

# Wyoming State Legislature

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CQ656

House of Representatives

September 24, 2002

James L. Connaughton, Chairman  
Council on Environmental Quality  
Executive Office of the President  
722 Jackson Place  
N.W.  
Washington, D.C. 20503

REPRESENTATIVE CHARLES P. "PAT" CHILDERS  
House District 50  
Park County  
28 Equine Drive  
Cody, Wyoming 82414  
Committees:  
Revenue  
Minerals, Business and Economic Development  
Transportation of Oil, Gas and Minerals

Dear Mr. Connaughton,

I appreciate the opportunity to comment on the National Environmental Policy Act (NEPA), the NEPA Task Force, and possible NEPA reforms. In order to further envision my understanding of the issues and these comments, my background is as follows:

1. State legislator, representing Park County, Wyoming, since 1996. Help write and pass a state law to involve state and local government in NEPA document preparation.
2. Chemical Engineering degree with over 32 years experience in engineering, field supervision, and regulatory matters for Marathon Oil Company (MOC).
3. Extensively trained in NEPA. Attended three training seminars, coordinated three seminars for MOC and four seminars for local government officials which were sponsored by a four county economic development district. Communicated frequently with Federal NEPA coordinators and contract NEPA writers and educators. Worked frequently with county commissioners and officials with conservation districts to obtain "Cooperating Agency" status for those governments.
4. Worked on following NEPA & EIS/EA documents - Shoshone O&G Leasing EIS and recommended MOC intervene on side of FS in appeal by environmental organizations (We Won that one for the FS), Grey Wolf reintroduction EIS, Grass Creek RMP, BLM/FS Owl Creek EA for North American Wild Sheep EA, Green River RMP, Black Hills NFP, Medicine Bow NF, Several Gas Project EIS's in SW Wyoming, New World Mine EIS near Cooke City, Montana (That one unnecessarily cost the public more than \$60 million in my opinion), several EIS's in neighboring states, worked on proposed Colorado Environmental Coalition's Wilderness wish list for NW Colorado on BLM properties., and Cave Gulch/Waltman Gas Project EIS. Successfully got BLM approval for an EA rather than an EIS for a ten-well exploitation project for MOC in the Vermillion area on the Colorado/Wyoming border. Worked on several EA and EIS projects for forest, ranching, and recreation projects as well as EIS for roadless issue, FS security issue,

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etc. Served on economic subcommittee for Wyoming Resource Advisory Committee for BLM. Worked on and working on GT/YNP Winter Use EIS. There are other NEPA documents I've reviewed but I can't remember them all. One in particular was interesting - an EIS for rerouting Bureau of Recreation dam water temporarily back to a dry river bed for a summer Olympic event in the East - Was approved by FS with no environmental organization successfully opposing nor any apparent Corps of Engineers problems. How many timber, ranching, or oil & gas projects would have this scenario approved by a federal agency?

I commend the Council on Environmental Quality (CEQ) for forming the task force; however, I am disturbed that state and local government representatives nor professional non-government NEPA writers and educators were included on the task force. Perhaps, the major flaws in NEPA is that federal agencies fail to properly address Title I of NEPA - (1) Quoted in part- "---continuing policy of the Federal government, in cooperation with State and local governments, ---." and (2) "---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." In **Robertson v. Methow Valley Citizens Council, 1989**, the U.S. Supreme Court stated " If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh environmental costs."

I am assuming that I do not need to inform the task force that NEPA is a procedural law not an environmental protection law. In the late 1990's, I attended, as Marathon's representative, a Region 8 EPA seminar in Denver concerning NEPA and the EPA's coordination of NEPA. I had reviewed carefully the CEQ's memorandum, dated February 1993, to all agencies that instructed the agencies to "incorporate pollution prevention into NEPA" as well as the EPA's instruction to the BLM to also incorporate the CEQ's same suggestions. For me, that memorandum would be a direct violation of Congress's intent of NEPA as well as the Supreme Court's 1989 decision.

In most of the Wyoming related NEPA documents that I have reviewed, the agencies do a very poor job of preparing the "socioeconomic impacts" from the proposed action. Probably one of the best examples is the snow machine issue in Grand Teton and Yellowstone National Parks. From the start, the National Park Service (NPS) disregarded most of the socioeconomic impacts to Wyoming and the local communities in the initial Environmental Assessment. In Wyoming, we have a saying - "All roads lead to Yellowstone." In the context for socioeconomic impacts, both the state and local governments and the citizens of Wyoming provide an infrastructure to ease the means for citizens of other states and countries to travel to the Yellowstone area. That infrastructure includes the highways, government workers (law enforcement, etc.), motels, restaurants, chambers of commerce, volunteers, etc. Yet, not any of the original NPS's EA addressed the socioeconomic issues of the infrastructure nor have the various drafts of the EIS's being considered truly covered the state and local impacts. Please, remember that NEPA requires an "informed decision."

Many NEPA documents consist of essentially repeating the language from other NEPA documents as well as making the same decision determined in the other documents; yet for commercial proposed actions, the development of most of the NEPA documents initiate the study from scratch and result

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in excessive delays in the project or excessive document costs to the commercial sector. These actions, many times, result in the commercial venture not being done as well as the businesses failing or moving out of the area.

The CEQ regulations provide for tiering and incorporation by reference and many Presidential administrations have strongly urged the agencies to reduce and streamline their paperwork; however, the commercial EIS's and EA's continue to take more time and be more costly and bulky. Two examples - **Insect infestation in the National Forest** - Because of a serious beetle infestation on the North Fork of the Shoshone River in the Shoshone National Forest (bordering Yellowstone National Park), I have reviewed about twelve NEPA and pre-NEPA documents concerning insect infestation in the National Forests. All of the documents provide the same decision on handling the issue; yet the excessive time for analyzing and picking that decision many times resulted in an exponential expansion of tree loss as well as presenting an extreme fire danger to the humans and wildlife in the area. **Cave Gulch/Waltman Gas Project EIS**, near Casper, Wyoming, cost more than \$500,000 but had a Finding of No Significant Impact (FONSI) with the agency's Record of Decision (ROD) - the same recommendation by most of the public at scoping. This issue was a gas well drilling program's possible impact on raptors and their habitat.

For the insect infestation example, I understand that Categorical Exclusion (CEQ #1508.4) is not allowed. The Region Forester also indicated that the use of Emergencies (CEQ #1506.11) should not be used since repeated use of that section would result in insect infestation no longer being an emergency. Additionally, use of 1506.11 for the infested area along the North Fork is inappropriate since the emergency is over and the trees are dead. It is interesting that an inordinate amount of time has to be spent on a NEPA analysis for issues such as beetle infestation which, in turn, results in devastating the same area. Excellent operation, but the patient died!

The two examples can also be directly tied to the big issue of postcard appeals or protests of projects by the environmental community. The public and the commercial sector continue to have put up with bulky NEPA documents that cost many thousands of dollars; are prepared over an unreasonable amount of time; and result in decisions that are quite evident before the scoping even takes place. If the final decision were different, the cost and time to prepare the documents should be borne by the public or the commercial sector; however, if the decision is the same before and after, the environmental community should bear the burden. A better solution would be to require that the proof of any significant impacts to a proposal has to be provided by the environmental community before the NEPA analysis is initiated.

For the last suggestion, one important consideration is repeatedly ignored in NEPA. That issue is a "predator-prey" situation. Hunters, wolves, or raptors pursuing wildlife create a predator-prey situation. Many other uses of the public lands do not present a "predator-prey" situation. Examples: Using public lands - Ranchers herding cattle, mineral industry employees doing their jobs, snow machine owners riding across the landscape. It is correct that any wildlife is aware of the human presence; however, most of the time, the wildlife does not consider the human a predator. For most NEPA documents, the approach of the study is to initially assume that humans create a predator-prey

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situation and probably a "significant" impact. The agencies are trying to develop alternatives to minimize any "significant" impacts. For the previous examples and many other situations, perhaps a better approach to the study is not to automatically consider the human use of public lands to create a predator-prey situation.

I apologize for the lateness of my comments and, again, appreciate the opportunity to comments on this important subject.

Sincerely,

A handwritten signature in black ink that reads "Pat Childers". The signature is written in a cursive style and is positioned above the printed name.

Pat Childers

# FAX

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Horst

**ATTN.** James Connaughton

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**FROM** Pat Childers

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**SUBJECT**

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Number of Pages 5

Date 9/24/02

**MESSAGE**

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