

February 3, 2006

NEPA Draft Report Comments  
c/o NEPA Task Force  
Committee on Resources  
1324 Longworth House Office Building  
Washington, DC 20515

It is indeed unfortunate that while the President keeps calling for our leaders that represent the American people to work together, certain Republicans continue to obfuscate their responsibilities in an extraordinarily partisan matter. The NEPA Task Force Report we are being asked to comment on was drafted entirely by Republicans without any input from the Democratic members of the Task Force. As a Republican I am deeply offended. This draft report does not carry any weight considering the conditions upon which it was drafted. Rep. McMorris should be particularly ashamed of her partisan efforts.

The report recommends significantly weakening NEPA in profound and fundamental ways, despite the fact that 10 former members of the Council on Environmental Quality - representing both political parties - and more than 200 law professors have said that NEPA does not need any legislative changes. Of the 22 proposals in the draft report, 13 of them would amend existing statutory law, including re-writing key definitions within NEPA, and throw into disarray established jurisprudence and common law.

As a biologist who has worked with state agencies, as well as the Forest Service, BLM, and the former Soil Conservation Service, it is my experience that nothing is wrong with NEPA. It works just fine. The problem is with the implementation, or more often than not, lack thereof. Public land management agencies in particular appear to be the worst offenders. The Forest Service and BLM currently violate NEPA on an almost daily basis. Conservation groups have demonstrated this point over and over through successful litigation, where often judges appointed by Republican Administrations, have found the agencies guilty of violating the law. NEPA is not violated because it is difficult to implement – it is violated because of political interference in public land management. Instead of demanding that federal officials uphold the laws that protect our environment, this task force has recommended the entire law be gutted.

NEPA is a simple bill - short, sweet and to the point. It is not difficult to understand or implement. It is a beacon of democracy allowing the American people to engage their

government through public participation on issues of importance to them. Prior to the Bush Administration, this was a premise embraced by all former Administrations, Republican and Democrat alike.

Although the report acknowledges that public participation is fundamental to NEPA's success, the Task Force has made several recommendations that dramatically limit who, when, and how the public can participate in all levels of the NEPA process. Putting limits on public involvement and our right to challenge harmful projects or reducing adequate review of major projects won't avoid controversy or improve projects. It will simply result in additional litigation where the federal government will be found to be a habitual lawbreaker. NEPA saves time and money in the long run by reducing controversy, building consensus, and ensuring that a project is implemented correctly the first time.

I object particularly to the following recommendations in the draft report:

- 1) Add mandatory timelines for the completion of NEPA documentation and only allow for occasional extensions. This will effectively end environmental analyses by allowing agencies to stall for time and then declare the analysis finished.
- 2) Place significant restrictions on a citizen's ability to participate in the public process and to challenge an agency's decision-making process that would unfairly tip the balance in favor of business interests rather than keeping the playing field even for all parties concerned.
- 3) Require that "reasonable alternatives," including those proposed by individual citizens or community groups, be supported by "feasibility and engineering studies." Ordinary citizens and grassroots organizations don't have the technical or financial resources to prepare such studies. The industry on the other hand, has ample resources to do so and would clearly receive favored treatment under this requirement.
- 4) Limit the types of projects subject to NEPA review by redefining "major federal action". Changing the definition disregards the core purpose of NEPA which is to answer the question "does the action have a significant impact on the quality of the human environment?"
- 5) Restricts an agency's ability to consider future impacts. This recommendation does away with an agency's obligation to determine reasonably foreseeable impacts at the project level— a current duty that is not a burden on public land management agencies that have Management Plans developed for 15-10 year terms and that already look at future management.
- 6) Create new criteria for the use of CE's, EA's, and EIS's. This is a blatant attempt to entirely circumvent NEPA and allow only minimal analysis of a project's impacts through the use of more CE's. NEPA currently provides clear direction for classifying activities for different levels of environmental review that allow agencies and the public the ability to uncover potential environmental impacts of particular actions.
- 7) Limit agencies flexibility to introduce new information. Instead of adding clarification, the draft report's recommendation arbitrarily eliminated a portion of CEQ's regulations concerning when it is appropriate to supplement a NEPA analysis. Existing CEQ regs already make clear that supplementation is only required if substantial changes in agency action or significant new information relevant to environmental concerns are made.

- 8) Require agencies to disregard the “no action alternative.” NEPA’s purpose in requiring the no action alternative is for use as a comparison. What the proposed action will do compared with doing nothing. It is critically important information for determining the level of potential impacts. This recommendation is purely political and not based on good science required in public land management.
- 9) Eliminates agencies responsibility to evaluate cumulative impacts. The draft report recommends “an agency’s assessment of existing environmental conditions” can serve as the “methodology to account for past actions.” This mixes apples with oranges. As technology and science advances, so will methodologies. In addition, existing environmental conditions may or may not be related to past actions. Again, this recommendation was made by people unfamiliar with scientific analysis in an attempt to further politicize the NEPA process.

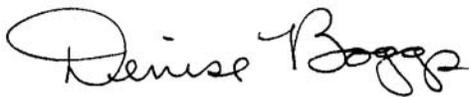
At its most basic level NEPA is about having an informed democracy. NEPA is also the guarantee that Americans affected by a major federal action will get the best information about its impacts on the community, a choice of good design alternatives to minimize damage, and the right to have our voice heard before the government makes a final decision. NEPA ensures balance, common sense and openness in federal decision-making; it is an effective tool to maintain a ‘checks and balance’ in government.

The recommendations to amend NEPA and embark on drastic regulatory changes that reduce public participation should be rejected. NEPA does not need any legislative changes.

If the Task Force wants to *improve* NEPA it should make the following recommendations: Require monitoring and reporting of project impacts, improve management oversight by providing agency personnel with adequate training and resources, and make mitigation promises mandatory. These are all good ideas that should be considered and do not require amending NEPA or its regulations.

I strongly urge the Task Force recommendations be soundly rejected.

Sincerely,



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Executive Director