

CEQ662



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>

To: <ceq\_nepa@fs.fed.us>  
cc: "stu" <slevit@wildlands.org>  
Subject: nepa comments

10/04/02 06:20 PM

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Dear CEQ:

I submitted these comments on Sept. 23, 2002. Steve Sosa (sp?) requested that I e-mail them to this address. I've learned that some of my e-mails in late September did not get sent properly and therefore am resending those that involve data or deadlines.

Please contact me if you have questions or need additonal assistance.

Thank you

-- Stu

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September 23, 2002

Council of Environmental Quality  
NEPA Task Force  
P.O. Box 221150  
Salt Lake City, UT 84122  
FAX: 801-517-1021  
Sent by Fax and mail  
RE: NEPA Task Force Comments

Dear Task Force:

Thank you for the opportunity to comment. If you want more specific examples supporting these comments please contact me.

NEPA is essential to public participation in, and understanding of, governmental actions affecting the human environment. Changes to any NEPA policy or procedure necessarily impacts

the public's ability and opportunity/right to participate in governmental decisions. Therefore, no change should be considered lightly, and no change should be implemented without full opportunity for public discourse and comment.

A.1. Printed and electronic reports from governmental agencies, particularly water quality reports such as 2-year 305(b) reports, 303(d) lists, fish and wildlife data from state reports and surveys, wetlands inventories, trend analyses, descriptive models, and GIS models and analyses.

A.2. Limited digital information is probably the greatest challenge for the public. While business has the resources to create new data and technology, the public does not have that capacity. Often this lack of capacity threatens the process because there is a sense, if not evidence, that business (and sometimes government) has created more data than is available to the public. This leads to the conclusion that NEPA analysis results are "fixed" or predetermined. The public must have equal access to all data considered and an explanation of all data not considered and why.

The greatest evaluation for data should be 1) its precision, 2) its accuracy, and 3) its source.

A.3. American Wildlands created a GIS-based course scale model that evaluates the biological integrity of watersheds at the 6th level hydrologic unit (huc). The analysis is complete for the Upper Missouri watershed and when complete will also include the Upper Columbia, Upper Yellowstone, and Upper Green watersheds. This information is available to interested parties. The greatest problem creating this model, and all NEPA related data, is the inconsistencies between different agencies' and states' data and data layers. One agency or state may maintain certain data that another agency or state does not. And the data may be maintained at a different scale or different mode/medium/software. These inconsistencies greatly affect the public's ability to assess data and information across political boundaries. If data is available to the public it may be expensive or limited quality or quantity, and the public still may not have all data necessary to understand and evaluate an action.

A.5. There is no "general" preferred way for AWL, or I think the public, to access data. There are times when a paper copy is appropriate and necessary to adequately evaluate and comment on a document. Other times a digital version is appropriate. The public should have the right to determine which it wants. At ALL times a digital version should be available via the internet/web sites or CD-ROM. The basis of AWL's preference is the depth of the need to evaluate. While often using a lot of paper, a paper copy is still the best and most adequate method of understanding and evaluating (and commenting on) data and information. While CDs are often easier to manipulate and search, nothing compares with reading the written word on paper. Additionally, digital versions require a computer, which may limit where, when, or who can read something. The cost of paper versions should NOT limit the public's access to these documents and data. However, it is quite reasonable for agencies to survey the public or interested individuals to determine how many of a document to prepare and send. That way 100 are not printed where 50 would suffice.

A.7. The concept of information security should be limited to information that is legally "classified." All other information/data should start from the position of being freely available to the public. That is a proposition upon which the US was formed. Where there is a need to limit the public's access to data, that data should be described and the reason explained for its being

classified. Where data or information is classified the public must also be given an opportunity to challenge the classification administratively and if necessary in court. The NEPA analysis must be either 1) be delayed when the public challenges the classification of information or data or 2) be reversed/reopened when the public is successful at challenging its denial to access the classified data/information. The purpose is to not impair the public's opportunity to comment and participate because of classified data or information. I cannot imagine what environmental information could itself be a security risk.

Where information security refers to computer security (hacking) the government should take steps to insure that data is secured behind firewalls and similar isolating mechanisms. I cannot imagine how making information available to the public could create a greater risk of hacking or sabotage than when information is not available to the public.

B.1-3. The greatest challenge to effective joint NEPA relationships seems to be when one agency/government is an advocate for a project and attempts to "push" or speed the proposal in a way that limits public participation or impairs the process. In Montana, the Bureau of Land Management and state Department of Environmental Quality completed a NEPA analysis for coal bed methane development. The BLM clearly wanted to push the proposal more than DEQ, and as a result issues a poorly analyzed and poorly considered draft document. This wasted not only agency time and money (which is in fact the public's) but the public's direct time and money. Agencies should not be "advocates" which becomes particularly apparent when there is joint agency relationships.

C.1-2. Tiered and programmatic analysis can be a very effective tool, however it can also confuse issues and the public. Therefore, their use should be limited to specific instances where the scope and scale of an analysis specifically demands such analysis. In Montana, the state and BLM recently completed a programmatic analysis of coal bed methane impacts to water quality. The analysis did lend itself to a broad-scale geographic analysis because of the differing chemical and physiographic features in the area considered. As a result, the agencies will have to complete site-specific analysis that will often repeat, and contradict, the programmatic analysis. The public is left with two often conflicting analyses, that supposedly build on each other and are supposed to be consistent with state and federal law. The process thus did not programmatically review anything that will inform or help the permitting process or the agencies' "hard look." The process also alienates and confuses the public that it was supposed to inform. It seems that such an analysis can only be effective if it is of a logically limited scope. That way, the analysis is logically geographically tied to the resource at issue. Too broad an analysis will confuse the issue and public; too narrow will not be expedient or economical.

Tiering poses a special challenge because of the possibility of changing circumstances. A tiered analysis must in future analyses account for changed or changing circumstances.

F. It is important to remember that a critical element of NEPA and NEPA implementation is to inform and involve the public. The public's right and ability to participate in agency decision making must not be impaired by efforts to streamline or speed analyses. New technologies, such as the internet and GIS mapping and models, improves the ability of agencies to take the requisite "hard look" at proposed actions. But the government must "take the public along" as it

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advances its capacities. To this end, public participation has a great opportunity to be increased and public involvement made more effective and meaningful. I hope the Task Force will not lose this opportunity to expand the public's role.

Thank you for considering these comments. Please contact me if you need additional information or assistance.

Sincerely,

Stuart M. Levit  
Staff Attorney