



WildLaw

CQ623

A Non-profit Environmental Law Firm

Ray Vaughan, *Executive Director*

Southern Appalachian Office
20 Battery Park Avenue, Suite 405
Asheville, North Carolina 28801
828/ 232-1157
Fax: 828/232-1162

September 20th, 2002

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

Dear NEPA Task Force,

Enclosed are the comments of Wildlaw's Southern Appalachian Office, Southern Appalachian Biodiversity Project(SABP), and Appalachian Voices regarding the proposal to make weakening changes to the National Environmental Policy Act (NEPA).

Together, Appalachian Voices, SABP and Wildlaw have commented on hundreds of NEPA documents over the past 10 years. The author of this letter has personally read about 200-250 NEPA documents from 1999 to 2002. It is very discouraging that the Bush Administration wants to weaken NEPA when it needs strengthening.

We are against any changes that would weaken, or in what is patently disingenuous language, "increase flexibility" for NEPA. Currently, due to lawless agencies, poorly informed courts, and administrative actions that subvert NEPA at every turn, including taking the President's Council on Environmental Quality (CEQ) and capturing it for those who want to destroy the environment and develop every inch of wild lands. We need a stronger NEPA, not a weaker one. This can be accomplished in the following ways:

- 1) Require a specific cumulative impact analysis, assessment, and evaluation section in each Environmental Impact Statement (EIS), Environmental Assessment (EA), Categorical Exclusion (CE), and Finding of No Significant Impact (FONSI). Currently lawless agencies either do not include cumulative impacts, or say they do but provide no actual quantitative information. Require both quantification and qualification of all proposals for cumulative impacts. Spell out the cumulative impacts so they include all past, present, and future foreseeable actions, no matter

CAET RECEIVED

SEP 26 2002

CQ623

September 20th, 2002

Page 2

what the action was or who performed the action in the project and surrounding areas;

2) Strengthen the CE definition (Section 1508.4) to limit the size, impact, and other features of an action so that only truly CE type actions are covered, rather than heavily impacting activities like logging, road-building, wetlands destruction, mining, oil/gas activities, grazing, urbanization, etc. Some actions are damaging no matter what the level including those mentioned above. We need to focus on truly CE actions that have no potential to harm the human environment, not as an excuse to perform a timber sale or construct a road without environmental review and oversight, and without the public being allowed to participate in the management of its public lands.

3) Require that a hard copy of environmental document be given to members of the public that request them. Putting environmental documents on computer disk or on-line only is not good enough, since it ensure that 50% of the public (who do not own computers) are either not able to obtain the information or do so with much difficulty. In addition, many programs either work poorly or not at all on certain computers. Agencies are essentially requiring each member of the public to invest \$1,000-2,000 in a computer so they can use the disk given to them. A hard copy can be easily used and carried to work so citizens can read and develop comments on their lunch hours and other free times. Putting a copy of an environmental document at a few local libraries in a town, city, or area to share is not sufficient for full public availability and participation.

4) Make the CEQ independent of the political stresses that currently occur. For instance, during the Clinton Administration, for the first time ever, a logging project was granted an emergency EIS exemption under NEPA (Section 1506.11) with no public input. Pressure was applied to staff so that an illegal waiver of the EIS requirements was granted. This allowed the logging of millions of board feet of public trees on tens of thousands of acres of National Forests with little NEPA analysis, assessment, and evaluation. This is the type of situation NEPA was intended to prevent, not to promote.

5) Require that all reasonable alternatives be covered in EIS/EA as stated in Section 1502.14(a). Currently, agencies often offer few if any reasonable alternatives. For instance, many timber sales and other ground disturbing projects on National Forests in North Carolina, Tennessee, and Virginia offer only two alternatives for analysis. These two alternatives generally consist of the "No action alternative", which NEPA requires be in each EIS/EA, and an "Action Alternative", which is the proposed logging and/or road-building action the Forest Service wanted and approved. This type of action, which is common, certainly does not reflect the NEPA/CEQ requirement that "all reasonable alternatives" be considered.

6) Require that all CEQ rules that apply to EIS, also apply to EA. Since EA's play the vital role of determining whether an EIS is required, and are being utilized more and more frequently by Forest managers, it seems logical that the same rules in preparing an EIS should apply to an EA. With far more guidance, both through statute and caselaw, directed towards the requirements of an EIS, simply applying those same standards to an EA only makes sense.

CQ623

September 20th, 2002

Page 3

7) Most "delays" that NEPA supposedly cause are usually caused by the agencies that do not implement NEPA, NFMA, ESA, MBTA, or other federal laws as required by law (including past court cases, CEQ regs, and internal NEPA regs.) Often the only recourse concerned citizens and grassroots groups have to remedy unlawful agency action is a lawsuit. To blame citizens for exercising their rights to participate in the management of our public lands is absurd and distinctly un-American in character. Appeasing powerful special interests by eliminating pesky concerned citizens is the likely result of the proposed NEPA reform, and that hardly seems an appropriate goal for the management of our public lands.

8) Require that agency NEPA implementing regulations mirror CEQ regulations and do not re-interpret what NEPA and CEQ require to the disadvantage of our public lands.

9) Require that projects cannot be segmented, ever. Especially with regard to road construction projects, the Forest Service, FHWA, and other public agencies often propose small "segments" of a large, interconnected project to avoid thorough public scrutiny. The total impacts of many of these projects have never been analyzed, assessed, or evaluated. Instead citizens are flooded with numerous individual EIS's or EA's that hide the true magnitude of cumulative impacts from the segmented project. Segmentation should be further discouraged. See Section 1502.4.

10) By emasculating NEPA the Bush Administration will take away one of the most citizen friendly involvement laws in existence. There is very little opportunity for most citizens to get involved in public decision-making because there are few laws at the local and state level which mandate/allow citizen participation and involvement. NEPA allows a community to ask questions and hold officials accountable for projects occurring on public lands or with public dollars in their backyard. Anything which reduces or lessens citizen participation under NEPA will weaken our democratic form of government. NEPA offers citizens the opportunity to force compliance with applicable law and to make their wishes known. Without NEPA citizens will lose an effective mechanism for creating true democratic results.

11) Do not exempt fire fighting and fuel reduction projects, defense projects, mining projects, oil/gas projects, and other projects from NEPA documentation. We need a more inclusive use of NEPA, not less so. Fire fighting and fuel reduction projects need to be planned carefully to ensure they do not harm the very environment they purport to protect. Bulldozing fire lanes, clear-cut logging, destruction/damage to streamside zones, are all products of fire fighting and fuel reduction projects. Defense projects can damage the environment as massively as projects by other agencies.

12) NEPA helps stop many wasteful taxpayer funded projects. By forcing agencies to disclose the true facts and impacts of a project, NEPA allows citizens to shine the light of honesty and responsibility onto agencies and public officials. Since the public are the owners of their government and public lands, that same public has a right to an honest analysis, assessment, and

CQ623

September 20th, 2002
Page 4

evaluation of how these assets will be treated. That was the original goal of NEPA, and should remain so. The current assault on NEPA would eliminate that valuable role, at the expense of the public, and for the benefit of only a few who seek to exploit what belongs to all for private gain.

We urge the Bush Administration not to destroy or wound the mother of environmental laws. NEPA truly is a remarkable document because it requires an agency to tell the truth. It is the power of truth that keeps NEPA modern and effective. Do not change NEPA to limit the public from participating in these public projects.

Sincerely,



Stephen H. Novak
Attorney for Appalachian Voices, SABP

Wildlaw
20 Battery Park Ave., Suite 405
Asheville, NC 28801



POSTNET
POSTNET
POSTNET
POSTNET
POSTNET



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

CQ623

84122+1150 14

