



State of Utah

DEPARTMENT OF NATURAL RESOURCES

CQ565

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Michael O. Leavitt
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Robert L. Morgan
Executive Director

September 23, 2002

NEPA Task Force
P. O. Box 221150
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Ladies and Gentlemen:

The Utah Department of Natural Resources appreciates the opportunity to provide input to the notice contained in Federal Register Volume 67, Number 131, regarding the National Environmental Policy Act (NEPA) Task Force.

The department concurs with the statement in the notice that there is the need, "to seek ways to improve and modernize the NEPA analysis and documentation process and to foster improved coordination among all levels of government and the public."

The department also supports the policy stated in the Act to, "prevent or eliminate damage to the environment . . . foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans."

However, the department is concerned that, since the passage of NEPA, a process has developed such that application of the Act results in disharmony and acrimony among people to the detriment of the general welfare and the environment. This is the result of protracted analyses, overlapping and conflicting laws, implementing regulations and legal decisions, postage stamp veto power and interest-based litigation which have created an atmosphere of confusion, mistrust and conflict. Customer service and timely decision-making often become secondary objectives in today's litigious environment.

The National Environmental Policy Act is well founded and laudable; however, the "NEPA process" which devolved from the implementing regulations has become too complicated, too slow, too contentious, too expensive and ineffective. While it is incumbent on an agency to produce sound, fact-based findings, the delays to customers that result when an issuing office is required to expend extra time and effort, simply to prevent a spurious suit, do not meet the original intent of identifying the on-the-ground consequences of a proposed action.

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The FR Notice requests that respondents address a series of questions. The department's response to several said questions follows.

A. *Technology, Information Management, and Information Security:*

- 1. Where do you find data and background studies to either prepare NEPA analyses or to provide input or to review and prepare comments on NEPA analyses?**

The department obtains such information from the various divisions within the department and other departments and divisions of state government, particularly the Automated Geographic Reference Center. The department bases its NEPA analyses and comments, not on speculation, but on a compilation of valid data gathered by competent resource professionals. Additionally, the department relies on data presented in the NEPA document prepared by a federal agency.

- 2. What are the barriers or challenges faced in using information technologies in the NEPA process? What factors should be considered in assessing and validating the quality of the information?**

At times it seems that technological capabilities take on a life of their own in that the essence of data collection and analyses is lost in the tendency to explore the limits of a given technological tool. This can result in an ever increasing, perceived need for additional data and the associated analyses.

A quality related factor, which seems seldom considered, is whether or not the additional information is truly pertinent in addressing a particular concern.

The department suggests that the criterion for data adequacy should be whether or not the body of knowledge is such that a reasonable, informed decision can be made.

- 3. Do you maintain databases and other sources of environmental information for environmental analyses? Are these information sources standing or project specific?**

Each of the entities addressed in question 1 maintain various databases, both standing and project specific. Generally, project specific data ultimately becomes part of the standing databases.

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B. *Federal and Inter-governmental Collaboration:*

- 1. What are the characteristics of an effective joint-lead or cooperating agency relationship/process?**

Mutual respect among participants, a sincere interest in the task at hand, effective communication and a commitment to see it through to the end, "no quitters."

- 2. What barriers or challenges preclude or hinder the ability to enter into effective collaborative agreements that establish joint-lead or cooperating agency status?**

Legal barriers, personal agendas taking precedent over the common goal, suspicions, confrontational personalities, posturing to protect "sacred cows," inability or unwillingness to see the issue from other perspectives.

- 3. What specific areas should be emphasized during training to facilitate joint-lead and cooperating agency status?**

Training in the various Alternative Dispute Resolution (ADR) procedures including, negotiation, mediation, arbitration (non-binding and binding) and neutral third-party opinion, would be very beneficial.

C. *Programmatic Analysis and Tiering:*

- 1. What types of issues best lend themselves to programmatic review, and how can they best be addressed in a programmatic analyses to avoid duplication in subsequent tiered analysis?**

The department suggests that the phrasing of the above question illustrates the crux of the problem. NEPA was not enacted to "review" or analyze "issues." In fact, the term "issue" does not appear in the language of the Act. A reading of the Act gives the impression that the underlying tenet of NEPA is a cooperative, rather than contentious process. A planning and decision making process to consider the environmental impacts of proposed actions, "in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." The most contentious sounding words found in NEPA

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language, "disagreement" and "unresolved conflicts," are presented in a context of cooperative resolution.

NEPA was intended to focus on resources, not issues.

In answer to the above question, the types of resources which "best lend themselves to programmatic review," are those associated with broad range projects or actions of regional, multi-regional or greater scope, such as the 1985 *Federal Coal Management Program EIS* and the current *BLM Vegetation Treatment Programmatic EIS*. Such documents address broad based resources ranging from regional hydrologic regimes to vegetation treatments involving several states.

The BLM Vegetation EIS makes clear the tiering relationship of such programmatic documents and local planning documents. It states, "The EIS is not intended to address specific agency management decisions developed under local land use plans." "This will not be a land use plan nor an amendment to land use plans, but will provide baseline cumulative impact assessments that local BLM offices can use as they work with local, state and national stakeholders to develop local plans." Thus, the Vegetation EIS will analyze various vegetation treatment techniques, and evaluate and document risks, thereby enabling local offices and other agencies to tier to the document for subsequent projects without the need for redundant analysis.

D. *Adaptive Management/Monitoring and Evaluation Plans:*

The department suggests that the best foundation for Adaptive Management, Monitoring and Evaluation Plans is found in the *Multiple-Use Sustained-Yield Act of 1960*.

Paraphrasing the language of the Act,

Multiple-use means management of resources so that they are utilized in the combination that will best meet the needs of the American people. Making the most judicious use of the resources while providing sufficient latitude for periodic adjustments in use to conform to changing needs and conditions. Harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources (including the establishment and maintenance of wilderness areas).

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Sustained-yield means the achievement and maintenance in perpetuity of high level output of renewable resources without impairment of the productivity of the land.

The adaptive management concept needs to become an accepted policy in the NEPA process.

E. *Categorical Exclusions:*

The department reiterates its previous suggestion that the criterion for data adequacy for all levels of environmental analyses, including Categorical Exclusions, should be whether or not the body of knowledge is such that a reasonable, informed decision can be made.

Thank you for the opportunity to provide comments.

Sincerely,



for Robert L. Morgan, P. E.
Executive Director

RLM/VP/btb



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