

January 23, 2005

NEPA Draft Report Comments  
C/o NEPA TaskForce  
Committee on Resources  
1324 Longworth House Office Building  
Washington, D.C. 20510

Reference: NEPA Draft Report Initial Findings and Draft Recommendations December 21, 2005

To Whom It May Concern:

Thank you for the opportunity to submit comments on the subject draft report. The California Forestry Association (CFA) is a trade association whose members consist of forest products producers, forest landowners and natural resource professionals committed to environmentally sound policies, responsible forestry, and sustainable use of natural resources. Our members process over 90 percent of the wood products manufactured in the state of California and many are dependent on wood from public lands.

We would like to offer specific comments on Recommendation 1.1: defining a “major federal action” (NEPA Sec. 102(C)).

Without a statutory definition for “major federal action”, the indirect effect has been to leave it to the Courts to define it for the Federal Government over the past 35 years. The result now is that some Federal Agencies, including the United States Forest Service, spend 40 percent or more of their annual appropriations on analysis, preparation, appeals and litigation of NEPA documents. The result has been a disaster. Not only are a sizeable percentage of scarce monetary resources wasted, but also many needed projects never are implemented simply due to the stall tactics of litigants.

We do not believe in 1969 that Congress had in mind that the Forest Service would have to prepare Environmental Impact Statements (EISs) for projects that maintained the health of the public’s national forests. If it did, then there are multitudes of Federal Agencies that should also be preparing EISs for their projects that implement annual programs. Some examples include but are not limited to:

NASA – Surely every space launch, particularly the space shuttle launches, are “major federal actions” as currently defined by the Courts. Clearly, the space shuttle launches spew tons of emissions into the atmosphere from the spent rocket fuel and have other potential direct effects on humans (including loss of life and property) and thus are major federal actions that have direct, indirect, and cumulative effects on the “quality of the human environment.” Yet I do not ever recall seeing NASA produce any EISs for their individual activities.

The Federal Reserve Bank – Surely every time the Fed raises or lowers interest rates, there are direct, indirect, and cumulative effects on the “quality of the human environment.” Yet, I don’t ever recall seeing a federal register notice from the Fed regarding preparing an EIS and allowing for public comment and opportunity to litigate prior to the Fed taking an action.

The Congress and its annual appropriations – Clearly each annual appropriation, generally 100’s of billions of dollars each, have direct, indirect, and cumulative effects on “the quality of the human environment”. Section 102(C) clearly states that “proposals for legislation . . . significantly affecting the quality of the human environment . . . [shall have a] detailed statement by the responsible official on the environmental impact of the proposed action . . .”.

I believe each of the 13 annual appropriations bills passed by Congress for the President’s consideration are “proposals for legislation” (NEPA, Section 102(C)) and, therefore, each annual appropriation bill is required to have an accompanying EIS including the opportunity for the public to comment and litigate. Yet, I don’t ever recall any federal register notice by Congress alerting the public to a NEPA process for each annual appropriation bill.

I suspect Congress understands that if it subjected itself to NEPA procedures, nothing would ever get accomplished. So it goes for most of the Executive Branch Agencies. So it’s time for Congress to fess up and define “major federal action” appropriately.

In summary, if Congress is going to truly do needed reform to the NEPA statute, it must define “major federal action” in a meaningful way. And, if Congress is not going to subject itself to NEPA, then they should define “major federal action” accordingly. An example definition might be “only those actions that exceed 200 billion dollars in initial project cost (in 2005 dollars)”.

/s/ Steven A. Brink

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