



House Committee on Natural Resources
Attn: Congressman McMorris, chair of NEPA re-organization in the HOUSE
nepataskforce@mail.house.gov

RE: National Environmental Policy Act – NEPA – draft comments

Ladies and Gentlemen:

These observations about NEPA and agency actions, often inaction that leads to litigation are being offered as a result of 30 years of frustration with multiple agencies as a small public citizen non-profit advocacy group that has consistently demanded reasonable protection of public natural resources that coastal fishing communities rely on to be economically viable and promote safety at sea of our fishing fleet. Our organization has been in federal court as an action of last resort on two separate occasions and won both times when the US Army Corps of Engineers perpetrated crimes against natural resources and marine safety that were absolutely intolerable and well outside the confines of the law. Reasonable alternatives were grossly ignored and information presented so grossly distorted that litigation was necessary to protect the public from unreasonable government actions.

The National Environmental Policy Act is the public's only interface with most federal actions; is our basic national charter for protection of our environment; is supposed to insure environmental information is available to and used in decision-making BEFORE decisions are made. NEPA is designed to promote BETTER decisions and proceed with the best alternative that must be environmentally sensitive and compared to NO action at all.

NEPA is based primarily on examining reasonable alternatives to the proposed action that avoid or minimize adverse effects and restore the quality to our present environment. The last 200 years of our nation's history have been to build necessary infrastructure with little environmental concern. Today our emphasis is changing to include necessary ecosystem effects in our nation's decision-making process, a change that many agencies have not yet been able embrace.

Most agency action does not bring the public into the NEPA process HONESTLY soon enough to make a SIGNIFICANT contribution to the final outcome; setting up a climate ripe for litigation where the very process leads to adversarial positioning of us against them = litigation.

Far too many agencies have a predetermined outcome and develop ALL their science to support that outcome even to the extent of manipulating facts during the public process. A classic example is always averaging results instead of revealing the full range of impacts; a procedure that distorts the picture completely and often leads to increases in environmental impact and the WRONG decision when a reasonable alternative that could have minimized impact is purposefully concealed = litigation.

More often than not many agencies actively attempt to circumvent the spirit of NEPA and set out from the onset of a proposed project by asking the WRONG question. They do not ask, "How can we comply with the law?" they ask, "How can we get around the law?" When your total emphasis and actions are designed from the very beginning to circumvent the law instead of complying with it = litigation.

The educational level of the average citizen in the United States is increasing exponentially in that the Internet provides a tremendous resource available instantly.

Ideas can be shared across a broad spectrum of affected parties instantly. The public can educate themselves on a broad range of topics instantly. Experts in any field from around the world can be accessed instantly. Agencies are no longer the Guru's that cannot be challenged as they perpetrated command-control actions prevalent in the past. The public now knows every time when the wool is being pulled over their eyes = litigation.

Agencies command-control activities of the past are no longer acceptable to the affected public, a public that has NEVER been accepted into the collaborative process in any meaningful or timely manner = litigation.

Individuals within an agency are never held accountable for their actions. There are no consequences for falsifying a report or presenting facts that do not reveal the true nature of the impact or blatantly omitting critical information or refusing to supply the public with requested information; pay day is still on Friday, every time = litigation.

To put it bluntly, the educated public has had enough and is banding together in alliances that supply necessary funding to litigate their way into the process that is out of control. Either these agencies are going to accept the public into the process in a meaningful manner from the beginning to build a truly collaborative partnership or = litigation.

Lip service to the collaborative process will fail. All affected parties must be accepted as partners in the process. In every project there are actions that are deal breakers that = litigation. These actions that = litigation must be identified very early in the process and addressed in such a manner that the affected party concerns are not automatically rejected. Most action groups have impact thresholds they can accept if HONEST avoidance measures are visibly in place; actions have HONESTLY attempted to minimize impact; and unavoidable impacts have some degree of HONEST replacement mitigation. Avoid, minimize, mitigate impacts are very, very important concepts that all too often ignored with the final result = litigation.

Access by the PUBLIC to all information used in the decision-making is a critical component. That information must be well indexed, fully page numbered so that anyone can find a specific bit of information readily, and must be electronically searchable in a fashion that ordinary citizens can readily use. As long as documents are scanned, non-readable, purposefully composed to hide vital information, and no way of cross-referencing = litigation.

Some agencies understand that information is POWER, power they are quite determined to maintain even resorting to ruthless tactics. They will restrict e-mail correspondence. They will place embargos on their employees that prevent the employee from responding to information requests. They will reduce correspondence to telephone answering machines they never answer. They will demand use of snail mail (US Postal Service) and will even in the best of circumstances take two to three months or more to respond to information requests that could easily be handled in 24-48 hours using modern electronics, and in some instances even refuse vital information or place excessive charges to obtain, purposefully forcing litigation knowing the time frame of the public process for a project will be over before the information becomes public and will not be available for consideration in the final decision-making process = litigation.

The opportunity for agency discretion in decision-making involving scientific integrity is way out of bounds and actual flim-flam is supported by court decisions to the extent agencies are under NO obligation under NEPA to ensure scientific integrity and are allowed to rely on opinions that allow unreliable studies and information even when the agency experts lack proper qualifications and rely on flawed data that is often manipulated which is evidenced and supported by in many court cases such as: Hells Canyon Preservation Council v Jacoby (1998); Price Rd. neighborhood Ass'n v US Dept of Transportation (1997); Greenpeace v Franklin (1992); and Marsh v Oregon Natural Resource Council (1989); cases all cited in the Draft EIS response of the Columbia River Deepening Project responding to Paul King's comments spawning ROGUE attitudes in agency actions that solicit = litigation.

All too often current "least cost" is the over-riding and final decision factor in too many projects. Environmental concerns are almost always relegated to a position of insignificance, in effect a FONSI, time and time again. When the comparison of impact is compared to the entire universe of ecological range, FONSI is always the outcome. Local cumulative impacts over time are never adequately adjusted into the current project which is almost always considered in isolation, and often huge projects are broken down and advanced as several smaller projects so as to avoid dealing with cumulative impacts and the TRUE significance of impact avoided = litigation.

At times the requirements are changed mid-stream and the public process response time is not extended meaning that the new requirement is not publicly addressed = litigation.

Adaptive Management is a new "RUSE" that means the project will move forward and negative impacts will not be addressed. A very high percentage of US Army Corps Projects never complete the stated mitigation let alone Adaptive Management concerns related to ecosystems. The public is catching on to this tactic and it will = litigation.

The majority of the public realizes that public infrastructure, especially related to transportation of the public, goods, and services is vitally important to our every day standard of living and are more than willing to accept SOME degree of environmental impacts to maintain our very high standards that consume a disproportionate percentage of the global resources. There is a small element within our society that places preservation of the environment to such a high standard that process alone will never satisfy; there is probably nothing we can do and must accept this as a fact of life that some litigation will always exist = litigation.

Fact: the United States has approximately 7% of the world's population, 70% of the world's attorneys that are all hungry for high paying jobs, and a legal nightmare that is growing exponentially as thousands of new laws are enacted each and every year. Without limited entry on new attorneys, litigation will continue to proliferate at an escalating rate = litigation.

We could site many examples to support our suggestions of what = litigation, but we believe these comments are a common thread you will hear over and over again and will demand action to correct. The PUBLIC is the new federal agency that will no longer be denied access to the process of environmental protection. Until this new "PUBLIC AGENCY" is recognized and accepted as a significant partner in the entire process of complying with NEPA regulation = litigation.

All affected and interested parties must be at the table in a significant decision making capacity from the beginning to end of a project, scientific integrity must be promoted, environmental impacts must be avoided, minimized and mitigated, cumulative impacts need to be continually addressed, Current "LEAST COST" must not be the exclusive driver of a project, ALL decision-making information must be made available to the public in such a manner that the information actually is able to be used to make the best informed decisions, public hearings must be conducted in such a manner that all involved are given adequate time to present their testimony that is able to be shared with all others in the process as it advances, not after it is done, and above all else pre-determined outcomes must not be the beginning premise. In a word, all-inclusive TRANSPARENCY of process that upholds the integrity of its action has to become central to reduce litigation; the public in general has had enough and is more than capable of sniffing out projects that are not in their best overall environmental interest. The new "PUBLIC" agency will not be denied and their RIGHT to litigation must be upheld or our democratic process will continue to fail – our forefathers got it RIGHT – there are three branches of government for a reason – to protect the "PUBLIC" from an over-bearing government, a government that at times forgets they are there to serve, not dictate the course or lack of environmental conservation.

As our population expands, environmental conservation (not preservation) will continue to come to the forefront of "PUBLIC" demands on government. In Oregon this past year a super-majority (61%) of the states voting population voted against lock up of the Clatsop Forest, and offered an indictment that sustainable use of our natural resources and ecosystems is essential to maintaining our standard of living that demands a high degree of conservation into the future that is protected by agency transparency and inclusion of the PUBLIC from beginning to end of a project that thoroughly protects local communities from federal abuse or the result will be escalating = litigation.

Open public processes that willingly embrace the full NEPA affect, timely presentation of the real well supported facts, accountabilities at the local level, consistent with national objectives and a process that allows all those affected and interested to participate in the process of accepting or, yes, even rejecting a federally funded project using HONEST transparency will greatly reduce litigation. ROGUE agency actions certainly need to be reigned in and an HONEST collaborative effort that includes the NEW PUBLIC is essential, thanks to modern internet, a tremendous resource that will direct a lot of government in the future, not just NEPA.

In addition to these specific comments CRCFA has signed on to the letter from Corps Reform Network and believe that to be a very good presentation.

Respectfully and thoughtfully submitted,

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