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"STEWARDSHIP IN FORESTRY"

February 6, 2006

NEPA Draft Report Comments
c/o NEPA Task Force
Committee on Resources
1324 Longworth House Office Building
Washington D. C.

Dear Task Force:

The Oregon Department of Forestry appreciates the work that the Task Force has done. We recognize that making changes to the National Environmental Policy Act (NEPA) is an extremely complex and difficult issue, and hope we can help by providing the perspective of a state forestry agency.

We fully support the underlying purposes of NEPA: to increase public involvement in federal decision-making, to consider alternatives that reduce environmental damage, and to balance economic and environmental goals. However, over the years the scope, complexity, and cost of preparing an Environmental Impact Statement have grown to the point where NEPA analysis has become a significant factor in the implementation of forest projects, which are frequently time sensitive. Therefore, we concur with the Task Force's goals to streamline the NEPA process, reduce project delays, and clarify some of the aspects of NEPA that have led to litigation.

Comments on specific recommendations from the NEPA Task Force are attached to this letter.

Sincerely,

Marvin D. Brown
Oregon State Forester

cc. Mike Carrier

Attachment

ATTACHMENT

Recommendations 1.1 (Define ‘major federal action’) **and 1.3** (Create unambiguous criteria for CE, EA, and EIS) – We support recommendations to better define when a NEPA analysis is required and what type of analysis is best suited to the decision that is being made. The cost and effort used to make a decision should be commensurate with the scope of the issue that is being dealt with, and the level of analysis should reflect the importance of the decision. Without clear direction from Congress, this issue becomes a persistent point of disagreement among interests.

Recommendation 1.2 (Add mandatory timelines) – The increasing length of time it takes to make a NEPA decision is one of our key concerns and one that is shared by many constituent groups that rely on federal decisions. Post-fire restoration plans are a good example of the current time related problems with NEPA. Without presupposing whether any specific fire should be salvaged, conducting an appropriate analysis to make that decision is moot when the time involved ultimately insures that the standing trees have lost most of their wood production value. The complexity and length of EIS’s and other NEPA documents has grown to the point where post-fire salvage operations normally take between one and three years to implement.

The merchantable value of small and mid-sized diameter trees is especially time sensitive, and delays in harvesting may result in substantial or complete loss of value from these trees. The reduced value of the smaller trees means that most or all of the economic value in the stand is contained in the larger trees that are also most valuable as future stand structure and wildlife habitat. One-way to help address this issue is to reduce the time associated with planning and implementing salvage-sales. Reducing the time it takes to plan and implement a salvage-sale would allow more of the value of the small and mid-diameter trees to be captured and allow greater flexibility to leave larger trees, while still maintaining the economic viability of the timber sale. Speeding up the process of salvage sales would also allow managers to reduce fuel-loading before natural forest regeneration occurs.

Recommendation 2.2 (Codify EIS page limits) – The size and complexity of an EIS has grown exponentially in the last 35 years. We believe that the current size of an EIS is far in excess of what was intended when the legislation was passed and what is needed to make an informed decision. Overtime court decisions have demanded more data and analysis in an EIS until the average EIS is now over 700 pages in length and reads like a doctoral dissertation. A recent case, *Ecology Center v. Austin* (Ninth Circuit, 2005), provides a good example of the problem. In his dissenting opinion Judge McKeown wrote, “The administrative record in the case is huge – a 1900+ page Final Environmental Impact Statement (FEIS), 150 detailed maps and 20,000 pages of background information. The majority highlights only parts of this record, criticizes the qualifications of the Forest Service’s personnel, and questions various scientific judgments. In faulting the Forest Service’s soil quality analysis and concluding that old-growth forest will not be impaired, the majority changes our posture of review to one where we sit at the table with Forest Service scientists and second-guess the minutiae of

the decisionmaking process.” All of this work was conducted to make a decision that would be routinely made on state or private forestland within a few months. Instead the Forest Service produced a vast volume of information in an effort to “bullet proof” their decision. Unfortunately it didn’t work.

Mandating size limits for EIS’s will not completely solve this problem. Congress should define, or direct CEQ to define, how much analysis is needed to make a decision. Judicial review standards like “arbitrary and capricious” and “hard look” should be examined and codified. Without this type of guidance, decisions made with shorter, 150 page EIS’s, stand little chance of passing judicial review standards.

Recommendation 4.1 (Amend NEPA suit provisions) – We fully support the concept of introducing requirements for participation throughout the process in order to gain legal standing in a court case. We believe this requirement would greatly enhance the quality of public participation and allow the agency to respond to public concerns before decisions are made.

Recommendation 5.2 (Consideration of the environmental impact of not taking an action) – Greater consideration of the consequences of choosing the “no action alternative” would be an important improvement to the NEPA process. The Committee should also consider adopting language similar to what was adopted by Congress in the Healthy Forest Restoration Act. In essence that bill required the courts to balance the short-term environmental risks of a project against the long-term environmental benefits of taking an action.

Recommendation 7.2 (Control NEPA related costs) – Current estimates show that the Forest Service is spending about 40 percent of its budget on planning and analyzing projects. From the standpoint of limited public funds, this level of expenditure negatively affects their ability to implement projects on the ground. CEQ should analyze the cost of NEPA compliance for specific types of projects and Congress should set some limits on expenditures as one means of bringing the scope of analysis back in line with the scope of a proposed action.

Recommendation 9.1 (NEPA’s interaction with other federal laws) – Many long-standing state and federal laws include requirements for public participation and processes for decision-making. An example of this is the National Forest Management Act. Laws like this should be examined by CEQ to determine whether there is significant overlap in the requirements. Where overlapping requirements exist, the processes in the other laws should be considered as a responsible way to substitute for additional NEPA imposed expenditure of public funds.