While "enhancing the process" is a laudable goal, many stakeholders feel that NEPA has become an abused process. By this I mean at the implementing agency level customer service and timely decision making often become secondary objectives in today's litigious environment. Clearly, agencies need to produce sound, defensible NEPA documents, to assist in implementing this goal. I encourage CEQ to seek changes in NEPA that would better confine appeals to truly affected parties, not individuals with a philosophical opposition to a particular action. Also, the current appeals process does not appropriately give deference to the expertise in land managing agencies, consequently it forces individuals in the agencies to become process rather than outcome oriented. While it is incumbent on an agency to produce sound fact-based findings, the time delays to customers that result when an issuing office takes extra time and effort (read expense) to prevent a spurious suit do not meet the original intent of establishing the on-the-ground consequences of a proposed action. Given the opportunity, I would volunteer to serve on a work group to flesh out remedies to these problems.

I am a strong advocate for adaptive management, and this concept needs to become accepted in the NEPA process as a matter of agency policy. The current process seems to assume there is no institutional knowledge regarding (for example) the drilling of a gas well, and the construction of the requisite infrastructure. I would like to see more attention in the NEPA process given to what is known about the consequences of a proposed activity, based on same or similar activity in comparable settings. Then, a mitigation plan based on successful analogous activity could be established, with flexible management alternatives that ensure environmental protection should the

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original preferred alternative need amending. In the adaptive management scenario, it will be important to differentiate between comments that are oriented toward land use and comments that are oriented towards land management. If an area currently is being managed for multiple use, especially where minerals or other resources have already been leased, and analogous activity in similar environments has produced results that are acceptable, and mitigable, opening the NEPA process to comments on land uses that preclude the activity implied in a lease is indeed a disingenuous action by the United States. Additionally, in the area of mineral or oil and gas exploration, for example, there may be more data provided for NEPA analysis if the contemplated action is allowed to be performed on a limited basis, until more data are compiled. Using this same example, negative results or a poor showing resulting from limited exploration activity may obviate the need for further data if there is no additional development drilling planned. This same scenario may make a case as well for categorical exclusions for drilling or seismic surveying based on the resources planned to be affected. The key here of course is that if exploration shows promise, a projected mineral or oil and gas development should be limited in the size of its expansion until a valid NEPA analysis is performed.

We applaud the use of tiering in the NEPA process and encourage its use to the extent that resource protection or mitigation is maintained. Examples in this concept first became apparent to the State of Utah in the 1980's when all of the coal regions in the state were involved in both regional and site specific analyses for the Federal Coal Management Program. This activity involved coal leasing as it was being restarted in response to increased energy demand. The regional NEPA analyses enabled the site specific analyses to withstand scrutiny, and leasing was somewhat expedited in the process. We see no reason why this approach cannot be utilized in other natural resource areas- especially given the site specific permitting that must be done before a surface disturbing activity is conducted.

The concept of cooperating agency status appears to mean many things to those involved in these interagency relationships. Our experience has shown that there is a great deal to be gained from collaboration and information-sharing in general technical areas as well as in NEPA related activities. Generally being knowledgeable and informed of just how agencies approach problems and issues helps greatly when NEPA issues arise. In addition, personal knowledge of ones counterparts in the other agency assists when cooperating on interagency projects. This way of approaching joint projects helps to eliminate the barriers to harmonious interagency relations and a truly cooperating agency.

Thank you for the opportunity to address a possibly new approach to environmental analysis under NEPA. If there are details which I can provide you on these topics, please contact me at 801-538-5370.

Very truly yours,

Lowell P. Braxton

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