

CQ545



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To: <ceq_nepa@fs.fed.us>
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Subject: PLA Comments

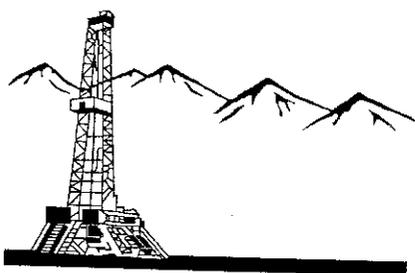
Attached are PLA's comments in response to the notice in July 9, 2000 Federal Register published by the Council on Environmental Quality NEPA Task Force. Please contact me if there is a problem with this transmission.

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September 23, 2002

NEPA Task Force
P. O. Box 221150
Salt Lake City, UT 84122
www.whitehouse.gov/ceq

Re: Council on Environmental Quality NEPA Task Force Notice and Request for Comments

Dear Sir/Madam:

On behalf of Public Lands Advocacy (PLA) following are comments in response the proposed nature and scope of Council on Environmental Quality (CEQ) National Environmental Policy Act (NEPA) Task Force (Task Force) activities. According to the July 9th and August 20th *Federal Register* notices, the Task Force is seeking ways to improve and modernize NEPA analyses and documentation and to foster improved coordination among all levels of government and public. In addition, the Task Force is soliciting examples of effective NEPA implementation practices to develop a publication of case studies including examples of best practices. PLA is a non-profit organization whose members include major and independent petroleum companies and non-profit trade and professional organizations that have joined together to foster the interests of the oil and gas industry relating to responsible and environmentally sound exploration and development on federal lands. One crucial PLA goal is to help industry comply with NEPA requirements on public lands and to provide comments to federal agencies on NEPA documentation for land use planning and project level activities. In this regard, PLA participates in most federal NEPA documents pertaining to oil and gas activities, including programmatic and project level documents.

We are pleased that a CEQ NEPA Task Force has been established to review current impediments with respect to NEPA implementation and compliance. While the National Environmental Policy Act itself is reasonable, as are the CEQ NEPA regulations, agency implementation of the law and rules has become extremely problematic over the course of the last two decades. Part of the problem stems from continuous litigation which allows the courts to determine the intent of NEPA and how best to comply with CEQ requirements. Consequently, in an attempt to respond to constant court challenges, federal agencies often exceed NEPA by trying to prepare so-called "appeal proof" environmental impact statement (EIS) and environmental assessment

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(EA) documents. This had led to costly, time consuming, excessively broad studies, inventories and analyses, which result in incredibly cumbersome and extraordinarily complex documents. It is literally impossible for the general public to understand these documents, and it is also difficult for other interested parties to analyze and review them, due to the enormous volume of documentation and the time-consuming nature of such a review. Of great importance to our members, who rely on timely preparation of EAs and EISs, there has been no change in the number and types of appeals filed by interest groups even after this level of analysis and documentation has been undertaken.

We urge the Task Force to review the data and comments provided in response to its request and determine how best to simplify the process and associated documentation as well as to reduce the time frames required for NEPA compliance.

TECHNOLOGY, INFORMATION MANAGEMENT AND INFORMATION SECURITY

- PLA typically utilizes the information provided in environmental analysis documents to prepare comments on a NEPA analysis, whether it is land management planning or for projects. In addition we rely on published data and studies with respect to specific resources, such as wildlife. We also utilize regulations, manuals and instruction memoranda in preparing our comments. It is important to note that many of the federally required analyses contain information that cannot be characterized as scientifically sound. We have often found a lack of justification for new environmental requirements contained in these documents. In fact, it would seem that many decisions are based upon the personal views of resource specialists or their supervisory administrators. It is imperative for the Federal agencies to utilize and cite specific, scientifically validated data to justify all new decisions, e.g., restrictions and designation of new land use classifications.
- We recommend that all scientific data used be limited to that which has been peer reviewed to ensure its accuracy and objectivity. Moreover, the applicability of the data to the area involved in planning or other NEPA analyses must be clearly demonstrated. There have been many instances where studies from another part of the country are used to make decisions even though conditions are not the same as those addressed in the studies.
- The Forest Service and BLM use various methods for mapping resources, such as the occurrence of wildlife habitat, winter range, plant communities, archaeological sites, etc. It is essential that all offices upgrade their mapping systems by utilizing GIS technology. GIS technology facilitates federal decision making and provides industry with information required to address resource concerns at the project planning stage as well as during operations. Even more important, GIS data can readily be shared between federal agencies to ensure a common database for management and

reporting purposes, for example, status and trend of endangered species or their habitat.

- > The manner in which resource and impact information is presented in an EIS needs to be revised. It is desirable for information to be presented only once in an EIS. Using the descriptions of the alternatives as an example, agencies characteristically repeat much of the same information under each alternative. PLA recommends that all the pertinent data be included in the description of the preferred alternative and that duplication of this data be eliminated from the discussion of other alternatives. The same holds true for the discussions of alternatives and environmental consequences. The chapter on alternatives needs only to address information relevant to management goals, objectives and requirements. The chapter on environmental consequences needs only to address the consequences associated with these goals, objectives and requirements.
- > The advent of the Internet is an advantage to the public, business and government for information distribution. It is helpful to have documents accessible online when specific information is being sought. However, there are several drawbacks. Many NEPA documents are so voluminous that it is not practical to expect interested parties to download and print them. It is still necessary for paper copies to be provided for public review by mail upon request. On the other hand, with respect to scoping, project proposals and other notices, it would save the agencies time and money to distribute these electronically. This would include many reports, including quarterly NEPA project updates.
- > When publishing notices of NEPA documents in the *Federal Register*, it is necessary for the title of the project to be identified and the state in which the project is located. For example, often the title merely states, "Resource Management Plan Amendment," when it should state "White River (CO) RMP amendment for oil and gas leasing." Given the volume of notices published every day in the Register, specific information in the title will help those who are interested in participating in the process.

FEDERAL AND INTER-GOVERNMENTAL COLLABORATION

- > In order to improve collaboration, making it more efficient and useful, federal agencies need to adopt consistent, compatible and technically rigorous standards and protocols for obtaining, managing and reporting data used in NEPA analyses. It is necessary for agencies to adopt common procedures, data elements, land scales and graphic symbols for each resource element to ensure cross boundary compatibility in data acquisition, analysis, synthesis and reporting. In addition, an interagency data management tool should be established that would provide for systematic documentation and archiving of all inventory, monitoring and research

data. Such data should be easily retrieved by each agency for use in land management planning, resource stewardship, training, and preparation of project-level NEPA documents.

- With respect to barriers to effective collaborative agreements, joint-lead or cooperating agency status, conflicts exist among the missions of the various agencies and states which serve to chill cooperation. This is particularly true of the Environmental Protection Agency (EPA). There have been several instances where EPA Region VIII had been invited to participate in agencies' ongoing NEPA processes. However, the EPA stated that it is not its responsibility to participate in the NEPA process, but rather to submit comments on the finished product. While we acknowledge that one of EPA's responsibilities is to evaluate EIS documents, it is highly unreasonable for the agency to bring up issues that should have been raised during preparation of the documents. This onerous situation must be resolved. Moreover, EPA must make an effort to recognize the roles of the land management agencies and their decisionmaking processes. With regard to states, Wyoming for one, has had difficulty being accepted as a cooperating agency even though the regulatory language at 43 CFR 1610.3-1 clear on that point.
- PLA recommends that agencies responsible for management activities throughout the various regions of the United States hold quarterly meetings in an attempt to apprise affected agencies of their activities. It could also be beneficial for regional, multi-agency task forces to be set up to accomplish the task of informing and affording an opportunity for involvement to other agencies.

PROGRAMMATIC ANALYSIS AND TIERING

Duplicative environmental documentation is a significant problem throughout the agencies and administrative determinations are currently underutilized by the agencies. It is becoming routine for agencies, particularly BLM, to request industry to fund not only field development environmental analyses but also analyses for smaller projects (e.g. small coal bed methane exploratory projects), or subsets of NEPA such as T&E and cultural surveys. Whether agencies or industry funds environmental analyses, it is in the best interest of both parties to work together and focus on compliance with CEQ regulations at 43 CFR 1500-08. Specific recommendations are as follows:

- A restructured format for EAs is needed. Currently, the agencies use an EIS format for EAs, creating unnecessary analysis, delays, and expense. NEPA instituted a tiered process for environmental documentation. Clearly, Congress never envisioned the same level of analysis and public involvement for both EAs and EISs.

The fact that an EA can be used to determine the need for an environmental impact statement clearly indicates the EA was intended to be a less complex document but still comprehensive enough to make a stand-alone decision.

- Programmatic EISs and EAs need to utilize and incorporate all available relevant data to avoid unnecessary research and associated delay, controversy and expense in subsequent NEPA analyses. Barring any significant changes in resource conditions, a simple checklist should be used in place of an EA for small projects. For larger projects, an EA focusing only on those issues not previously addressed in the programmatic analysis is all that is necessary.
- Limit the narrative on the affected environment and focus on the environmental consequences of the proposed action, including mitigation measures and other standards or guidelines. Eliminate the analysis of speculative situations or unachievable alternatives.

Section 1502 of the CEQ NEPA regulations directs that mitigation measures be identified in the EIS which may be employed to reduce or entirely avoid impacts to other resource values. However, federal NEPA documents typically fail to incorporate mitigation measures into the section on Environmental Consequences. While the CEQ regulations have been construed that lease stipulations and standard operating requirements only need to be identified, often in an appendix, it is necessary to incorporate such protection measures into the cumulative effects analysis so that it can be utilized in the decisionmaking process. This information is essential because it illustrates that with appropriate mitigation, the majority of oil and gas activities are compatible with other resource uses, including those in sensitive areas. By omitting mitigation measures from the cumulative effects discussion, the federal government fails to disclose an accurate picture of potential short and long-term impacts of a proposed project and its alternatives. This concern applies not only to programmatic planning documents, but also to project level documents. Therefore, we strongly urge the CEQ to develop specific guidance to the agencies explaining the need to incorporate mitigation measures imposed through the NEPA process into the analysis and to revise the impact analysis accordingly.

ADAPTIVE MANAGEMENT/MONITORING AND EVALUATION PLANS

The term "adaptive environmental management" (AEM) as described in CEQ's report "The National Environmental Policy Act: A Study of its Effectiveness After Twenty-Five Years," is a process for environmental management that would "predict, mitigate, monitor and adapt." Apparently, CEQ is contemplating extending NEPA analyses beyond a final decision, emphasizing implementation of mitigation plans rather than NEPA documents while allowing agencies to defer decisions regarding mitigation in the NEPA analysis or record of decision --- even during project implementation. While we support the use of performance standards on activities, we are concerned that unspecified, later-to-be-determined mitigation measures would have an adverse

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impact on valid existing rights of oil and gas lessees and associated activities that are constrained by lease terms, economic and seasonal opportunities. We strongly oppose any process that would allow federal agencies to find new ways of deferring appropriate management decisions. The public is already faced with agencies' reticence to make decisions even within the current NEPA land management planning process. We cannot imagine how much further the federal land managers' role would be eroded if they were not required to make any decisions at all!

Please note that PLA is not opposed to planning updates based upon new information. Clearly when a new threatened or endangered species is located within a planning area, it is necessary for the agency to revise its land use plan accordingly. The same is true for other changed resource conditions. We also support updating plans as a dynamic process rather than from scratch every ten or fifteen years. If certain resource conditions have not changed and it is found that current management is still appropriate, there is no need to revisit those resources during a plan update. Our concern stems from the notion that certain land use decisions could be deferred indefinitely due either to a perceived lack of information or reluctance on the part of a federal official to make decision. NEPA requires that decisions be made utilizing the best available information. That is what needs to be done. Deference of decisions will clearly result in more needless bureaucracy and untenable delays until new information is collected. It is questionable that there would ever be an adequate basis upon which to make a decision.

Several years ago, the Forest Service contemplated the use of what was termed a "contingent rights" stipulation. Under this concept, the agency would have the ability to determine after a lease was sold whether development would be acceptable and under what terms. Industry strongly opposed this proposal because it is necessary for a lessee to know specifically under what conditions it could develop its lease before it is acquired. The Mineral Leasing Act mandates that leases are contractual undertakings by the federal government and as such confer specific rights to lessees that cannot be altered once the lease is issued. Exception to these rights is limited to provisions of the Endangered Species Act. CEQ's interpretation of adaptive environmental management could be construed to have the same impact on valid existing lease rights as the once-proposed contingent rights stipulation. **Clearly, abrogation or diminution of lease rights and the ability of federal agencies to make clear and timely decisions must be entirely avoided in any program proposed by CEQ.**

We support the institution of project specific work groups with the following parameters. Work groups must be:

- Comprised of experts who have scientific, working knowledge of the issues and the activities being addressed

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- Given the opportunity to offer recommendations with all final decisions resting with the managing agency
- Balanced with all resource disciplines represented
- Open to public participation and provisions must be made for public comment at each meeting

It is crucial for mitigation measures to be clearly identified in all decision documents, even if they are performance based rather than prescriptive in nature. We object to the idea that an agency should have the ability to defer making such basic decisions until after rendering a final decision on a project. This does not mean that more comprehensive NEPA documents should be prepared because federal agencies can prepare tiered supplemental NEPA documentation to address new conditions. Moreover, it is consistent with the Act itself and existing regulations, i.e., which require NEPA analyses to be conducted before significant changes can be made to any management program.

Net Effects

During the land use planning process, agencies are required to predict post-lease activities that could occur from oil and gas development by preparing a reasonably foreseeable development (RFD) scenario. Forecasting RFDs is a difficult exercise because it requires knowledge of the geology and O&G potential of each planning area, which may be unknown in certain instances because some of these areas have not been explored, especially in deeper horizons. PLA has urged agencies to estimate RFD forecasts utilizing local geologic trends and historical activity within the resource area, and to vary the RFD figures by alternative but this suggestion has met with limited success because some offices develop one RFD scenario and use it for all alternatives. As part of the RFD scenario, agencies quantify the number of wells it anticipates will be drilled in the planning area over the life of the plan and verifies this figure with industry. Agencies also estimate the average surface disturbance associated with wells in the area. This can be accomplished by calculating average disturbance acreage for well pads, access roads, pipelines and facilities.

The RFD and acreage disturbance information is then used as the basis for determining environmental consequences of oil and gas exploration and development activities in accordance with each management alternative analyzed. It should be noted that while the number of wells drilled can vary by management alternative, the projected level of disturbance associated with the average well remains the same under this approach. Currently, agencies use the number of exploration and development wells that could be drilled, rather than net acreage disturbed by oil and gas operations as their baseline for determining environmental consequences of each alternative. As such, they typically fail

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to consider that once a well is plugged, reclaimed and abandoned, it has no adverse effect on the environment.

For example, if BLM predicts 10 wells will be drilled with 5 acres disturbance each, up to 50 acres could be disturbed. We propose, however, if 5 of the 10 wells are dry and subsequently reclaimed, they should not be counted as part of the acceptable level of long-term impacts established in the analysis because they were short-term disturbances. Hence, industry should be given the opportunity to drill additional wells, provided they would not result in more than 25 acres of additional surface disturbance or would not exceed an acceptable level of surface impact as determined in the land management plan or through post-plan monitoring. Moreover, if 10 additional wells could be drilled without exceeding the established threshold of disturbance, they should be allowed since they would fall within the acceptable range established during planning. The key element which must be considered in determining what level of oil and gas activity will be allowed over the life of the plan is not the number of wells which could be drilled, but rather the net effect of surface disturbance and reclamation activities.

This "net effect" approach is consistent with the newly adopted ecosystem management strategy because it relies on scientific data to establish suitable levels and patterns of use. The "net effect" approach will also have the added benefit of facilitating better land use planning and encouraging multiple-use activities, including oil and gas leasing, exploration and development, on federal lands.

Post-Land Management Plan and Project Monitoring

The second prong of our proposal addresses the necessity of effective post-plan and project monitoring. We recognize that agencies are already required to conduct certain monitoring activities. However, it does not appear that such monitoring efforts are a priority if they are done at all. Therefore, in addition to proposing a method for basing land use decisions on net effects and acceptable levels of change, we also propose that the agencies develop the capability for determining when land use activities are approaching management thresholds established in the plan or project EAs/EISs. As such, integrated monitoring must occur for all resource activities, including motorized and non-motorized recreation, grazing, mining, wildlife and wildlife habitat, vegetation management, air and water quality, in addition to oil and gas activities, to get a true picture of cumulative effects. Active monitoring will help agencies to avoid responding to new development proposals with knee-jerk reactions that halt all activity pending completion of a new environmental impact statement. With improved monitoring activities, agencies will improve their resource databases, including data sharing with other agencies and reporting to the public.

In order for this concept to work, agencies must develop a system for tracking monitoring efforts and results. In addition, a quality control process needs to be put in place to

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ensure that resource management objectives are clearly stated and measurable. Measurable management thresholds, which when reached require a review of existing management practices, must also be identified. An extremely important element of the monitoring effort is an inventory of resource data. Components of this database, many of which must be reflected on maps, would include:

- ◆ Identification of the area of concern and applicable land management plans and policies
- ◆ An inventory of all resource activities, including oil and gas wells, fields, roads, pipelines
- ◆ recreation and grazing use, wildlife habitat manipulation, etc., on state and federal lands
- ◆ A yearly survey of companies regarding their future activity plans (agencies must devise a method for protecting proprietary data.) so that timely resource allocation and budgeting can occur
- ◆ A record of current surface disturbance and post-activity reclamation for all resource uses (This complements the net effects concept.)
- ◆ A record of known new activities that may occur over the long term to help in determining net effects of activities
- ◆ Archeology and T&E species surveys
- ◆ Review mitigation measures to determine their effectiveness
- ◆ Review the effectiveness of plan decisions and the accuracy of the NEPA impact analysis

We also recommend the agencies enter into a memorandum of understanding with other Federal and State agencies with administrative or management responsibilities in the areas of concern to facilitate collection of needed resource data. Industry may be able to provide some of the data discussed above.

The overall goals of this proposed two-pronged strategy are to:

- ◆ Provide an element of flexibility in planning for the oil and gas program on federal lands
- ◆ Eliminate repetitive NEPA documentation for exploration and development activities
- ◆ Provide incentives for mitigation and swift reclamation of dry holes, temporary access roads and well pads
- ◆ Create a tool kit for dynamic resource management planning to assist industry, organizations and government agencies in the pursuit of their interests and missions
- ◆ Increase agencies' efficiency and data exchange with other surface management agencies

CATEGORICAL EXCLUSIONS

Categorical exclusions (CE) have been used much less frequently in the past several years, despite the fact that there are many good reasons to issue them. Nevertheless, there are many actions that warrant a CE from complex NEPA analysis. In those situations where an EA or and EIS has already been completed for a specific project, it is reasonable to expect that no additional NEPA analysis would be necessary. This is particularly true for actions that merely implement decisions already made. Agencies and users should be spared additional, extraneous analyses in these situations.

In our view, if an analysis specifically details operating standards, conditions, and stipulations, actions consistent with those requirements do not warrant additional analysis. Furthermore, activities that take place in already developed areas should be approved through a CE if they would not result in any significant new disturbance. Specific actions we recommend for CE include:

- Casual uses that do not result in long-term surface disturbance, such as geophysical activities
- Actions that implement decisions already made, such as development wells
- Repair of existing rights-of-way or roads
- Emergency repairs of existing facilities or equipment necessary to maintain production or which involve well control or public safety issues
- Fire control measures, including equipment mobilization and activation
- Requests for exceptions or modifications to existing lease stipulations when no new surface disturbance would result
- Issuance of leases where lands are included in a federal unit
- Approval of an application for a permit to drill (APD) related to:
 - Re-entry or modification of an exiting well bore
 - In-fill development when the well is consistent with existing environmental documentation
 - A new well drilled from an existing well pad
 - Onsite remediation efforts of groundwater or soils
- Sundry notices associated with
 - Routine workovers
 - Routine hydraulic fracturing to improve production or injection
 - Activities involving less than 5 acres
- On-lease linear facilities when placed in existing corridors or previously disturbed areas
- Right-of-Way grants within an existing way or an approved corridor
- Disposal of produced water in accordance with State or federal regulatory requirements

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- Minor modifications or variances from activities described in approved development or production plans
- Unitization, communitization and drainage agreements or development contracts

ADDITIONAL AREAS FOR CONSIDERATION

Accountability

Sadly, a growing problem within the federal land management agencies is a lack of commitment to their programs and to accomplishing important and routine tasks associated with their programs. Therefore, it is essential for each federal land management agency to develop an internal accountability process for responsible management and for ensuring designated program tasks are accomplished in an efficient, cost-effective and timely manner. These include meeting program goals and objectives. There also needs to be consistency among the agencies' accountability systems so that progress can be monitored to determine whether they are progressing in the achievement of their management goals and objectives. As such, indicators of success need to be established which provide for explicit and quantitative standards by which actions can be planned, expectations evaluated and accomplishments measured. PLA believes that an accountability system would help make the federal land management agencies more productive and cost effective. We do not recommend congressional oversight of such accountability programs.

CONCLUSION

PLA appreciates this opportunity to provide the Task Force with comments on how to improve the NEPA process. In summary, there is no need to modify neither the National Environmental Policy Act nor the regulations. However, agencies' implementation of NEPA requirements has become cumbersome and wasteful. We urge the Task Force to take the steps outlined in our comments as a means of improving the process.

PLA's members have had broad experience in working through the federal NEPA process, at both the programmatic and the project levels. After the Task Force has had a chance to review the comments received, PLA is available to meet to discuss your findings and offers its assistance in developing a program designed to improve NEPA implementation.

Yours truly,

/signed/ **Claire Moseley**

Claire M. Moseley
Executive Director

