

## OFFICE OF SPECIES CONSERVATION

CQ578

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**By Facsimile (801) 517-1021**

NEPA Task Force  
PO Box 221150  
Salt Lake City, UT 84122

RE: Notice and request for comments, National Environmental Policy Act (NEPA) Task Force

Dear Task Force Members:

The State of Idaho supports the purpose of the NEPA Task Force: improving and up-dating NEPA studies, paperwork, and coordination. We agree that federal agencies' plans, decisions, and paperwork under NEPA can move faster with the same or better accuracy and precision in predicting effects.

However, we are not sure that a centralized task force is capable of meeting these purposes. We have more faith in the de-centralized concept of innovations in the field. This idea was proposed by Senators led by Mike Crapo of Idaho and developed further by the Udall Center for Environmental Conflict Resolution. Concepts and specific proposals for pilot projects incorporating some streamlining of NEPA procedures have also been developed in Idaho by a federal lands task force and working group for the Idaho State Board of Land Commissioners. The test of pilot projects should proceed at least in parallel with the Task Force effort, if not prior to a task force.

Innovative pilot projects designed to accomplish NEPA purposes should be conducted immediately where the innovations fit within existing authorities. We also urge that new authority be sought, on a pilot basis, for worthy innovations. This would allow for better business practices, requiring some changes from current law or regulation, to be tested. In this regard, we encourage you to review and use the recommendations regarding pilot projects and collaborative and streamlining concepts contained in reports submitted to the Idaho State Board of Land Commissioners: the July 1998 report by the Federal Lands Task Force, "New Approaches For Managing Federally Administered Lands," and the December 2000 report by the Federal Lands Task Force Working Group, "Breaking the Gridlock--Federal Land Pilot Projects in Idaho." A copy of each of these reports is provided with these comments is available at <http://www2.state.id.us/lands/LandBoard/fltf.htm>.

Innovation that assures timely decisions on conservation projects is a long-term solution to the problems recently identified by President Bush. We support the president's proposal to make timely decisions by reducing unnecessary regulatory obstacles delaying active forest management. To the extent that these regulatory obstacles involve NEPA, we believe they partly reflect shortcomings in NEPA (a decision-making policy that precludes timely decision-making),

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and partly reflect abuses of NEPA (interest groups whose interests are served by gridlock). These problems should be the focus of innovations.

The following comments address the five points listed in the federal register announcement. Because the State of Idaho is generally a spectator of the federal NEPA process, we are short on insider examples. A source of detail, however, is the report *Reclaiming NEPA's Potential* published by the Center for the Rocky Mountain West ([www.crmw.org](http://www.crmw.org)). We encourage the Task Force to obtain and use a copy of this report.

#### **A. ... Information Management ...**

There is opportunity for simplifying NEPA decisions by making common information available. Many parts of a NEPA analysis could be "boilerplated" so individual analysts need not re-invent what is already available. Descriptions of Affected Environments, for example, should be shared within and between agencies operating in the same area. In Idaho, the Forest Service and Bureau of Land Management operate side-by-side in many places and should not re-write descriptions of landscapes they share. Background information on species and potential affects on species could likewise be shared among agencies.

We hope that sharing boilerplate information is a fairly simple matter of keeping an electronic library. The information can be archived by species name or by state, county, and watershed for landscape information. Each analyst using the information could then confine their efforts to updating the information instead of reproducing it from scratch.

Another important information issue is the reliability and use of information itself. The information typically available is appropriate for developing hypotheses, and occasionally calculating predictions from models. Using these hypotheses and models to design conservation projects leaves ample room for disagreement. Changes in NEPA that provide a routine and timely way to resolve these disagreements are desperately needed: we recommend that the Task Force particularly look for such changes.

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

We suggest increasing inter-governmental collaboration and we applaud the efforts of the current and previous CEQ Administrators to encourage it. Idaho has participated in two cooperating-agency analyses: the Idaho Panhandle National Forest Plan Amendment and the Yellowstone National Park Winter Use Plan. In these partnerships, our role as a state has been to help with analysis, including framing alternatives for analysis. The option to take on this role is helpful to state and federal government alike.

We would like to innovate on the cooperating agency arrangement under special authorization allowing for shared decision-making. Federal agents, as representatives of the national interest, can make more fully informed decisions if they share decision-making with representatives of state and local interests. The details of how such decision-making could be shared must be proposed and tested through a series of pilot projects.

We also encourage collaboration among private interests. NEPA provides an ideal opportunity for competing interests to negotiate a common plan and submit it as one alternative for study.

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However, NEPA also provides an ideal opportunity for others to wait for a final decision and then challenge it. Whether challenges go to an appeals process or directly to court, they cause delay and sometimes result in exclusive settlement negotiations. This deters collaboration and should be remedied.

### **C. Programmatic Analysis and Tiering:**

On this point, we offer a note of caution from the outside looking into the NEPA process.

It seems to us that the complex inter-relating of documents known as "tiering" is a symptom of analysis paralysis. Perhaps the constant threat of litigation on points of process has forced decision-makers to trace out every logical definition of a "planning area" and "proposed action." However, the ability to conceive of areas, actions, sub-areas, and sub-actions, and the ability to piece them together is an analytical abstraction. It does not necessarily provide better information for decision-makers. Programmatic analysis likewise may appear to make sense, but has not proved itself. Overarching programmatic analyses do not satisfy requirements for local analysis.

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

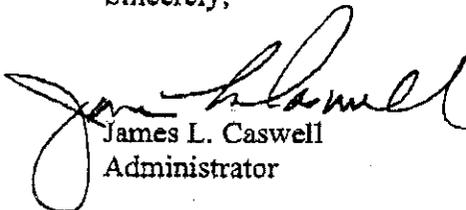
We are not familiar with how this concept has been used, but it sounds hopeful. Information unavailable to decision-makers today that can be collected as the action proceeds should not delay the action. Allowing the action to proceed and gather new information makes more sense than requiring ponderous prediction. The more valuable information is obtained by making more and quicker decisions to act, and then keeping track of the results. If we want more conservation out of our efforts, we must put more action into our efforts. However, based on the most common legal complaints filed against agency decisions – failure to produce an EIS, and reliance on inadequate EIS – we do not know how an agency could proceed with action on the promise of information to be gathered later.

### **E. Categorical Exclusions:**

Categorical Exclusions should be available for – and used for – projects with no significant effect on the quality of the human environment. Politicized projects (e.g., forestry and any conservation project in the area of a listed species) should not be denied exclusion because of their profile instead of their effects or potential effects. We urge the Task Force to ensure that Extraordinary Circumstances are declared only when warranted and not as an excuse for delay.

Thank you for the opportunity to comment and your consideration of our comment.

Sincerely,



James L. Caswell  
Administrator

gs/tm

c: John McGee