

CQ625

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

September 17, 2002

Dear NEPA Task Force:

Thank you for the opportunity to comment on the revision of the National Environmental Policy Act implementing regulations. I retired from the US Forest Service in 2000 after a thirty-year career, and worked with the NEPA regulations since their implementation. What began as a good law to protect the environment has become a regulatory maze that complicates even the simplest government action. The process is so complicated that much of the litigation brought against the government is based upon the government's failure to adequately follow the NEPA process. The process needs to be simplified and more thought given to what can be excluded from NEPA documentation. Agency appeal processes must be streamlined to allow excluded decisions to proceed without the possibility of administrative appeal. NEPA documentation should be the minimum necessary to adequately decide the proposed action. This means that each decision will address only those impacts pertinent to the proposed action. The Task Force will succeed if the process makes NEPA documentation easier, simpler, and more expedient.

Federal and Inter-government Collaboration. Most agencies work well together to jointly prepare NEPA documents, but there are times that each agency must issue a decisions document on the NEPA decision. This adds time to the process and duplicates the appeal and in some cases the litigation before final action. All collaboration must provide for a single decision document with one appeal process and litigation opportunity. Mineral decisions on acquired National Forest are a good example of problems with the current process. The Forest Service and BLM collaborate on the NEPA document for mineral actions, but each must issue a decisions document. These separate documents may be appealed and litigated through each agency for the same decision. This process double jeopardy is unnecessary and adds years to the processing time. It would seem appropriate for the Forest Service and BLM to make one decision on the surface and subsurface impacts of mineral development actions and use one appeal system for those decisions. CEQ could be an assistance by insuring that the agencies coordinate all aspects of NEPA beyond collaboration of NEPA documents. This would include NEPA decisions, NEPA appeal process, and litigation process.

Categorical Exclusions: The agencies are reluctant to use Exclusions from Documentation on the simplest decisions because they believe that they are not defensible in court. They are convinced that to prevail in court requires more documentation, that every impact be identified and discussed, and that all possibilities are analyzed. Each appeal or litigation requires review of the NEPA process to see if the process should be modified or additional impacts should be analyzed. One of the tests of NEPA document review is whether or not agency attorneys believe the document can be supported in court. This is part of the documentation dilemma for NEPA decisions, and

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some of what needs to be changed. One possibility is to allow the broader use of Categorical Exclusions from NEPA documentation. Almost all of the agencies have tightened the allowable exclusions to the point that few actions can be excluded and many deciding officers are choosing to do EIS' rather than use CE's on those actions that can be excluded. Greater emphasis needs to be placed on the use of CE's and support for decisions excluded from full documentation included as part of all agencies NEPA process.

Additional Areas for Consideration: One of the biggest problems with NEPA decisions is the time it takes the Agencies to complete the document and make a decision. In most cases this takes years and the outcome is uncertain throughout the process. The NEPA process needs to be streamlined and the documents required for the analysis (whether the decision document is an EIS, EA, or CE) clearly identified. The evolution of NEPA documentation has placed more and more information in the documents and increased analysis time substantially. The process needs to be simplified and developed in such a way that the government will prevail in court and be able to process decisions more quickly. The detail of analysis needs to be better defined and supported by CEQ.

Thank you again for the opportunity to comment and I hope that the NEPA can be improved and simplified.

Sincerely,



Robert M. Willis

President

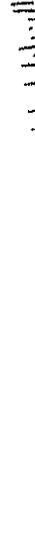
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