CEQ NEPA Implementing Regulation Working Group

Meeting Minutes

Date: August 7, 2018

Time: 4:00 PM

Present: Aaron Szabo, Ted Boling, Viktoria Seale, Dan Schneider, Mario Loyola, Michael Drummond, Katherine Smith, Yardena Mansoor, Steven Barnett, Tom Sharp
From: Charlotte Roe <charlotteeroe@yahoo.com>
Date: August 20, 2018 at 4:04:40 PM CDT
To: Mary Neumayr <Privacy>
Cc: "Boling, Ted A. EOP/CEQ" <Privacy>
Subject: [EXTERNAL] Comments re ANKPRM - Proposed Procedural Revisions of NEPA

I’m submitting these comments via email as I had trouble accessing the Federal eRulemaking portal. Thank you for accepting them. Roe

August 19, 2018

Mary Neumayr, Chief of Staff Council on Environmental Quality 730 Jackson Place NW Washington, DC 20503

RE: Request for Comment, Advanced Notice of Rulemaking Change (ANPRM) to Regulations Implementing the National Environmental Policy Act (83 Fed Reg 28591-28592 June 20, 2018)

Dear Ms. Neumayr,

Thank you for the opportunity to comment on the ANPRM under consideration by the Council on Environmental Quality.

On behalf of In Defense of Animals and The Cloud Foundation, I strongly object to the proposed revisions contained in the Advanced Notice of Proposed Rulemaking (ANPRM) issued by the Council on Environmental Quality with respect to regulations implementing the National Environmental Policy Act (NEPA). CEQ was founded to be a facilitator of robust environmental review and a pillar of the National Environmental Policy Act, our magna carta for environmental protection.

The proposed rule changes are just the opposite. They represent an effort to dismantle these vital regulations that have stood the test of time for decades. They would open the door for commercial interests to block meaningful engagement by the American public and the science community. This has already begun to take place by the Department of Interior’s use of Determination of NEPA Adequacy, a procedure not now in the CEQ regulations, that is being used to bypass citizen participation in, or knowledge of, environmental review processes. This is violating an essential public trust. We will not stand silent in the face of such disrespect for the intent and purpose of the National Environmental Policy Act.

I request that CEQ withdraw these proposed rule changes and instead focus on training and education to promote more effective NEPA implementation by federal agencies.

With respect to the proposed categories, should this ill-advised process continue, I offer the following comments:

1. As to the first question regarding multiple agencies: No changes are necessary. CEQ is already empowered to encourage timely, efficient inter-agency and multiple agency environmental reviews under Section 1502.2 of CEQ regulations. The best rule to avoid government over-reach or bureaucratic confusion is always: “If it’s not broken, don’t fix it.” This needs no fixing.
2. Should the NEPA process be made more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions? No. This issue is fully addressed by Section 1501.6(a)(2) of the CEQ regulations. If agencies are not implementing this regulation, the flaw needs to be addressed by better training and leadership, not by more bureaucracy.

3. Should CEQ’s NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions? No. Section 1501.6 of the CEQ regulations adequately addresses the need for agency cooperation, encourages early agency cooperation, and spells out procedures such as the lead agency inviting others to be cooperating entities. If this process has broken down in some instances, it is not due to a defect in the regulations but, instead a failure on the part of the agencies. More effective CEQ leadership could help address any gaps in implementation.

4. With reference to the question of format and page length of NEPA documents and time limits for completion: **No revision is needed.** The pertinent regulations, Section 1502.10 (format), Section 1502.7 (page limit), and Section 1501.8 (time limit) already allow for flexibility and common sense measures depending on project size and the nature of the environmental issue. No rule-making change is needed to improve on this guidance.

5. Should rules be revised to ensure NEPA documents better focus on significant issues that are relevant and useful to decision makers and the public? No. The CEQ requirements regarding significance outline a bare minimum of what is required to fulfill the purposes and requirements of NEPA. Substantial case law advises the agencies, the public, and regulated communities providing greater assurance and detail regarding the level of analysis required.

If CEQ wishes to revisit the question of when an EIS is required, it should only strengthen the basis upon which a full environmental review is triggered. In that case, the “intensity” factors calling for an EIS should be broadened to include those such as: a) the degree to which members of the general public and members of the affected community are concerned about the proposed action and its environmental, social, cultural and historical impacts; b) the degree to which the proposed action may impact the future genetic viability of a species, including wild horse and burro herds; and c) the degree to which the proposed action may affect the public’s ability to benefit from the preservation of a federally protected species, whether through photography, on-range documentation and monitoring, or tourist activity benefiting the local economy.

6. Should the provisions in CEQ’s NEPA regulations relating to public involvement be revised to be more inclusive and efficient? **No changes are needed at this time.** However, if this rulemaking process proceeds, the public’s role should be expanded to require comments when changing or defining the categories of actions that may fall under a categorical exclusion (CE).

7. Should definitions of any key NEPA terms in CEQ’s NEPA regulations, such as those listed below, be revised? No. These definitions are fine in themselves. Their definitions are clarified by case law and best practices, in our American system based on rule of law.

8. Should any new definitions of key NEPA terms be added? No. Any effort to add definitions to those which have been working over the life of the statute would only serve to confuse new practitioners. It would undermine the purpose and intent of NEPA.
9. Should the provisions in CEQ's NEPA regulations relating to any of the types of documents noted be revised? No. Nonetheless, should this process continue, the following should be clarified and strengthened: Supplements -

CEQ should issue guidance on the use of documents or procedures used either to supplement NEPA review under Section 1502.9(c) of the CEQ regulations or to avoid such review. For example, the Department of Interior has increasingly used an agency protocol, Determination of NEPA Adequacy (DNAs), to bypass public comment, accountability and the need for environmental review. This is an unacceptable attack on the core purpose of NEPA.

10. Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised? No. Section 1501.2 of CEQ regulations clearly spells out the why and how to “Apply NEPA early in the process.” To revise these regulations can only lead to confusion, delay and NEPA avoidance.

11. Should the provisions in CEQ’s NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised? No. Nonetheless, if this process continues, we would accept a strengthening of Section 1506.5 of the CEQ regulations. This regulation states that contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. The execution of any disclosure statement under Section 1506.5 should be made public.

12. Should the provisions in CEQ’s NEPA regulations relating to programmatic NEPA documents and tiering be revised? No. Existing regulations allow agencies to tier off a programmatic EIS to avoid repetitive analyses of an issue and save energy while taking a thorough look at the case in hand.

13. Should the provisions in CEQ’s NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised? No. The consideration of alternatives is at the heart of the NEPA process, and this is emphasized in CEQ regulations. The determination of whether a certain alternative is appropriate depends, and must arise, from the facts of each case.

14. Are any provisions of the CEQ’s NEPA regulations currently obsolete? I do not recommend revising CEQ regulations on the pretext that a few references are out-dated. The question should be: Do such references harm or weaken the implementation of the statute? The answer is no.

15. Which provisions of the CEQ’s NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient? No. Nonetheless, without any change in regulations, CEQ could and should take the initiative to create a central collection of all NEPA documents including draft EISs, environmental assessments, preliminary EAs, finding of no significant impacts, categorical exclusions, and record of decisions along with appendices, comments and responses for any of the aforementioned documents.

16. Are there additional ways CEQ’s NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents? No, and no again. Section 1502.25 of the CEQ regulations states that agencies “shall prepare draft EISs concurrently with and integrated with other environmental reviews...” Combining NEPA environmental reviews and other decision documents would indelibly harm
public participation, as it would cause confusion and obfuscation. If that is the intent of this proposed rulemaking process, it should be dropped immediately.

17. Are there additional ways CEQ’s NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA? No, NEPA regulations have not impeded the capacities of federal agencies in their application of this vital legislation. On the contrary, the types of changes now being considered by CEQ would lead to delays and uncertainty and in all likelihood trigger litigation that would delay federal projects.

18. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ’s NEPA regulations? No changes are necessary in CEQ regulations to address this issue. If the rulemaking process continues, a revision of language should be considered to broaden the engagement of native American tribes whether or not cultural artifacts are identified on the present location of Indian reservations. For example, where Section 1503.1(a)(2)(ii) of the CEQ regulations reads, “when the effects may be on a reservation” it could best be replaced with the broader terms “if their interests may be affected,” so that the section reads: “Indian tribes, if their interests may be affected; and.”

19. Are there additional ways CEQ’s NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible? This question was answered in responses found above to questions 1, 2, 3, 4 & 17.

20. Are there additional ways CEQ’s NEPA regulations related to mitigation should be revised? No changes are needed to improve mitigation. CEQ’s “Final Guidance for Federal Departments and Agencies on the Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact,” should be followed by agencies which have in the past often downplayed the mitigation process. Mitigation is a crucial part of NEPA implementation and a prime responsibility of the agencies. The regulations are clear. They need to be followed.

Respectfully yours,

Charlotte Roe
Science Advisor, The Cloud Foundation
Wild Horse and Burro Project Partner, In Defense of Animals 1621 So. County Rd. 13
Berthoud, CO 80513
charlotteeroe@yahoo.com
Ted,

Can you please turn this email into a pdf and send it to me?

Thanks.

Sent from my iPhone

On Aug 20, 2018, at 5:22 PM, Boling, Ted A. EOP/CEQ <Privacy> wrote:

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CEQ’s NEPA Implementing Regulations

AGENDA

August 29, 2018, 11:30AM – 12:30PM

(b)(5)
Date: August 14, 2018

Time: 3:30 PM

Present: Aaron Szabo, Ted Boling, Viktoria Seale, Dan Schneider, Mario Loyola, Michael Drummond, Katherine Smith, Yardena Mansoor, Steven Barnett, Tom Sharp; Theresa Pettigrew

(b) (5)
CEQ NEPA Implementing Regulation Working Group

Meeting Minutes

Date: August 14, 2018

Time: 3:30 PM

Present: Aaron Szabo, Ted Boling, Viktoria Seale, Dan Schneider, Mario Loyola, Michael Drummond, Katherine Smith, Yardena Mansoor, Steven Barnett, Tom Sharp; Theresa Pettigrew
CEQ NEPA Implementing Regulation Working Group

Meeting Minutes

Date: August 29, 2018

Time: 11:30 AM

Present: Mary Neumayr, Aaron Szabo, Ted Boling, Viktoria Seale, Dan Schneider, Theresa Pettigrew, Mario Loyola, Michael Drummond, Katherine Smith, Yarden Mansoor, Steven Barnett, Tom Sharp
CEQ NEPA Implementing Regulation Working Group
Meeting Minutes

Date: August 29, 2018

Time: 11:30 AM

Present: Mary Neumayr, Aaron Szabo, Ted Boling, Viktoria Seale, Dan Schneider, Theresa Pettigrew, Mario Loyola, Michael Drummond, Katherine Smith, Yardena Mansoor, Steven Barnett, Tom Sharp
(b) (5)
CEQ NEPA Implementing Regulation Working Group

Meeting Minutes

Date: August 7, 2018

Time: 4:00 PM

Present: Aaron Szabo, Ted Boling, Viktoria Seale, Dan Schneider, Mario Loyola, Michael Drummond, Katherine Smith, Yardena Mansoor, Steven Barnett, Tom Sharp
CEQ NEPA Implementing Regulation Working Group

Meeting Minutes

Date: August 14, 2018

Time: 3:30 PM

Present: Aaron Szabo, Ted Boling, Viktoria Seale, Dan Schneider, Mario Loyola, Michael Drummond, Katherine Smith, Yarden Mansoor, Steven Barnett, Tom Sharp; Theresa Pettigrew
CEQ’s NEPA Implementing Regulations Working Group

AGENDA

September 6, 2018, 1:00 – 2:00PM
IN THE SENATE OF THE UNITED STATES

FEBRUARY 18, 1969

Mr. Jackson (for himself and Mr. Stevens) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

To authorize the Secretary of the Interior to conduct investigations, studies, surveys, and research relating to the Nation's ecological systems, natural resources, and environmental quality, and to establish a Council on Environmental Quality.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 That it is the purpose of this Act to promote and foster means and measures which will prevent or effectively re-

3 duce any adverse effects on the quality of the environment in the management and development of the Nation's natural resources, to produce an understanding of the Nation's natural resources and the environmental forces affecting
them and responsible for their development and future well-
being, and to create and maintain conditions under which
man and nature can exist in productive harmony and fulfill
the social, economic, and other requirements of present and
future generations of Americans, through a comprehensive
and continuing program of study, review, and research.

TITLE I

SEC. 101. The Secretary of the Interior (hereinafter
referred to as the "Secretary"), in order to carry out the
purposes of this title, is authorized—

(a) to conduct investigations, studies, surveys, re-
search, and analyses relating to ecological systems and
environmental quality;

(b) to document and define changes in the natural
environment, including the plant and animal systems,
and to accumulate necessary data and other information
for a continuing analysis of these changes or trends and
an interpretation of their underlying causes;

(c) to develop and maintain an inventory of exist-
ing and future natural resource development projects,
engineering works, and other major projects and pro-
grams contemplated or planned by public or private
agencies or organizations which make significant modi-
fications in the natural environment;

(d) to establish a system of collecting and receiv-
ing information and data on ecological research and
evaluations which are in progress or are planned by other
public or private agencies or organizations, or individ-
uals;

(e) to evaluate and disseminate information of an
ecological nature to public and private agencies or or-
ganizations, or individuals in the form of reports, pub-
ications, atlases, and maps;

(f) to make available to States, counties, municipali-
ties, institutions, and individuals, advice and informa-
tion useful in restoring, maintaining, and enhancing the
quality of the environment.

(g) to initiate and utilize ecological information in
the planning and development of resource-oriented
projects;

(h) to encourage other public or private agencies
planning development projects to consult with the Sec-
retary on the impact of the proposed projects on the
natural environment;

(i) to conduct research and studies within natural
areas under Federal ownership which are under the
jurisdiction of the Secretary and which are under the
jurisdiction of other Federal agencies; and

(j) to assist the Council on Environmental Quality
established under title II of this Act.
SEC. 102. In carrying out the provisions of this title, the Secretary is authorized to make grants, including training grants, and enter into contracts or cooperative agreements with public or private agencies or organizations, or individuals, and to accept and use donations of funds, property, personal services, or facilities to carry out the purposes of this Act.

SEC. 103. The Secretary shall consult with and provide technical assistance to other Federal agencies, and he is authorized to obtain from such departments and agencies such information, data, reports, advice, and assistance as he deems necessary or appropriate and which can reasonably be furnished by such departments and agencies in carrying out the purposes of this Act. Any Federal agency furnishing advice or assistance hereunder may expend its own funds for such purposes, with or without reimbursement by the Secretary.

SEC. 104. The Secretary is authorized to participate in environmental research in surrounding oceans and in other countries in cooperation with appropriate departments or agencies of such countries or with coordinating international organizations if he determines that such activities will contribute to the objectives and purposes of this Act.

SEC. 105. Nothing in this Act is intended to give, or shall be construed as giving, the Secretary any authority over any of the authorized programs of any other depart-
ment or agency of the Government, or as repealing, modifying, restricting, or amending existing authorities or responsibilities that any department or agency may have with respect to the natural environment. The Secretary shall consult with the heads of such departments and agencies for the purpose of identifying and eliminating any unnecessary duplication of effort.

SEC. 106. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

TITLE II

SEC. 201. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the “Council”). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. Each member shall, as a result of training, experience, or attainments, be professionally qualified to analyze and interpret environmental trends of all kinds and descriptions and shall be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interest of this Nation. The President shall designate the Chairman and Vice Chairman of the Council from such members.
Sec. 202. (a) The primary function of the Council shall be to study and analyze environmental trends and the factors that effect these trends, relating each area of study and analysis to the conservation, social, economic, and health goals of this Nation. In carrying out this function, the Council shall—

(1) report at least once each year to the President on the state and condition of the environment;

(2) provide advice and assistance to the President on the formulation of national policies to foster and promote the improvement of environmental quality;

(3) obtain information using existing sources, to the greatest extent practicable, concerning the quality of the environment and make such information available to the public.

(b) The Council shall periodically review and appraise new and existing programs and activities carried out directly by Federal agencies or through financial assistance and make recommendations thereon to the President.

(c) It shall be the duty and function of the Council and the Secretary of the Interior to assist and advise the President in the preparation of the biennial environment quality report required under section 203.

Sec. 203. The President shall transmit to the Congress annually beginning June 30, 1970, an environmental quality
report which shall set forth (a) the status and condition of
the major natural, manmade, or altered environmental
classes of the Nation, including, but not limited to, the air,
the aquatic, including marine, estuarine, and fresh water, and
the terrestrial environment, including, but not limited to, the
forest, dryland, wetland, range, urban, suburban, and rural
environment; and (b) current and foreseeable trends in
quality, management, and utilization of such environments
and the effects of those trends on the social, economic, and
other requirements of the Nation.

Sec. 204. The Council may employ such officers and
employees as may be necessary to carry out its functions
under this Act. In addition, the Council may employ and fix
the compensation of such experts and consultants as may be
necessary for the carrying out of its functions under this Act,
in accordance with section 3109 of title 5, United States
Code (but without regard to the last sentence thereof).

Sec. 205. There are hereby authorized to be appropri-
ated such sums as are necessary to carry out the purposes of
this title.
A BILL

TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO
conduct investigations, studies, surveys, and research relating to the Nation's ecological systems, natural resources, and environmental quality, and to establish a Council on Environmental Quality.

BY MR. JACKSON AND MR. STEVENS

Passed by 18, 1969

Read twice and referred to the Committee on Interior

RECOMMENDATION 1969
The PRESIDING OFFICER. The concurrent resolution will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. A concurrent resolution to authorize the Secretary of the Senate to make a technical correction in the enrollment of the bill (S. 3016) to provide for the continuation of programs authorized under the Economic Opportunity Act of 1964, to authorize advance funding of such programs, and for other purposes.

The PRESIDING OFFICER. Is there objection to the concurrent resolution?

There being no objection the Senate proceeded to consider the concurrent resolution.

MR. NELSON. Mr. President, the printer made a mistake and designated one section as section 620(d), when it should be designated as section 602(d). That is what the concurrent resolution is about.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 51) was agreed to, as follows:

Resolved by the Senate (the House of Representatives concurring), That the Secretary of the Senate, or the Clerk of the Senate, be authorized for the continuation of programs authorized under the Economic Opportunity Act of 1964, to authorize advance funding of such programs, and for other purposes, is hereby authorized and directed to make the following correction:

In section 114 strike out "section 620(d)" and insert "section 602(d)".

CORRECTION IN ENROLLMENT

MR. MANSFIELD subsequently said: Mr. President, I ask unanimous consent that the vote by which the Senate earlier today agreed to Senate Concurrent Resolution 51 be reconsidered.

The PRESIDING OFFICER. Is there objection? There being no objection, the vote by which Senate Concurrent Resolution 51 is reconsidered. The resolution is before the Senate.

MR. MANSFIELD. Mr. President, I send to the desk an amendment to the concurrent resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read the amendment as follows:

Sec. 2. That the Senate recede and concur in the House amendment to the title of S. 3016.

MR. MANSFIELD. Mr. President, it is my understanding that this has to do only with the title and does not interfere in any way with the content of that which was discussed by the Senate.

The PRESIDING OFFICER. Is there objection to the amendment offered by the Senate for consideration? The Chair hears none, and the amendment is agreed to.

The question now is on agreeing to the concurrent resolution as amended.

Senate Concurrent Resolution 51, as amended, was agreed to, as follows:

S. Con. Res. 61:...
Maine will comment on that in a moment.

The changes the conference committee made in S. 1075 as passed by the Senate and the floor are reflected in the section-by-section analysis of the conference report accompanying the statement of the managers on the part of the Senate. The changes are also discussed in a separate attachment, titled "Major Changes in S. 1075 as Passed by the Senate."

Mr. President, I ask unanimous consent that the major changes in S. 1075, as passed by the Senate, be printed at the conclusion of my remarks, together with a section-by-section analysis of the bill.

The PRESIDING OFFICER (Mr. Dox in the Chair). Without objection, it is so ordered.

(See exhibits 1 and 2.)

Mr. JACkSON. Mr. President, it is my view that S. 1075 as passed by the Senate and now, as agreed upon by the conference committee, is the most important and far-reaching environmental and conservation measure ever enacted by the Congress.

Mr. President, it is my view that S. 1075 as passed by the Senate and now, as agreed upon by the conference committee, is the most important and far-reaching environmental and conservation measure ever acted upon by the Congress.

This measure is important because it provides for new approaches to dealing with national problems on a preventive and an anticipatory basis. As Members of the Senate are aware, too much of our past history of dealing with environmental problems has been focused on efforts to deal with "cures," and to "reclaim" our resources from past abuses.

Pitr. The first new approach is the statement of national policy and the declaration of national goals found in section 101.

In many respects, the only precedent and parallel to what is proposed in S. 1075 is in the Full Employment Act of 1946 which declared an historic national policy on management of the economy and established the Council of Economic Advisers. It is my view that S. 1075 will provide an equally important national policy for the management of America's future environment.

A statement of environmental policy is more than a statement of what we believe as a people and as a nation. It establishes priorities and gives expression to our national goals and aspirations. It provides a statutory foundation to which administrators may refer it for guidance in making decisions which find environmental values in conflict with other values.

What is involved is a congressional declaration that we do not intend, as a government or as a people, to initiate actions which can endanger the continued existence or the health of mankind: That we will not intentionally initiate actions which will do irreparable damage to the air, land, and water which support life on earth.

An environmental policy is a policy for people. Its primary concern is with man and his future. The basic principle of the policy is that we must strive in all that we do, to achieve a standard of excellence in man's relationships to his physical surroundings. If there are to be departures from this standard of excellence they should be exceptions to the rule and the policy. And as exceptions, they will have to be justified in the light of public scrutiny as required by section 102.

Second. To assure that the policies and goals defined in this act are infused into the ongoing programs and actions of the Federal Government, the act also establishes some important "action-forcing" procedures, Section 102 authorizes and directs all Federal agencies, to the fullest extent possible, to administer their existing laws, regulations, and policies in conformance with the policies set forth in this act. It also directs all agencies to assure consideration of the environmental impact of their actions in decision-making. It requires agencies which propose actions affecting Federal and State agencies having jurisdiction or expertise in environmental matters and to include any comments made by those agencies which outline the environmental considerations involved with such proposals.

Taken together, the provisions of section 103 direct all Federal agencies which take action that might take into account environmental management and environmental quality considerations.

Third. The act in title II establishes a Council on Environmental Quality in the Executive Office of the President. This Council will provide an institution and an organizational focus at the highest level for the concerns of environmental management. It will provide the President with objective advice on a continuing and comprehensive overview of the fragmented and bewildering Federal jurisdiction involved in some way with the nation's environmental activities in this area will be complemented by the support of the Office of Environmental Quality proposed in the Water Quality Improvement Act of 1969.

The Council will establish a system for monitoring environmental indicators, and maintaining records on the status of the environment. The Council will ensure that there will be complete and reliable data on the environmental indicators available for the anticipation of emerging problems and trends. This data will provide a basis for sound management.

Fourth. Finally in section 201, S. 1075 requires the submission by the President to the Congress and to the American people of an annual environmental quality report. The report is to provide a statement of progress, to establish some baselines, and to tell us how well—or as some suspect how badly—we are doing in the environment—the nation's life support system.

It is the clear intent of the Senate conference that the annual report should be referred in the Senate to all committees which have exercised jurisdiction over any part of the subject matter contained therein. Absent specific language on the reference of the report, the report would be referred pursuant to the Senate rules. This is the position of the conference understanding that under the rules all relevant committees may be referred copies of the annual report.

This was the intent of the Senate when S. 1075 was passed. In the section-by-section analysis of section 303 of S. 1075 at page 26 of the committee report No. 91-296 it is expressly stated that:

It is anticipated that the annual report recommended by the conference committee would be a vehicle for oversight hearings and hearings by the appropriate legislative committees of the Congress.

The Senate conference intends that under the language of the conference report, the annual report would be referred to all appropriate committees of the Senate.

Mr. President, one of the provisions of the Senate passed bill which the conference committee agreed to change requires special comment. Section 101(b) of S. 1075 provided that:

(b) The Congress recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

The conference committee changed this provision so that it now reads:

(b) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

I opposed this change in conference committee because it is my belief that the language of the Senate passed bill reaffirmed what is already in the law of this land; namely, that every person does have a fundamental and an inalienable right to a healthful environment. If this is not the law of this land, if an individual in this great nation cannot at the present time protect his right and the right of his family to a healthful environment, then it is my view that some fundamental changes are in order.

To dispel any doubts about the existence of this right, I intend to introduce an amendment to the National Environmental Policy Act of 1969 as soon as the President. This amendment will propose a detailed congressional declaration of a statutory bill of environmental right.

Another provision which should be brought to the attention of the Senate is section 102(e) of the conference report. This section directs all Federal agencies to:

- promote the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lead appropriate support initiatives, research and demonstration programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of man's world environment.

This provision was added to the bill as an amendment I offered in the Senate Interior Committee in June. The purpose of the provision is to give statutory authority to all Federal agencies to par-
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esignate in the development of a positive, forward looking program of international cooperation in dealing with the environmental problems all nations and all people share. Cooperation in dealing with these problems is essential, for the problems are urgent and serious. Cooperation is also possible because the problems of the environment do not, for the most part, raise questions related to ideology, security and the balance of world power.

We must seek solutions to environmental problems on an international level because they are international in origin and scope. The earth is a common resource, and cooperative effort will be necessary to protect it. Perhaps also, in the common cause of environmental management, new nations of the earth will find a little more sympathy and understanding for one another.

I am hopeful that the United Nations Conference in 1972 on "the Problems of the Environment" will arrive at solutions to international environmental problems. I am, however, concerned that at the present time, the federal government is not doing enough to plan and prepare for the 1972 U.N. Conference. Section 102(e) of the conference report on S. 1076 provides the federal agencies and the administration with the authority to make a positive and a far-reaching contribution to this international effort to deal with the growing and growing international problem. I am hopeful that this authority will be utilized.

Mr. President, there is a new kind of revolutionary movement underway in this country. This movement is concerned with the integrity of man's life support system—the human environment. The stage for this movement is shifting from what has once been the exclusive province of the conservation organizations to the campus, to the urban ghettos, and to the suburbs.

In recent months, the Nation's youth, in high schools, colleges, and universities across the country, have been raising up the banner of environmental awareness and have been seeking measures designed to control technology, and to develop new environmental policies which reflect the full range of diverse values and amenities which man seeks from his environment.

S. 1076 is a response by the Congress to the concerns the Nation's youth are expressing. It makes clear that Congress is responsive to the problems of the future. While the National Environmental Policy Act of 1969 is not a panacea, it is a starting point. A great deal more, however, remains to be done by the Federal Government, both in the form of legislation and executive action, if mankind and human dignity are not to be denied in the year 2000 by the expansive and impersonal technology modern science has created.

Mr. President, the inadequacy of present knowledge, policies, and institutions for environmental management is reflected in our Nation's history, in our national attitudes, and in our contemporary life. It touches every aspect of man's existence. It threatens, it degrades, and destroys the quality life which all men seek.

We are increasing evidence of this inadequacy all around us: hazardous urban and suburban growth; crowding, congestion, and conditions within our central cities which result in civil unrest and destruction of man's social and psychological well-being; the loss of valuable open spaces; inconsistent and often, incoherent rural and urban land-use policies; critical air and water pollution problems; diminishing recreational opportunities; continuing soil erosion; the degradation of unique ecosystems; needless deforestation; the decline and extinction of fish and wildlife species; and many, many other environmental quality problems.

A primary function of Government is to improve the institutional policy and the legal framework for dealing with these problems. S. 1076 is a step toward that end.

There should be no doubt of our capability to cope with environmental problems. The historic success of Apollo 11 last month demonstrates that if we—as a nation—and as a people—commit our talents and resources to a goal we can do the impossible.

If we can send men to the moon, we can clean our rivers and lakes, and if we can transmit pictures from another planet, we can monitor and improve the quality of the air and children's breath and the open spaces they play in.

The needs and aspirations of future generations make it our duty to build a sound and operable foundation of national objectives for the management of our resources for our children and their children. The future of succeeding generations in this country is in our hands. It will be shaped by the choices we make. We will not, and they cannot escape the consequences of our choices.

Mr. President, I believe that the bill agreed upon by the conference is a sound measure. This measure will be an important step toward building a capability within the Federal Government to cope with present and impending environmental problems.

Problems of environmental management may well prove to be the most difficult and the most important problems we have ever faced. I urge the Senate to prepare the Federal Establishment to face them. I urge the approval of the conference report.
that the phrase "where consistent with the foreign policy of the United States" was added.

Section 103(f)
This language is identical to Section 201 (d) of title II of the Senate passed bill. Title II was deleted by the Senate Finance Committee, but this and other provisions from this title were incorporated into title I and II of the bill reported by the Conference.

Section 102(g)
This language is identical to Section 201 (e) of title II of the Senate passed bill.

Section 102(h)
This language is a modification of language found in Section 201 (g) of title II of the Senate passed bill.

Section 102 in general
The conference substitute provides that the phrase "to the fullest extent possible" applies with respect to those actions which Congress authorizes and directs to be done under both clauses (1) and (2) of Section 103 (In the Senate passed bill, the phrase applied only to the directive in clause (1)). In accepting this view, Section 201 (g) of title II of the Senate passed bill, the conference agreed to delete section 9 of the House amendment from the conference substitute. The conference substituted for the House amendment the phrase "shall not construe its existing authority" which avoids full compliance with the intent of the conference and is not consistent with the full extent possible language. The conference substitute requires that the Federal agencies shall comply with the provisions of this bill to the fullest extent possible.

Section 104
This language, with a minor reference change, is identical to language discussed and agreed to on the Senate floor on October 8 as a proposed Section 103 to S. 1076 when a conference with the House on S. 1076 was agreed to.

Section 105
This language is a modification of Section 105 of S. 1076, as passed by the Senate. As modified this section provides that the provisions of this Act are "supplementary to and shall supplement all existing regulations of Federal agencies." The effect of this section is to give recognition to the fact that the NII shall not modify or repeal existing law. This section does not, however, obviate the requirement that the Federal agencies may have an adverse effect on the quality of the environment, conduct their activities in accordance with the provisions of this bill and to do so would violate their existing statutory authorizations:

The II of S. 1076 as passed by the Senate was deleted. This title had authorized certain research and data gathering functions, a small grant program and the creation of a new position of Deputy Director in the Office of Science and Technology. The most important change here is that the Conference deleted the provision to establish an Environmental Protection Agency. Title II of the language agreed upon by the Conference Committee is largely from the House amendment and contains a number of important substantive changes and exceptions to the language of the House amendment. A language of title II of S. 1076 as passed by the Senate is that the substance of Title II and III of the Senate passed bill were
shall be improved and coordinated to the end that the Nation may attain certain broad national goals and a distribution of the burden of the environment. The broad national goals are as follows:

(1) Finalize the responsibilities of each generation as trustee of the environment for future generations. It is recognized in this statement of responsibility the need for a national legislative program to enable the nation to enhance, improve, and maintain the quality of the environment to the greatest extent possible for the continued benefit of future generations.

(2) Assure for all Americans safe, healthful, productive, and esthetically and culturally satisfying places to live. The Federal Government, in its planning and programs, shall strive to protect and improve the quality of each citizen's environment both in respect to the preservation of the natural environment as well as in the planning, design, and construction of man-made structures. Each individual should be assured a safe, healthful, and productive environment in which to live and work and should be afforded the maximum possible opportunity to derive physical, aesthetic, and cultural satisfaction from his immediate surroundings and from the environment he shares with the rest of humanity.

(3) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences. The resources of the United States must be used so that the quality of the population of the United States and the increased demands upon limited resources which appear inevitable in the immediate future. To do so, it is essential that the widest and most efficient use of the environment be made to provide both the necessities and the amenities of life. By seeking intensified beneficial utilization of the earth's resources, the Federal Government must avoid degradation and misuse of resources, risk to man's continued health and safety, and other undesirable and unintended consequences.

(4) Preserve important historic, cultural, and natural aspects of our national heritage, and maintain wherever possible an environment which supports diversity and variety of individual choices. The pace of urbanization coupled with population growth and man's increasing ability to work unprecedented changes in the natural environment makes it clear that one essential goal in a national environmental policy of conservation or development is to preserve our natural heritage. There are existing programs which are designed to achieve these goals, but many are fragmented and often single-issue in concept. This section would make it clear that all agencies, in all of their activities, are to carry out their programs with a full appreciation of the importance of maintaining important aspects of our national heritage.

This subsection also emphasizes that an important aspect of national environmental policy is the maintenance of physical surroundings which provide present and future generations of American people with the widest possible opportunities for diversity and variety of experience and choice in cultural pursuits, in recreation endeavors, in aesthetic appreciation, and in living style.

(5) Achieve a balance between population and resources, use which will permit each generation to work in harmony with others, and to produce and maintain a balance between the needs of the present and the needs of the future generations of mankind.

(6) Achieve a balance between population and resources, use which will permit each generation to work in harmony with others, and to produce and maintain a balance between the needs of the present and the needs of the future generations of mankind.

It is hoped that State governments and private enterprise will strive to maintain a balance between the needs of the present and the needs of the future generations of mankind.

Section 206

This section sets forth the purpose of the Act, the role of the President, and the provisions for funding, administration, and enforcement of the Act. The President is to appoint an Advisory Committee on Environmental Quality, which shall consist of representatives of governmental agencies, private organizations, and citizens, to advise on matters relating to environmental quality. The Act also provides for the establishment of an Environmental Protection Agency, which shall have the responsibility to enforce the provisions of the Act.

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large measure, been caused by the failure to consider all relevant points of view and all relevant values in the planning and con-
duct of Federal actions. With regard to projects that bring together the skills of landscape architect, the engi-
neer, the ecologist, the economist, the sociologist, the
attorney, and the health professional, it is clear that
national discipline would result in better planning, better projects, and a better environment. Too often in the past, the environmental
awareness of the engineer and cost analyst. And, as
a consequence, too often the environmental point of view, the relationship between man and the environment, and the implications thereof have been overlooked or
purposely ignored.

(3) All agencies which undertake activi-
ties resulting in environmental values, ameni-
ties, and aesthetic considerations, are authorized and directed, after consulta-
tion with the Council, and other environ-
mental agencies, to develop methods and procedures to incorpo-
rate those values in official planning and
design of the environment. Environmental factors have frequently been ignored and
omitted from consideration in the early stages of the evaluation of the agency's
activities. As a result, many of the projects listed in this Act have been approved
without the consideration of their environmental impact, and the opportunity for
public participation and public review then
means the Congress—environmental en-
hancement opportunities may be lost and the consequences
and the impact may be irreparable. It is of
vital importance to all Federal agencies.

(4) After consultation with and obtain-
ing the comments of Federal and State agencies which have jurisdiction by law
with the environment, and each agency which proposes legislation and
any other major Federal action shall make a detailed statement to the Council,
and the public, of the particular action, and the
impacts of the action, upon the environment, and the compatibility of the action
with the environmental values, ameni-
ties, and aesthetic considerations of the agency and the State and local agencies

(5) In recognition of the fact that envi-
ronmental problems are not confined by
political boundaries, all agencies of the Fed-
eral Government which have
international responsibilities are authorized and directed to lend support to appropriate international
organizations to study and to study such
problems as a part of an

(6) All agencies of the Federal Govern-
ment shall utilize ecological information in the planning and development of resources
projects. Each agency which studies,
proposes, constructs, or operates projects hav-
ing resource management implications is
authorized and directed to consider the ef-
facts upon ecological systems in connection
with their activities and to study such effects
as a part of their planning.

(7) All agencies of the Federal Gover-
ment shall determine the effect of their
proposals on the environment, and shall make
public releases of such information through the
The committee does not intend that the
requirement for consultation by other agencies should unreasonably delay the processing of
Federal actions. The Committee anticipates that the President will promptly prepare and publish
what additional consultation with those
agencies and the other agencies which have "jurisdiction by law" over various environmental

prohibit the agency from acting in full com-
pliance with the provisions of this Act, the
agencies concerned shall be required to recom-
mend such measures as are necessary to make
its authority consistent with this act. The
agency may withdraw its proposals to the
President not later than July 1, 1971, and,
if recommended, to the appropriate con-
grressional committees.

This section provides that nothing in
sections 101 to 109 shall affect the specific
statutory obligations of any Federal agency:

(1) To prescribe any environmental qual-
ity standards and criteria, or
(2) To coordinate or consult with any
State or Federal agency, or to act or refrain from acting contin-
gent upon the recommendations or certifica-
tion of any other Federal or State agency.

There are existing statutes and they may
be in the future a new statute which pre-
scribes specific criteria or standards of qual-
ity for environmental indicators, or which
prescribe certain procedures for coordina-
tion or consultation with State or Federal agencies. The construction or certification of other Fed-
eral agencies as a prerequisite to certain ac-
tions. It is not the intent of sections 101 to
109 to establish additional requirements for those which are already established concerning particular actions or agencies. It is the intention that there be no more restrictive or effective procedures or requirement established by the
the procedures outlined in this Act for those
sections 101 to 109 which are
beyond the sphere of the existing instruc-
tions, standards, or criteria.

This section provides that the President
shall submit to the Congress an annual environmental quality report. The first such report shall be transmitted on or before July 1, 1970. Subsequent reports shall be trans-
mitted on or before July 1, in succeeding
years.

The report is to include, but not be lim-
ited to, a current evaluation of the status
and condition of the major environmental classes of the Nation, and the extent to which this information should be based
upon measurements of environmental indica-
tors relating quality and supply of land, water, and energy, and other factors such as environmental health, popu-
lation distribution, and demands upon the environment for use such as food, recreation and wilderness. Significant current
and developing environmental prob-
lems should be highlighted. Current and o
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the Nation's future social, economic, physical,
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It is the committee's strong view that the President's annual report shall provide a
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ment of the best people available on the Nation's environmental problems and the progress being made toward providing a quality of life for all Americans.

The report should summarize and bring together the major conclusions of the technical reports of other Federal agencies concerned with environmental quality.

Too often, these reports go unread and unappreciated. A succinct, readable summary and evaluation would be of great assistance to the Congress and the President.

It is anticipated that the annual report and the recommendations made by the President would be the vehicle for oversight hearings and report of the appropriate legislative committees of the Congress.

It is important that each of the Senate and House Committee on Environment and Public Works approve a set of priorities that the annual report should be referred to the Senate to all Committees which have jurisdiction over any part of the subject matter contained therein.

A specific clause or reference to the report on the annual report, the report would be deferred pursuant to the Senate rules. It is the Committees' understanding that under the rules all relevant Committees may be referred any report on the annual report.

Section 202

This section creates in the Executive Office of the President a Council on Environmental Quality which shall be composed of three members appointed by the President with the advice and consent of the Senate and who shall serve at the President's pleasure.

It is intended that the members of the Council shall be persons of broad experience and judgment with the science and judgment to analyze and interpret trends and developing problems in the quality of the Nation's environment. The committee shall not view the Council's function as a purely scientific pursuit, but rather as one which requires a knowledge of the social, economic, political and cultural considerations. The members of the Council, therefore, should not be primarily selected for depth of training or expertise in any specific discipline, but rather for the ability to grasp broad national issues, to render public service in the national interest, and to appreciate the significance of choosing among present alternatives in shaping the country's environment.

The President shall designate one member of the Council as Chairman.

Section 203

This section provides for the Council, in exercising its powers, functions, and duties under this Act.

(1) The council with the advice and consent of the Senate, shall have the services of experts and consultants. This provision is designed to provide the Council with the necessary internal staff to assist members of the Council.

It is not intended that the Council will employ personnel to this section, a staff which would in any way conflict with the capabilities of the staff of the Office of Environmental Quality which would be created by the Clean Air Act of 1963. It is understood that when the Office of Environmental Quality is established it will discharge the duties of the Council and its integrated agency in the Office of the President—the Council operating on the policy level and Office of Environmental Quality on the staff level.

The professional staff of the Office will be available to the Council (as well as to the President) to assist in implementing existing environmental policy and the provisions of the legislation and to assist in forecasting future environmental problems, values and goals.

Section 204

This section sets forth the duties and functions of the Council as follows:

(1) The Council shall assist and advise the President in the preparation of the annual environmental quality report required by section 201. The committee assumes that the Council shall have the primary responsibility for the draft of the President's annual report. It should, in the policy measure, be based upon the Council's report to the President required by section 204.

(2) The Council shall keep on file studies and analyses related to the status of the environment. The Council will seek to coordinate the work of the agencies within and outside the operating agencies of the Federal Government an effective system for monitoring environmental protection data and analyzing trends. It will further seek to relate trends in environmental conditions to short- and long-term national goals and aspirations.

(3) The Council shall review and appraise Federal programs, projects, activities, and policies which affect the quality of the environment. Based upon its review, the Council shall make recommendations to the President.

The committee does not view this direction to the Council as implying a project-by-project review or commentary on Federal programs. Rather, it is assumed that the Council will periodically examine the general direction and impact of Federal programs in relation to environmental trends and problems and recommend general changes in direction or supplementation of such programs when they appear to be appropriate.

It is not the committee's intent that the Council be involved in the day-to-day decision-making processes of the Federal Government or that it be involved in the resolution of particular conflicts between agencies and departments. These functions can best be performed by the Bureau of the Budget, the President's Interagency Council on National Resources, and the President himself. The committee does, however, strongly feel that the President needs impartial and objective advice which can provide him with an accurate overview of the Nation's environmental trends and problems and how these trends and problems affect the future material and social well-being of the American people.

The Council recommendations to the President are for his use alone, and his actions on their recommendations will depend on the confidence he places in the judgment of the persons he appoints to membership on the Council. Used properly, the Council's recommendations will not conflict with similar activities authorized by law and being performed by other agencies. This section does not, however, preclude the Council from authorizing studies if the President feels necessary to ascertain the reliability of existing data. Neither does it preclude the Council from authorizing studies for the purpose of establishing data in fields which are within the jurisdiction of other Federal agencies if the Council deems it necessary to validate or supplement data already in the possession of other agencies.

Section 205

This subsection provides for the members of the Council shall serve full time. The compensation for the Chairman of the Council is set at level II of the Executive Schedule pay rates and at level IV for the other two members. These provisions parallel the compensation provisions established by law for the Chairman and the members of the Council of Economic Advisers.

Section 206

This section authorizes appropriations for the administrative expenses of the Council. The amounts of $900,000 for Fiscal Year 1970 and $700,000 for Fiscal Year 1971 are authorized and added to the compensation of the Council as a whole and the Council as a whole, the compensation of the Council as a body and the Council as such. These provisions parallel the compensation provisions established by law for the Council of Economic Advisers.

Mr. ALLCOTT. Mr. President, as a co-sponsor of S. 1076 and as the ranking minority member of the Senate Interior and Insular Affairs Committee, I wish to express my appreciation and the remarks of our distinguished chairman, the Senator from Washington (Mr. Jackson). I congratulate him for his inde-
During the 81st Congress, three bills were introduced and referred to the Senate Interior Committee. All three dealt with environmental policy and creation of new or improved institutions. Hearings were held and additional consultation and coordination with the administration ensued. As a result, S. 1075 was reported by the committee and passed by the Senate in a form which would provide the executive branch with effective machinery to help it provide the necessary leadership in reversing the deterioration of our environment. In addition, the bill will establish by statute a national environmental policy. I believe it is significant to point out that S. 1075 enjoys the sponsorship of every single member of the Senate Interior Committee.

The Senate Interior Committee has long had an interest in conservation and environmental matters. Recent examples include the establishment of many national and state parks, national seashores and lakeshores, national recreation areas, a national trails system, a wild and scenic rivers system, and a wilderness system. The Outdoors Recreation Resources Review Commission, and an action to conserve these resources.

This committee, much of this Nation's most precious heritage has been preserved and protected by legislation emanating from the Interior Committee. This bill has also been passed upon legislation to establish the land and water conservation fund.

In the area of water resources, this committee has produced a myriad of legislation affecting the conservation and wise use of our rivers and lakes, including weather modification. The Water Resources Council, the National Water Commission, the various river basin planning commissions all have their foundations in legislation acted upon by the Interior Committee. The reclamation program, which is under the jurisdiction of this committee, is the backbone of our water resources program. One only needs to observe the "before" and the "after" with respect to a reclamation project to know this.

In 1969, one of the most significant actions to establish the Public Land Law Review Commission and its companion measure, the Multiple Use and Classification Act. This is truly landmark legislation since our public lands are an important feature of our environment and its quality.

In the field of mineral resources, this committee and the Senate approved a measure, which I have introduced in six successive Congresses, which would establish a national mining and minerals policy. The significance of this measure to environmental quality may not be apparent at first view, but the quality of our environment is closely related to the availability of materials. In addition, during the hearings on this measure, there was recognition of the need to be concerned. Also, technology and the discovery of new materials may lead to the solution of some of our most troublesome environmental problems. Therefore, the notion of a national mining and minerals policy is the development of improved methods to recycle both industrial and other wastes and scrap back into the materials stream.

I have taken the time to mention just a few of the legislative achievements of the Interior Committee to demonstrate its long-standing interest and endeavors in the matter of environmental quality. Other committees have also displayed interest in the environmental field, and I do not intend to in any way diminish their achievements.

The President has expressed his concern over the degradation of our environment. Senators will recall that President Nixon had committed himself in the 1968 campaign to a policy of improving the environment. The October 18, 1968, radio address entitled: "A Strategy of Quality: Conservation in the Seventies." In that address, Candidate Nixon characterized our environmental dilemma in these words: the battle for the quality of the American environment is a battle against neglect, mismanagement, poor planning and a piecemeal approach to problems of natural resources.

Acting upon that commitment, President Nixon established by Executive order the "Environmental Quality Council" in May of 1969. The Council is of the highest level. The President, himself, is the chairman, and it includes the Vice President and seven cabinet members. The Council provides the action mechanism to implement environmental policy decisions.

So the Senate and as reported from the conference is designed to complement the actions of the President and provide him with the tools to get on with the task of improving our damaged environment and preventing further determent to it.

We can no longer afford to view the environmental problem on a basis of cleanup of our dirt. We must approach it from the standpoint of prevention. Prevention will require planning—long-range planning—and that planning must rest upon research and new technology. It is evident and supported by all introduced legislation which I believe would assist the Congress to participate in a meaningful way in determining the materials and energy of enhanced research. As Senators know, Federal expenditures for research and development approach an annual amount of $4.7 billion. The funds for this research and development effort are made available in 13 separate appropriations bills, and at no point does Congress have an opportunity to exercise an overview of our total research and development program. Such a program would provide for the establishment of a nonlegislative joint House and Senate committee to review and report to the Congress on the effectiveness of our overall research and development program, based upon an annual report from the President. Such a mechanism, had it come into existence, could have helped the Congress to bring some new decisions with regard to research to have dealt with the many serious problems now facing us in the environmental area. The legislation which I have mentioned is the mechanism similar to the one proposed in my bill S. 1305 of the 89th Congress would prove to be useful and helpful.

In summary, the environment is the
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concern of us all. In some respect, nearly every department of the Government is or may be involved in decisions or actions which affect the environment. And, the jurisdiction of the various committees and subcommittees is often broad and includes environmental considerations. The environment is not the exclusive bailiwick of any committee of Congress nor departs from the floor of Congress; S. 1076 recognizes this fact, and therein lies its strength, appropriateness, and timeliness. This is truly landmark legislation in history of man and his efforts to protect and improve his environment, and I am proud to be associated with this measure.

Mr. JACKSON. Mr. President, I wish to express my appreciation at this point for the fine cooperation that we have had in trying to work out difference which occurred since the conferences met on S. 1076.

The junior Senator from Maine has been most cooperative. We would have had many unresolved problems had it not been for his cooperation.

Mr. MUSKIE. Mr. President, I wish to add to the appreciation of the junior Senator from Washington for his cooperation in working out points of difference which otherwise might have been very difficult and could have led to difficulties on the floor of the Senate, which all of us wanted to avoid.

The basic objective of S. 1076 is one to which I think all members of the Committee on Interior and Insular Affairs are agreed. It is to devise an overall and total environmental improvement policy. We recognize that in order to do that we will be concerned with the work of many agencies in the executive branch of Government as well as with the work of many committees in Congress.

We are undertaking to do our cooperative effort on this bill and in S. 7, which is in conference between the two Houses, is to begin the process of developing a comprehensive environmental policy as well as a comprehensive policy, which we hope will emerge out of the work of these disparate executive agencies and eight Senate committees.

I do not intend to prolong my discussion of the bill, but I think the discussions which I have been privileged to have with the distinguished Senator from Washington and other members of the committee, as well as with members of the Senate Committee on Public Works and the two staffs have raised some points of emphasis to which I should refer in this discussion.

I know my colleagues on the Committee on Public Works, the chairman, the Senator from West Virginia (Mr. RANZETT), and the distinguished Republican member (Mr. BOSS), also might like to ask questions for points of emphasis.

One of the questions that primarily concerned us is the floor of the Senate on October 8, when we last had a discussion among those concerned, and one which concerned us in the discussion of the conference report, was the question of the relationship of this legislation to the established agencies of the executive branch. First of all, we were concerned with those which have an impact upon the environment, actual or potential, and second, which those agencies have responsibilities in the field of environmental improvement.

I would like to refer to some of the inclusions the Report made by distinguished Senator from Washington.

He has inserted three principal documents: First, his floor statement, as it is described, in the conference report; second, the consolidated report as amended in conference; and finally, a statement of major changes in S. 1076, as passed by the Senate and as changed by the conference report.

First, I should like to refer to page 4 of the major changes analysis. On page 4 he refers to that part of the discussion which is entitled "section 102 in general" and I should like to read it.

The conference report provides that the phrase "to the fullest extent possible" applies with respect to those actions which Congress authorizes to be done under both clauses (1) and (2) of section 102 (in the Senate-passed bill, the phrase applied only to the directive in clause (1)).

Mr. President, what disturbed us about this language in the "major changes analysis" was the impact of the phrase "to the fullest extent possible" upon the executive agencies which have authority under other statutes with respect to the implementation of our environment, specifically such agencies as the Federal Water Pollution Control Administration and the National Air Pollution Control Administration. Each agency is of special interest to the Senate Committee on Public Works. Each operates under basic legislation which has been written under the jurisdiction of the Senate Public Works Committee and which has become law. Legislation has been carefully developed over the past 7 or 8 years. We were concerned that S. 1076, through such language as that which has been had, would not have the effect of changing the basic legislation governing the operation of the agencies such as those to which I have referred.

As a result of the discussions with the Senator from Washington and his staff, language was inserted on page 5 of the "major changes document" putting into the Record by the Senator from Washington which clarifies this point.

That insertion reads:

Many existing agencies such as the National Water Pollution Control Administration; and the National Air Pollution Control Administration already have important responsibilities in the area of environmental protection. The provisions of section 102 (as well as 103) are not designed to result in any change in the manner in which they are carrying out their environmental protection authority.

It is clear then, and this is the clear understanding of the Senator from Washington, and his colleagues, and of those of us on the Senate Committee, that the agencies having authority in the environmental improvement field will continue to operate under their legislative mandates as previously established, and that those legislative mandates are not changed in any way by section 102-5.

The second section of the conference report which is of concern to us is section 103. The Senate has already discussed this. I shall read that portion of the conference in the major changes analysis placed in the Record by the Senator from Washington.

This portion reads:

This section is based upon a provision of the Senate-passed bill (section 103(f) (1)) not in the House amendment. This section, as proposed by the Senate, requires all agencies of the federal government shall review their "present statutory authority, statutory purpose, and procedures to determine whether there are any deficiencies and inconsistencies in the, which prohibit full compliance with the purpose of the provision" of the bill. If an agency finds such deficiencies or inconsistencies, it is required under this section to report to the President by July 1, 1971, such measures as may be necessary to bring its authority and policies into conformity with the purposes and procedures of the bill.

Now, Mr. President, in the discussion with the Senator from Washington and his staff, it developed that this language had different implications for different kinds of executive agencies, especially with respect to the agencies whose activities have an impact, potentially unfavorable, upon the environment. Obviously, it was the objective of the language to make such agencies environmental conscious.

With respect to that objective, I was fully in accord with the Senator from Washington and his committee. However, the second set of executive agencies affected by that language are those agencies which have authority in the environmental improvement field; more specifically, insofar as the Public Works Committee is concerned, the Federal Water Pollution Control Administration and the National Air Pollution Control Administration.

We were concerned that the language which I have referred to should not have the effect of forcing the agencies over which we have jurisdiction to conform the basic legislative requirements of S. 1076. This is made clear on page 7 of the major changes analysis, which was placed in the Record by the Senator from Washington.

I quote from it:

It is not the intent of the Senate, committees that the review required by section 103 would result in existing environmental control agencies such as the Federal Water Pollution Control Administration and the National Air Pollution Control Administration to review their statutory authority and regulatory policies which are related to maintaining and enhancing the quality of the environment.

This section is aimed at those agencies which have little or no authority to consider environmental values.

This language in the "major changes analysis" document clarifies, with the full agreement of the, Senator from Washington and his staff, their understanding as to the implications of section 103 with respect to those executive agencies which have environmental improvement authority.
the present time under already existing legislation.

The third point to which I should like to refer, for the purpose of emphasis, is the question of committee jurisdiction with special reference to various areas of environmental concern which are now involved in the jurisdictions of several Senate standing committees.

It was on a concern on October 8, when we discussed this matter in the Senate last, and it is our concern now, that S. 1075 shall not have the effect of altering existing committee jurisdictions in this regard. In 1948, the Senator from West Virginia (Mr. VANCE), the Senator from Delaware (Mr. BOGGS), and I are especially concerned with the jurisdiction of the Public Works Committee of the Senate.

I think that in the "major changes analysis" document of the Senator from Washington this is again clarified in the following language, which I read from page 9:

"It is the clear intent of the Senate conferees that the annual report would be referred to the Senate for all Committees which have responsibility for the subject matter contained therein. Absent specific language on the reference of the report, it would be referred pursuant to the subject matter contained therein, pursuant to the Senate rules. It is the committees' understanding that under the rules all relevant Committees may be referred copies of the annual report. This was the intent of the Senate when S. 1075 was passed. In the section-by-section analysis of Section 303 of S. 1075, page 20 of the conference report, No. 91-200, it is expressly stated that, "It is anticipated that the annual report and comments made by the President would be a vehicle for oversight hearings and hearings by the appropriate legislative committees of the Congress."

Mr. President, as I say, this was clearly understood on October 8 when we last discussed it on the Senate floor. It was never at issue as between the Senator from Washington and myself; it is clearly understood today.

The legislative language which was included in October 8 was not struck from the conference report because, under House rules, it was considered to be new matter which was subject to a point of order. So I think it is appropriate that on the Senate floor today we reemphasize that it is the intent of the Senate, and of the representatives of both committees, that when the annual reports of the Council on Environmental Control and its legislative recommendations, as they are developed, reach the floor, they shall be referred to the committees which have had traditional jurisdiction with respect to the subjects of such report and such legislative recommendations.

I want to make one final point, and for this I would like to refer to a document inserted in the record by the Senator from Washington (Mr. JACKSON) this afternoon, entitled "Section-by-Section Analysis." This point is important because, beginning on October 8, and a few days prior to that time, we undertook to do something new in legislative direction. We undertook to place in the Executive Office of the Senate an agency which was part of the production of S. 1075 and in part the product of S. 7, the Water Quality Improvement Act, which is still in conference between the House and the Senate and which is not likely to be acted on finally in this session of Congress, but in the Senate and the House. It is a subject I am about to touch on, but because of other matters in this bill which are not touched upon in S. 1075 at all.

The point I wish to raise with respect to the conference on Environmental Quality established by S. 1075 and the Office of Environmental Quality which would be established by the Water Quality Act is that it is not my intent, as of our two sessions, that I have discussed this objective as well.

There is pending, for example, in the Committee on Government Operations, Senate Resolution 78, which I first introduced to the need for a joint legislative joint committee patterned on the basis of the select committee which I have proposed, and I am glad to join with him and interested Members on this side and in the House to undertake to create that kind of joint committee as early as possible in the next session of the Congress. We are agreed on that objective. We have in mind the kind of joint committee which is envisaged in Senate Resolution 78.

So I would like to think that, notwithstanding the difficulties and the differences of opinion that the Senator from Washington (Mr. JACKSON) and I have had with respect to S. 1075 and S. 7, out of the labor pains of this creation we have begun a period of cooperation and coordination in the Senate's work in the field of the improvement of environmental quality which will result in a wiser, more effective policy in this field.

Mr. JACKSON. Mr. President, will the Senate yield?

Mr. MUSKIE. I yield.

Mr. JACKSON. I wish to express my concurrence in the comments made by the able Senator from Maine, with special reference to the need for a joint non-legislative committee on the environment. I would hope that would be the first order of business next year. I think we can move quickly on the matter. If we can have similar cooperation in the House, we can have it enacted into law in the next session.

Mr. BOGGS. Mr. President, will the Senate yield?

Mr. MUSKIE. I yield to the Senator from Delaware.

Mr. BOGGS. Mr. President, as a member of the Public Works Committee of the Senate, I have a couple of questions to ask the distinguished Senator from Maine.

Is my understanding correct that all reports and legislative proposals as a result of S. 1075 will be referred to all existing legislatures in the field? For example, any report or legislative proposal involving water pol-
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lution would be referred to the Committee on Public Works. Is that correct?

Mr. MUSKIE. Yes. That is the clear understanding of the Senator from Washington (Mr. Jackson), myself, and the two staffs. There is no fuzziness or doubt on that point at all.

Mr. BOGGS. Am I correct that the thrust of the directions contained in S. 1076 deals with the obligation on the environmental impact agencies rather than the environmental enhancement agencies, such as the Federal Water Pollution Control Administration or National Air Pollution Control Administration?

Mr. MUSKIE. Yes, Sections 192 and 193, and I think section 166, contain language designed by the Senate Committee on Interior and Insular Affairs to apply strong pressures on those agencies that have an impact on the environment—the Bureau of Public Roads, for example, or the Energy Commission, and others. This strong language in that section is intended to bring pressure on those agencies to become environmental impact agencies, to bring upon them to respond to the needs of environmental quality, to bring pressure upon them to develop legislation to deal with those cases where their legislative authority does not enable them to respond to those values effectively, and to reorient them toward a consciousness of and sensitivity to the environment.

Of course this legislation does not impose an obligation on those environmental-agency agencies to make final decisions with respect to the nature and extent of the environmental impact of their activities. Rather than performing self-policed functions, I understand that the nature and extent of environmental impact will be determined by the environmental control agencies.

With regard to the environmental improvement agencies such as the Federal Water Improvement Administration and the Air Quality Administration, it is clearly understood that those obligations will operate on the basis of the legislative charter that has been created and is not modified in any way by S. 1076.

Mr. MUSKIE. As I indicated from the language I read from the section-by-section analysis put in the Recone by the Senator from Washington (Mr. Jackson), the Office of Environmental Quality which would be created by Title II of S. 7, would constitute the staff of the Secretariat of the Council on Environmental Quality established by S. 1076, and there would be meshed together in a way to produce a strong agency, strong at the board level and at the staff level, to begin the development of coordinated federal policy in the environmental field.

Mr. BOGGS. Mr. President, I thank the distinguished Senator from Washington (Mr. Jackson) for the excellent and outstanding work that has been done in this field, and for their cooperation in working together and bringing forth a sound agreement on the language in this bill, including its legislative history. I think this language protects the jurisdiction of other committees that have been legislated to protect environmental quality, while preserving the basic intent of S. 1075.

Mr. MUSKIE. I thank the Senator. I am happy to yield now to the distinguished Senator from West Virginia (Mr. Randolph). I appreciate the confidence he has shown in permitting me to conduct these negotiations with Senator Jackson, and the confidence he has expressed in the results we have produced.

Mr. RANDOLPH. Mr. President, my knowledge of the leagues, the Senator from Maine (Mr. Muskie), the Senator from Washington (Mr. Jackson), the Senator from Colorado (Mr. Allott), and the Senator from Iowa (Mr. Boozé) have discussed this legislation which is of concern, not only because of the congressional committee jurisdiction, but to Congress and the people of the United States. Today, approximately 203 million persons live in an area that is becoming increasingly confined. Because of the problems of urban development, mobility of people, and the methods by which problems are moved from one point to another, our society and our environment are constantly changing.

I wish to stress—and do it very briefly, I hope—what I believe has come out of the discussion today and the conference of which have been held by members of the Public Works Committee and the Committee on Interior and Insular Affairs. There may have been some elements of misunderstanding. If there were, they have been removed. If there were some elements of controversy, they have been dispelled.

I think that what we have, through these deliberations, come closer together. This is important if we are to deal with environmental quality effectively. It is only when people get together, that environmental quality means so much to every facet of our society, that the Congress has given specific attention to this subject.

I serve not only as the chairman of the Senate Public Works Committee, but of our Subcommittee on Roads. We recognize, as my able colleague from Maine and others in this body have recognized, that in America driven a mile a mile of highway, no matter what type of road it is, we are not only placing cement or asphalt on the earth, but we are enabling people to move from one point to another.

So in 1968, it was my purpose, and the Senate and Congress agreed, that we would write into the Federal Aid Highway Act that this matter of relocation, bringing people into the conferences before an actual decision was made as to where a road would go, either by the State or Federal Government, or by an agreement of both agencies. The Federal Aid Highway Act is an example of how we are making the people a part of policymaking, even though they, in a sense, are laymen rather than experts, that they would have a part in thinking these matters through.

The Senator from Maine (Mr. Muskie) and other Senators who have spoken about these matters to me, have spoken to me, it is important that we take people into our confidence before the fact rather than after the fact. In order to provide the opportunity for discussion of the many approaches which are coming into being. And so, in the 1968 act, we dealt with matters such as relocation. As the Senator from Washington (Mr. Jackson) knows, this is a matter of environmental quality for the people whose lives are affected by highways. We are facing up to our responsibility for the first time, to provide prompt compensation for the property which is displaced in business and industry, or in their places of residence.

I use this one legislative enactment of Congress to indicate that we are moving more broadly and more sufficiently in the direction which is of concern to me. I could discuss, of course, the Corps of Engineers of the U.S. Army, and how now they are beginning to look at environmental matters as never before because in the Congress of the United States, and the Committee on Public Works they have provided leadership and required them to consider environmental quality.

We find environmental quality interwoven with whatever we do. Whether it is building a road or constructing a bridge, whether it is in the impoundment of waters or in building a building, we must realize that we are working not only with statistics and figures, but we are working with people. The lives of people are involved.

I think it is important for the Recone to reflect that Senators have given their attention in recent weeks and days to this matter, have attempted to bring S. 1076 and S. 7 together to deal with the problems and to lay down the ground rules to guide us to doing a better job in the months and years ahead.

The stress has been here today on the coordination and the cooperation. I think this is a very real partnership among Senator Jackson, Senator Muskie, Senator Allott, and Senator Boozé.

I think we are merging our efforts. We have arrived at an agreement. We must not fragment this effort. We must pool our efforts to assure for future generations an environment in which people can live and grow.

We must assure that consideration of legislation, which affects the environment in which people live, by people and committees who are dedicated to this very real task that lies before us. The resolution of differences between S. 1076 and S. 7, now H.R. 4148, provides this assurance.

As chairman of the Committee on Public Works, I congratulate all of those Senators who have carried on these negotiations. They were negotiations in the very best sense of the word. Although
found influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and expanding technological advances and recognizing further the critical importance of restoring and maintaining the quality of the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all available means and resources, including financial and technical assistance, in a manner calculated to foster and promote the creation and maintenance of conditions under which the man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out this policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, programs, projects, functions, and resources to the end that the following purposes may be attained:

(1) fulfill the responsibilities of each generation as trustee of the environment for the benefit of man and nature; (2) assure for all Americans—safe, healthful, productive, and aesthetically and culturally pleasing surroundings; (3) achieve the Maximum beneficial use of the environment without degradation; risk to health or safety, or other, undesirable and unintended consequences; (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, and use the environment which supports diversity and variety of individual choices; (5) secure objects between population and resource use which will permit high standards of living and a wider sharing of life's amenities; and (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102. The Congress authorizes and directs the President, having met, after full and free conference, to agree to recommend and do recommend to the Federal Government:

(1) the policies, regulations, and public laws of the United States shall be interpreted in this Act in accordance with the purposes set forth in this Act, and (2) the agencies of the Federal Government shall:

(4) utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment;

(3) develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act which will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical decisions;

(5) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the environment, a detailed statement by the responsible official on:

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which should not be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local and state uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) the unavoidable and irreversible commitment of resources which would be involved in the proposed action should it be implemented.

(d) Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction, by way of law or special expertise with respect to any environmental impact involved. Copies of such statements and the policies and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 802 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes.

(e) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unquantifiable commitment of available resources;

(f) make available to States, counties, municipalities, institutions, and individuals, on a cost-sharing and information useful in restoring, maintaining, and enhancing the quality of the environment;

(g) initiate and utilize existing information and planning design in plans and systems oriented to resource-directed projects; and

(h) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies thereof which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such changes in any of such laws or regulations as may be necessary to accord their authority and policies into conformity with the intent, purposes, and procedures prescribed in this Act.

Sec. 104. Nothing in Section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with the criteria of section 101 of the Environmental Quality Act of 1969, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting, in accordance with the recommendations or certification of any other Federal or State agency.

Sec. 105. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II
COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201. The President shall transmit to the Congress annually beginning July 1, 1970, a report on Environmental Quality (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major Federal actions affecting the quality of the environment, a detailed statement by the responsible official on:

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which should not be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local and state uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) the unavoidable and irreversible commitment of resources which would be involved in the proposed action should it be implemented.

(d) Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction, by way of law or special expertise with respect to any environmental impact involved. Copies of such statements and the policies and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 802 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes.

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Sec. 105. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.
nomic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and ecological requirements of the Nation in the light of expected population pressures; (4) a review of existing and planned activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or activities, with particular reference to their effect on the environment and on the conservation, development, and utilization of natural resources; and (5) to make such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may designate.

Sec. 205. In exercising its powers, functions and duties under this Act, the Council shall:

(1) consult with the Advisory Committee on Environmental Quality established by Executive Order Numbered 11470, dated May 23, 1969, which shall represent active of science, industry, agriculture, labor, conservation organizations, State and local governments, and other groups as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including those of public, semi-public, and private agencies and organizations, and individuals), in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206. Members of the Council shall serve full time and the Chairman of the Council shall be paid at a rate provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5318). The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5318).

Sec. 207. The Council shall be required to carry out the provisions of this Act not to exceed $200,000 for fiscal year 1970, $400,000 for fiscal year 1971, and $600,000 for each fiscal year thereafter.

And the House agrees to the same.

That the Senate recedes from its disagreement to the amendment of the House to the title of the bill, and agree to the same with an amendment as follows: In lieu for the words proposed to be inserted by the amendment of the House to the title of the bill, insert the following: "An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

And the House agrees to the same.

Edward A. Gargante, Chair
John D. Dingell, Vice Chair
W. B. W. Amherst, Jr.
W. S. Malland
John P. Saylor
Managers on the House
Henry M. Jackson
Frank Church
Gaylord Nelson
George Aiken
Lon B. Jordan
Managers on the Part of the Senate.

Mr. JACKSON. Mr. President, I move the adoption of the conference report.

The motion was agreed to.

PROGRAM

Mr. MANSFIELD. Mr. President, for the information of the Senate, we shall shortly have the foreign aid appropriations bill conference report before us. Whether that bill can be finished today is highly doubtful.

Then on Monday, it is anticipated that we will have the supplemental appropriations bill and the tax reform bill, and somewhat along the line, perhaps, the Labor-HEW appropriations bill conference report, whether or not.

And for the information of the Senate, it can expect votes on the foreign aid appropriations bill conference report this afternoon or Monday or Tuesday or Wednesday. Whenever we get to the appropriate time.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill H.R. 1814 (40) making appropriations for foreign assistance and related programs for the fiscal year ending June 30, 1970, and for other purposes; that the House receded from its disagreement to the amendment of the Senate numbered 6 to the bill and concurred therein; that the House receded from its disagreement to the amendments numbered 8 and 31 to the bill and concurred therein.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The roll was called by the Clerk.

Mr. MANSFIELD. Mr. President, I ask unanimous consent at this time that the Senate stand in recess until 4:30 p.m.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Thereupon (at 3 o'clock and 56 minutes p.m.), the Senate took a recess until 4:30 p.m.

The Senate reconvened at 4 o'clock and 30 minutes p.m. when called to order by the Presiding Officer (Mr. Byrd of West Virginia in the chair).

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ENROLLED BILLS SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills, and they were signed by the Acting President pro tempore:

H.R. 9534. An act to amend title 38, United States Code, to promote the care and treatment of veterans in State veterans' homes; and


ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The roll was called by the Clerk.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CALL OF THE ROLL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a quorum call, and to comply with the rule, before I make that suggestion, I want to announce that it will be a live quorum. I believe the officials will notify Senators that it will be a live quorum.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the House insignifying the absence of a quorum?
THE NATIONAL ENVIRONMENTAL POLICY ACT:
A VIEW OF INTENT AND PRACTICE

DANIEL A. DREYFUS* and HELEN M. INGRAM**

INTRODUCTION

Policy performance usually falls short of policy promise. Creative and innovative intentions boldly stated in the preambles of legislation become diluted and deferred in the practical chore of translating what legislatures say into what government does. Causes for the performance gap are legion, and any policy which aims at innovative change is bound to face frustration in application. However, the National Environmental Policy Act of 1969 (NEPA)¹ is an exception to the general rule that the targets and goals of the formulators of policy ebb away as the implementors take over. In NEPA’s case, the objectives were expanded during implementation, and the impact of the Act was enhanced beyond initial expectations.

Participants in the legislative process did not generally agree that the passage of NEPA would have much positive impact upon public policy. Contemporary documents reveal that the Nixon administration had aggressively opposed enactment of the measure throughout the legislative process, and the President’s signature on January 1, 1970, was a belated and lukewarm acquiescence to growing national concern with the environment. Most members of Congress, moreover, probably did not appreciate the potential scope and significance of the measure. The news media and environmental interest groups displayed little appreciation for the portent of the legislation. The New York Times of January 2, 1970, for example, barely noted the new requirement for preparation of environmental impact statements, and a headline referred to Senator Henry M. Jackson as “Sponsor of Pollution Control Bill.”

In place of the attrition of commitment which usually occurs in implementation, this article argues that the goals of NEPA have been reinterpreted and in many ways extended beyond those intended by the sponsors. The thousands of column inches of public praise or

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vilification of NEPA printed since 1970 and the volumes of legal arguments, judicial opinions, and administrative rules and regulations dedicated to its interpretation are testimony to its significance. As this essay and the ones which follow in this symposium issue indicate, there is a good deal of disagreement among NEPA scholars about the locus and extent of the impact. There is little question, though, that NEPA has changed the influence of participants in environmental policymaking.

Indeed, as the other four contributions on NEPA demonstrate, the most fruitful and interesting subject for research is not simply whether NEPA is being implemented, but how the law has affected who participates and with what leverage in decisionmaking. A preliminary subject to be addressed here is how the uniquely aggressive implementation of NEPA came about.

The purposes of this introductory essay are twofold. First, the aim is to revisit the legislative process, to recreate the decisionmaking context, and to recall the motives and intentions of several key legislative actors. We have a privileged perspective for this task. One of the authors writes from the vantage point of a staff member of the Senate Interior and Insular Affairs Committee and one of two key aides to Senator Jackson during the formulation of NEPA legislation. Second, this article will comment upon events—again from the frame of reference of a close observer and staff participant with some insight into congressional intent—which have occurred in a half dozen years of implementation.

CONTEXT OF THE LEGISLATIVE PROCESS

The context and orientation of the legislative process is ordinarily remedial. It aims to correct an ill or to restructure or replace a sagging institution. Commentators on NEPA have combed the public record in vain for extensive future-oriented analysis by participants of how the mechanisms and institutions to be established by the law should operate.2 Far more fruitful for unraveling the legislative intents of NEPA are the participants’ perceptions and diagnoses of the ailments of existing institutions and mechanisms. Remarking on the extent to which the existing decisionmaking context dominated Congressional consideration of NEPA, Frederick R. Anderson observed:

... the largest portion of NEPA’s legislative history is taken up with establishing the dynamics of environmental systems, diagnosing the

extent of environmental harm insofar as it is known (and calling for study and measurement of what is not yet known), identifying the federal institutional shortcomings which contribute to environmental deterioration, and endorsing the need for comprehensive federal planning, coordination and decisionmaking under a unified national policy. The subject of enforcement of such a policy on the working level in federal agencies did not command Congress' full attention at any point.\(^3\)

The context in which the National Environmental Policy Act was formulated was one in which economic management had long been an accepted government function. An essential objective of government throughout the history of the U.S. had been to promote economic growth. Early frontier expansionism had been replaced by the progressive conservation ethic of the 1900's, which espoused wise use of natural resources. Sustained yield and public stewardship had replaced exploitation, but the goal of management, both public and private, was still economic gain. Even the preservationists of the 1950's and 1960's did not challenge the ascendency of economics as it applied to most issues. They simply maintained that some places had very great value which was difficult to quantify.

The idea incorporated in the policy statement of NEPA that valuable economic opportunity might in some instances be foregone in order to achieve an environmental goal was a significant shift of policy premises. Such a revolution in values applied to government decisionmaking would require an extraordinary mechanism to display and weigh environmental effects of proposed actions, just as economic effects had long been considered.

The National Environmental Policy Act was formulated within a context of widely-shared criticism of administrative fragmentation in the handling of natural resources and the environment. The Hoover Commission had long since identified and deplored the conflicting and overlapping missions of myriad agencies and bureaus dealing with natural resources. The solution proposed then, and again seriously considered by the Eisenhower administration, was a Department of Natural Resources.\(^4\)

In the late 1960's, when NEPA was debated, the vanguard concerned with environmental policy added ecological irrationality to the case against executive branch fragmentation. Critics of existing governmental machinery realized that every decision—to grant re-

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search funds, to construct a public works project, to lease public lands—has environmental implications. They noted that the impact of government upon the environment was in fact comprehensive, but administrative treatment was piecemeal. The mission of each agency was narrowly defined and responsive to some specific federal concern, such as proprietorship over public lands and navigable waters or interstate or international aspects of fisheries and game management. The newer environmentally-oriented functions of air and water pollution control were equally narrowly assigned and were primarily a response to crisis situations which had not been adequately treated by state and local government.

The challenge was to approach environmental management in a comprehensive way. The new values of environmental policy had to intrude somehow into the most remote recesses of the federal administrative machinery and begin to influence the multitude of decisions being made by thousands of officials. The functions of government involved were too diverse to be unified organizationally. Imposing a comprehensive policy within the organizational arrangement was the ambition which Senator Henry Jackson (D-Wash.) had for environmental impact statements. In a floor speech insisting upon the Senate version of the measure, which established the impact statement procedure, Jackson said:

There are about 80 major Federal agencies with programs under way which affect the quality of the human environment. If environmental policy is to become more than rhetoric, and if the studies and advice of any high-level advisory group are to be translated into action, each of these agencies must be enabled and directed to participate in active and objective-oriented environmental management. Concern for environmental quality must be made part of every Federal action.⁵

Serious shortcomings in environmental information and a lack of established legitimacy in environmental expertise were recognized as other impediments to environmental decisionmaking. Traditionally, economic impacts of resource development decisions were well documented in justification, but decisionmakers were supplied very little information about environmental impacts. One of the charges raised by conservationists in preservation battles, for example, Echo Park and the Grand Canyon Dam controversy, was that agencies such as the Park Service or the Fish and Wildlife Service, which might be expected to generate information, were muzzled by department

secretaries. Further, decisionmakers had far less respect for environmental information than for economic data, which were clothed in the accepted benefit-cost analysis and backed by established rules and procedures.

The need for sounder environmental information was identified repeatedly at the joint House-Senate colloquium to discuss a national policy for the environment held in July 1968. For instance, Lawrence Rockefeller observed:

> The area where greater knowledge would help is the resource decision-making process. Many federal resource decisions are still made on a benefit-cost ratio which does not adequately reflect environmental factors. We know—or are told—precisely what the dollar benefits are for flood control, irrigation, or highway traffic—but no one can tell us the cost of various alternatives in long-term environmental values.

The environmental impact statement mechanism was relied upon by the authors of NEPA to alter the existing decisionmaking context, so that henceforth environmental effects might be assigned greater significance in decisionmaking.

**GENESIS OF NEPA**

Perhaps it is an exaggeration to say that "nothing is new under the sun," but the policymaking process certainly draws heavily for its raw material upon concepts which have been employed before. There are several impediments to original ideas in policymaking, aside from the obvious scarcity of creative genius which plagues all forms of human endeavor. Public policymaking imposes decisionmaking costs. There is brisk competition for the time and energies of principal decisionmakers, and they cannot afford to invent new techniques for every problem. Furthermore, concepts which are familiar are easily communicated, while departures must be described in tedious detail in the course of legislative debate. Once a policy approach has been put into practice, a body of experience is acquired which serves as a referent for further applications of the same or similar techniques. In any event, if sufficient inquiry is made, most policy concepts can be identified as extensions or adaptations of approaches which have been used before.

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7. Hearings of the Joint House-Senate Colloquium to Discuss a National Policy for the Environment, Before the Senate Comm. on Interior and Insular Affairs and the House Comm. on Science and Aeronautics, 90th Cong., 2d Sess., at 6 (1968).
There are three distinct parts to NEPA; each was conceived separately and derived from separate sources. They are:

1. Establishment of the Council on Environmental Quality (Title II)
2. An explicit declaration of a national environmental policy (Section 101)
3. A direction to all agencies of the federal government to carry out certain functions—the "action-forcing mechanism" (Sections 102 through 105)

Council on Environmental Quality

The phylogeny of the Council on Environmental Quality (CEQ) can be traced directly to the model of the Employment Act of 1946, which established the Council of Economic Advisors to the President. 8 The 1946 Act was a formal recognition of the government's responsibility for maintenance of economic health and for the economic impacts of its activities. Over the years national economic efficiency was established as an objective for a wide range of governmental programs. Basic economic data were collected, and economic criteria were established to evaluate projects. Establishment of the Council of Economic Advisors symbolized this development and provided an institutional mechanism for monitoring economic well-being.

The Resource and Conservation Act, proposed in 1959, was a direct, section-by-section parallel to the Employment Act. Sponsored by Senator Murray, the bill declared "a national policy on conservation, development, and the utilization of natural resources and for other purposes." 9 It required an annual Presidential Resources and Conservation Report, establishment of a Council of Resources and Conservation Advisors to the President, and organization of a Joint Congressional Committee on Resources and Conservation.

Substantial considerations supported application of economic policy approaches to environmental management. Environment, like economics, pervades governmental actions. The aim of the proposed Resources and Conservation Act was to give similar legitimacy to environmental concerns and to provide continuing review of the cumulative impact of federal actions upon environmental matters. Of course, in 1960 environment was very narrowly defined to include only recreational, wildlife, scenic, and scientific values and enhancement of the national heritage for future generations.

No action was taken on Senator Murray's bill, but the concepts

were perpetuated in various forms, and ultimately some of them became the major legislative objectives of both the Jackson bills and Congressman John Dingell’s (D-Mich.) House companion measure. The notion of a presidential advisory council or board and the annual report remained a central theme of the NEPA bills of the 91st Congress. A joint committee on environment was proposed and nearly established in 1970 but was not a part of successful NEPA measures.

The structure and functions of the CEQ were major questions in the legislative history of NEPA. The Nixon administration preferred its own small advisory body in the executive office. Congressman Dingell and Senator Jackson were committed to a body with sufficient stature to be influential in the executive branch and with sufficient staff capability to monitor and advise upon the state of the environment.

National Environmental Policy

The Murray bill, after the fashion of the Employment Act, began with a short statement of national policy. As enacted in NEPA, the statements of goals and objectives were a good deal more sophisticated. The essential building blocks of an environmental policy statement, though not widely discussed, were articulated by the environmental vanguard throughout the 1960’s. Professor Lynton Caldwell as early as 1963 had suggested “environmental administration” as the focus for public policy. He noted that:

Examination of the recent literature of human ecology, public health, natural resources management, urbanism and development planning suggests a growing tendency to see environment as a policy framework within which many specific problems can be solved.\textsuperscript{10}

In 1965 the President’s Science Advisory Committee also recognized broad political and social implications for environmental affairs and suggested that environmental quality was a citizen’s right.\textsuperscript{11}

An unusual Senate-House colloquium, held during 1968 to discuss a national policy for the environment, marked an important step in the evolution of an environmental policy statement. The Congressional co-chairmen, Senator Henry Jackson and Congressman George P. Miller, invited legislators, administrators, academics, and well-known citizens interested in the environment to attend. While there was little agreement about the scope of federal concern and less upon


\textsuperscript{11} President’s Science Advisory Committee, \textit{Restoring the Quality of Our Environment}, Report of the Environmental Pollution Panel 16 (The White House 1965).
the form which federal environmental management should take, there was a consensus that a more explicit expression of federal attitude toward the environment was desirable.\footnote{12}

The impetus given an explicit policy statement in the colloquium was extended in the consideration of Senate Bill 1075, introduced by Senator Jackson and others in the 91st Congress. As introduced, Senate Bill 1075 was limited. It would have established an advisory Council on Environmental Quality in the Executive Office of the President, required an annual environmental quality report, and vested in the Council certain broad environmental data-gathering functions. Similar measures were under consideration in the House, including House Resolution 6750, formulated by Congressman John Dingell, which became the center of House action on NEPA. Both the Jackson and Dingell bills were designed to favor the jurisdiction of their respective committees. The Senate bill referred to the Department of the Interior under the jurisdiction of the Senate Interior and Insular Affairs Committee, and the House bill was introduced as amendments to the Fish and Wildlife Conservation Act under the purview of the Merchant Marine and Fisheries Committee.\footnote{13}

During the Senate hearings key legislators became convinced of the need for a strong policy statement. Dr. Lynton Caldwell strongly recommended that an explicit statutory policy on environmental management be included in the bill. Following the hearing, the Senate Interior staff worked out an amendment to Senate Bill 1075 which contained a declaration of national environmental policy; the amendment was enacted in section 101. Specifically, the federal government is instructed to protect and restore the environment in accordance with a general national policy—declared by the act—that government shall endeavor "to create and maintain conditions under which man and nature can exist in productive harmony." One provision in the amendment which did not survive the House-Senate conference in its original form stated: "The Congress recognizes that each person has a fundamental and inalienable right to a healthy environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment."\footnote{14}

Though eventually stricken on the ground that its vagueness might

\footnote{12. \textit{Hearings of the Joint House-Senate Colloquium}, supra note 7.}

\footnote{13. Jurisdictional disputes imposed restraints upon the NEPA proposals throughout the legislative process. Congressional committees handled the environment in a fragmented manner (as did the administration); a large number of committees could, therefore, logically assert dominion.}

invite endless litigation, the provision is indicative of the sponsors’ policy objectives.

*Environmental Impact Statements*

Environmental Impact Statements (EIS) were invented in response to the anticipated administrative indifference or outright hostility toward the environmental council and the environmental policy statement. During the hearings on Senate Bill 1075 it became clear that while the administration professed full concurrence with the objectives of environmental management, it in fact recommended against enactment of the measures then sponsored. Dr. Lee DuBridge, the President’s Science Advisor and the administration’s principal spokesman at the Interior Committee’s hearing, proposed the alternative of establishing a committee of selected cabinet members under presidential leadership to deal with environmental issues. Interrogation by committee members developed the fact that the proposed cabinet council would have little or no full-time staff support.

After the hearings Senator Jackson discussed with the committee staff his concern that if the legislation were enacted over the administration’s opposition, the newly formed Council on Environmental Quality would be unlikely to enjoy strong presidential support. Some other institutional arrangement seemed to be needed. He instructed the staff to explore the concept, suggested by Dr. Lynton Caldwell during Senate hearings, of incorporating “action-forcing” mechanisms into the bill. In part, Dr. Caldwell suggested:

... Congress should at least consider measures to require the Federal agencies, in submitting proposals, to contain within the proposals an evaluation of the effect of these proposals upon the state of the environment.

Building upon Dr. Caldwell’s idea, language was drafted which would grant authority to every federal agency to implement the environmental policy act as part of its established responsibilities.

As reported by the Interior Committee, Senate Bill 1075 included the requirement that every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment include a finding by the responsible official that the environmental impacts of the proposed action had been studied, that unavoidable adverse impacts were


16. *Id.* at 116.
justified by other stated considerations of national policy, that long
term resource considerations had been evaluated, and that irrevers-
able and irretrievable commitments of resources were warranted. If
proposals involved unresolved environmental conflicts, alternatives
were to be studied, developed and described. In other words, whatever
the principal objective of the proposed action, the agency would
be required to explore the environmental consequences and expose
them to the consideration of any subsequent reviewers.

The measure passed the Senate, as amended by the Interior
Committee with the environmental findings provision, on July 10,
1969, without significant debate. The ease of Senate passage was,
however, deceptive. Later in the legislative process jurisdictional and
substantive conflicts arose in both the House and the Senate.

Congressman Dingell's companion version in the House included a
very brief policy statement, requirement of an annual environmental
report, and establishment of the Council on Environmental Quality.
There was no language in the House measure regarding impact state-
ments or other action-forcing provisions. It passed by a vote of 372
to 15 on September 23, 1969, but not without several important
concessions obtained by Congressman Aspinall (D-Colo.), Chairman
of the Committee on Interior and Insular Affairs. In recognition of
the overlapping interests of Aspinall's Interior Committee with the
Merchant Marine and Fisheries Committee, he was granted a position
on the conference committee, where he acted as a restraining force.
He also succeeded in inserting an important amendment which
affected the substance of the legislation. It stated that "nothing in
the Act shall increase, decrease, or change any responsibility of any
Federal official or agency." Had this provision not been modified by
conference and its effects mitigated by the language of the confer-
ence report, this amendment would have negated the action-forcing
mechanism.

In the Senate a heated substantive and jurisdictional controversy
between the Interior and the Public Works Committees had to be
bargained to terms before the conference. In contrast to the House
settlement of the jurisdictional dispute, no members of the Senate
Public Works Committee were appointed as conferees on Senate Bill
1075. Instead, Senator Jackson agreed to support in conference
several changes in the measure which had been negotiated between
himself and Senator Muskie (D-Me.), the spokesman for the Public
Works Committee viewpoint. Two significant modifications were
made in the "action-forcing" provisions:

1. The requirement for a formal finding of environmental impact
was changed to a "detailed statement" by the responsible official.
2. A provision was added to require consultation with environmental agencies in the development of environmental impact statements and to make explicit that such statements would be public documents widely available.

The negotiations among adversaries—both principals and staff—leading to this settlement and several others affecting other parts of the bill were protracted and bitter. The bases of disagreement are complex and multifaceted and are only sparsely displayed in the public record. The substance of the Muskie objection to the “finding” requirement was that it would be difficult to challenge. He doubted that an environmental finding declared by federal agencies would be reliable. Muskie stated:

The concept of self-policing by Federal agencies which pollute or license pollution is contrary to the philosophy and intent of existing environmental quality legislation. In hearing after hearing agencies of the Federal Government have argued that their primary authorization, whether it be maintenance of the navigable waters by the Corps of Engineers or licensing of nuclear power plants by the Atomic Energy Commission, takes precedence over water quality requirements.

I repeat, these agencies have always emphasized their primary responsibilities making environmental considerations secondary in their view.

The essence of the Muskie insistence upon interagency review of impact statements was a desire to extend and protect the authority of the environmental agencies under the jurisdiction of his Public Works Subcommittee on Air and Water Pollution. As he said on the Senate floor:

The requirement that established environmental agencies be consulted and that their comments accompany any such report would place the environmental control responsibility where it should be.

The result of the compromise version was to reduce the solemnity of the official’s responsibility to consider environmental implications and to substitute greater outside sanctions—criticisms by other agencies, court challenges, or public opinion—to enforce NEPA policies. Few significant changes were made in environmental impact statement provisions by the conference committee, and the compromise was embodied in Section 102 as enacted.

19. Id.
Since NEPA was enacted, endless hours of intellectual effort have been invested by solicitors of federal agencies, nonfederal litigants, and potential litigants, and judges and their law clerks in trying to divine the intent of Congress from the sketchy documentation of legislative history. The pursuit of "congressional intent," however seriously it may be approached, has been about as scientific as the voodoo practice of reading the future in a random pile of chicken bones.

Clearly, no one can say except a presiding judge—and that because of authority rather than special insight—what the intent of Congress was with respect to Section 102. There were many House and Senate participants in the legislative process, and each had diverse interests and perspectives; it would be impossible to unravel their separate intentions. At the same time, Senator Jackson's Interior and Insular Affairs Committee staff prepared the original draft of Section 102 and participated in the later process of modifications. Therefore, the recollections of a staff member—along with consideration of the record—may afford some useful insight.

Above all, the impact statement was not intended merely to provide data or description, but to force a change in the administrative decisions affecting the environment. It was conceived as an action-forcing mechanism and consistently described as such by its proponents. Emphasis—perhaps over-emphasis—upon environmental concerns was considered a necessary means of instilling the new policy into an unencongenial decisionmaking process in which the support of the administration was uncertain and federal agencies were wedded to their own missions and to economic efficiency.

The principal staff members who drafted Section 102 combined two viewpoints—that of a lawyer with an appreciation for the role of the courts in policymaking, and that of a student of administration and practitioner of bureaucratic infighting. Both perspectives were useful in designing incentives and recognizing disincentives to operate under Section 102.

It is axiomatic that nearly any significant proposal will face competition for allocation of scarce resources. There are more actions proposed than federal agencies can possibly undertake, and at each stage of the bureaucratic decision process there is a need to eliminate some proposals. The decisionmaker must have criteria upon which such eliminations can be based, and it was NEPA's action-forcing intent to introduce new criteria. Consequently, a proposal accom-

panied by an environmental horror story should carry a heavy handicap in the competition. Given a choice, an administrator is unlikely to stake the agency's program upon proposals which must carry such liabilities throughout the remaining review process and which face public and political opposition as well.

The temptation for agency officials to understate the adverse environmental consequences of favorite proposals was recognized. Here the role of legal review was to be critical. Preparation of the environmental impact statement was to be a statutory requirement. There is no question that the original drafters of Senate Bill 1075 contemplated a role for the courts. The threat of litigation was intended as an incentive to agencies to make a fair appraisal. The requirement for interagency review comment was a further guarantee against excessive agency bias. The members and staffs of both the Senate Interior and Insular Affairs and the Public Works Committees had experience with water resources programs under their jurisdictions. They anticipated similar interagency relationships would emerge under NEPA. By law, proposals for water resource projects to be constructed by federal agencies are submitted to other interested federal agencies and to concerned states for review and comment. The rivalry among federal water agencies is legendary, and the interest of the states in such projects is intense. Consequently, the comments from the interagency review process have often been critical, have displayed in-depth technical analysis, and have been a most fruitful source of questions for the examiners of the Office of Management and Budget and the Congressional committees.

Congressional intent concerning the scope of actions to which NEPA was to apply and how statements were to be prepared is difficult to divine. The words of the Act are vague:

- The entire Section 102 was qualified by the Senate-House conference with the phrase "to the fullest extent possible."
- Statements were to be prepared for "major federal actions significantly affecting the quality of the human environment."

Also,
- "Alternatives" to the proposal are to be described.

The interpretations of each of these and other turns of phrase have been argued endlessly, and the meager official legislative history sheds little light upon intent.

Generality of wording, however, was unavoidable, since the Act was intended to apply to numerous agencies and programs. No precise procedures or definitions could be cast in statutory language which would be applicable to such dissimilar undertakings as con-
struction of a major airport, a change in grazing regulations on public lands, the licensing activity of a regulatory commission, and granting research funds.

Procedural details were left for executive rulemaking, as is customarily the case. The conferees said that “the President was to prepare a list of those agencies...” which would participate in the review of impact statements and to establish a time limitation for receipt of comments from federal, state, and local agencies. Presumably, similar executive amplifications of the impact statement procedure—regarding such matters as the definition of a “major action,” retroactive applicability, occasions for generic rather than specific statements, and other considerations—were anticipated.

There are few clues in the legislative history concerning what NEPA’s Congressional authors expected impact statements to look like. Although the language of the act specifies “a detailed statement,” the most active participants probably had different things in mind. Some of the conferees were concerned that the process might become cumbersome and delay the implementation of programs. The few exhortations in the Conference Report that such delays be avoided now appear naïve.

It is certainly true, however, that the conferees never contemplated anything so extravagant as the multiple volume dissertations which now are commonly produced. This contention is bolstered by the fact that NEPA made no provision for funding extensive additional work by the federal agencies.

A PARTICIPANT’S PERSPECTIVE OF NEPA IN PRACTICE

The atmosphere in which a policy is implemented is often quite different from that in which it is formulated. Typically, the coalition of interests responsible for passage of a policy through Congress falls apart, and the subsequent support for implementing policy is less strong. It has been noted that the Congressional designers anticipated a hostile environment for the Act’s application. In fact, this unfavorable reception did not materialize. When the language of the Act is read in light of subsequent events, it leads inevitably to the style of implementation which occurred.

In the early years of implementing the requirement for impact statements, three developments occurred which transformed them from a force operating from inside program administration (as anticipated by the original drafters) to a force exerted from outside

by interest groups and courts. These included the explosion of the environmental movement, the emergence of environmental law firms, and the assumption by the CEQ of the role of monitor of the EIS process.

With Earth Day, which was celebrated four months after the passage of NEPA, the environmental issue burst into the crisis stage in American public opinion. During the time the legislation was being considered, the environmental issue was at what Anthony Downs calls the pre-problem stage. Although some legislators and the environmental vanguard were articulating a need for environmental management, there was no general public consciousness of environmental concepts. Prior to 1970 issues were taken up in discrete fashion: opposing dams in the Grand Canyon, saving the Redwoods, rescuing the scenic Hudson, etc. As the era of the environment emerged, many issues were tied together as examples of a more general problem. The public activity involved in each instance of the general environmental problem was greatly enlarged and insistent upon positive action. Many government agencies were called upon to do something effective. The President, once hostile to NEPA, embraced it and appointed committed environmentalists to the CEQ. As a consequence, there was much more outside pressure and much less bureaucratic resistance than the designers of NEPA expected in the preparation and review of impact statements.

The advent of a national environmental ethic was accompanied by a proliferation of environmentally-oriented legal firms whose expensive legal work was underwritten by the Ford Foundation and other donors. As noted earlier, the architects of NEPA clearly foresaw a role for the courts in enforcing environmental policy. Landmark cases predated the enactment of NEPA, such as the High Mountain Sheep Dam on the middle Snake River and Storm King Mountain pumped storage powerplant on the Hudson, but these were infrequent and associated only with prominent issues. No one in the NEPA policymaking process, however, could have foreseen that talent and funds would become available to pursue hundreds of cases involving matters of purely regional or even local concern. A result of the expanded legal action was that almost any environmental impact statement might be challenged in the courts. The courts, in turn, generally took a critical attitude toward agency compliance with the Act.

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The shape of NEPA implementation also was greatly influenced by the President's decision to delegate to the newly-established CEQ responsibility for issuing guidelines for agency implementation of NEPA. Such a delegation was by no means necessary; in fact, legislative history indicates that the designers thought the Bureau of the Budget would supervise the 102 process, just as it served as overseer of benefit-cost evaluations. On the one hand, the role of CEQ as umpire of the NEPA process has further diversified its often conflicting roles as a monitor of the nation’s environmental health, advisor to the President, and public ombudsman, and these built-in contradictions have hampered the agency in the performance of its tasks. On the other hand, CEQ handling of NEPA has marked the process with the Council’s particular perspective. Unlike the Bureau of the Budget (now OMB), which is responsible to the President alone, CEQ is dependent upon environmental groups for political support. It is likely that CEQ has been less sensitive to the dynamics of organization and administration and more sympathetic to environmental political forces and to public participation than the central budgeting agency would have been.

Modification of the initial action-forcing concept which began with the Muskie-Jackson compromises was greatly extended by the events just chronicled. The initial approach—a formal “finding” by the responsible official—was intended to internalize the influence of environmental concerns upon agency decisionmaking. Changes in legislative language combined with environmental activism have served to transform the impact statement process into a tool for “external,” public participatory policymaking. The change has had a number of unfortunate, dysfunctional consequences.

Because of CEQ guidelines and court action, environmental impact statements were required for actions in which decisions had already been made and to which administrative agencies were already committed. The consequences of this retroactive application, however desirable it might be in the abstract, profoundly affected early implementation of the Act. It created instantly an incredible backlog of impact statements which had to be prepared on what were essentially irrevocable decisions—projects under construction, programs under way, and the like.

More significantly, it was often these advanced actions and proposals which set the unfortunate tone for early implementation of NEPA. Militant environmental groups grasped the opportunities for

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25. See, e.g., remarks in Senate National Environmental Policy, Hearings at 117-124.
one more delaying action in conflicts they had previously lost. Agencies found themselves rationalizing commitments to actions which they had no practicable abilities to modify or reverse. The best talents in the agencies were devoted to defending old decisions made before full consideration of their environmental impacts was required.

Because of litigation, CEQ guidelines and public participation, environmental impact statements have become too long, disjointed and complex. The earliest environmental impact statements prepared pursuant to the Act were perfunctory affairs. One (related to a land use permit for a road from the Yukon River to the north slope of Alaska) was only eight typewritten pages long, including discussion of alternatives. Another (relating to Corps of Engineers dredging programs in the Great Lakes) required only three pages. The proper balance between these early documents which contained too little information, and efforts prepared today, which threaten information overload, has yet to be struck.

The courts and CEQ's guidelines have applied two interpretations to environmental impact statements which probably were not anticipated or intended by the authors of the provision:

1. They look upon the statements as comprehensive decision documents; and
2. They view the statements as evidence of whether the agency is complying with other provisions of NEPA.

As indicated by a specific reference in the Conference Report, Section 102(2)(c) was patterned after the 90-day review process required for water resource projects. There was an implicit assumption by the authors that, as in the case of a water project, any major proposal would already have been justified by economic evaluations and that the objectives and alternatives of the proposal would have been identified and described in the course of formulation. The impact statement, therefore, need only amplify environmental considerations which might otherwise have been overlooked.

As the Act was applied to programs dissimilar from water resources, such as licensing actions of the Atomic Energy Commission, it became clear that the analysis and justifications for many federal decisions were not being documented in any formal way. At least there was no basic decision document upon which the logic of the proposal itself could be weighed by the public or the courts.

Environmentalists, who had been frustrated for years by their inability to obtain written analyses supporting governmental decisions, sought to have a written account of the entire decision process
included in environmental statements. The courts, sharing a need for information, agreed. CEQ in its November 1971 guidelines determined that "Environmental statements will be documents complete enough to stand on their own." 7

Certainly, there is a need for public documentation of important governmental decisions, and the complexity of such decisions requires that the documentation be voluminous and costly. The body of policy concerning the public right to information appears to be deficient in that it relates only to already prepared documents and does not require gathering information in a public disclosure document; it also does not prescribe the level of detail required. The responsibility has been imposed upon NEPA in this instance to enforce the fundamental public right to freedom of information concerning governmental activities. Environmental policies probably are being unfairly burdened with the costs of this extra public service and unfairly criticized for the required effort.

A final and perhaps most dangerous dysfunctional consequence has been that of delay. The external process into which the EIS has evolved defies the expressed intent of the Act's authors that it be efficient. The diversity of the participants, the independence of litigants and the judiciary, and the delays which legal actions necessarily entail mitigate against expedited decisionmaking and deprive the responsible officials of control over timetables.

Some of the greatest strengths and most dangerous weaknesses of NEPA stem from this transformation. The checks provided by outside participants obviously preclude expedient action by agency officials in response to parochial or political motives. Alternatively, the process can be unresponsive to real needs for timely federal action. Honest disagreements by courts or litigants or cynical delaying action by interest groups could frustrate proposals which are supported by the general public.

Most criticism of NEPA has been presented as opposition to unjustified and costly delays. Until recently, however, the critics have had very little public credibility. With the currently increasing concern over energy supplies and economic stagnation, however, the situation could change dramatically.

Current energy problems and the economic crisis facing the nation have greatly reduced public enthusiasm for environmental constraints upon constructive economic activity. The news media have notably mitigated their partisan treatment of environmental issues. Oppo-

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ments of NEPA, it would appear, now have an opportunity to attack it effectively. Like Frankenstein's monster, the ultimate threat to NEPA lies in the possible disaffection of its creator. There is no question that Congress had something far less awesome in mind when it fashioned the act. Thus, the future holds two possibilities for NEPA. If Congress, dissatisfied with NEPA's implementation, substantially amends it, the result might be a conscious tradeoff of greater environmental degradation in return for other public benefits. On the other hand, if the public does not agree to such modification, then NEPA is likely to continue to be an unusual example of policymaking in which impact exceeds expectations.

THE ESSAYS WHICH FOLLOW

A review of the literature on environmental evaluation commented:

The history of the adoption and implementation of the National Environmental Policy Act, and of the extension of the environmental impact assessment section of the law to several of the states, is one of the most remarkable but, in the literature of political science and public administration, unremarked developments in recent years.\(^2\)

With a view toward making a needed contribution to this literature by providing some policy impact assessment of NEPA after a half-dozen years of implementation, the Natural Resources Journal has collected the essays which follow.

The initial and most important target of Section 102 was the administrative process. Two of the essays in this symposium specifically evaluate impact upon federal agencies. The Allan Wichelman article develops a classification of agencies and relates it to the pace at which agencies have integrated NEPA into their decisionmaking processes. Richard Andrews centers his attention upon two agencies, the Army Corps of Engineers and the Soil Conservation Service, and compares and contrasts their responses. On the whole his evaluation of agency response is more pessimistic than that of Wichelman. Least optimistic of all is Hanna Cortner's article, which is based on a survey of some of the literature on NEPA implementation. She concludes that federal agencies have reluctantly and incompletely complied with NEPA requirements. In fact, her essay assesses the implementation of NEPA quite differently than we have here. For her there has

been a gap between NEPA's statutory promise and its policy performance.

The Cortner article surveys a variety of participants beyond federal agencies and concludes that the "external" pressure of courts has been the key leverage point for change. Paul Friesema and Paul Culhane concentrate on another "external" leverage point—the process of review and public comment. They maintain that the scientific quality of the EIS, particularly of the social impacts assessment, is unrelated to its effectiveness as a change agent. They believe that detailed, clear, and forcefully presented comments in response to EIS's can influence agency treatment of environmental and social concerns.

Together these essays provide a variety of perspectives upon the policy impact of NEPA. For NEPA to remain "alive and well" as the Council on Environmental Quality concluded in its Fifth Annual Report, it must be subjected to such critical appraisal and debate.

The National Environmental Policy Act

Judicial Misconstruction, Legislative Indifference, & Executive Neglect

MATTHEW J. LINDSTROM & ZACHARY A. SMITH

Foreword by Lynton K. Caldwell

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not change the existing authorities to comply with other envi- 
ronmental requirements. A "detailed statement" should be provided to address the environmental impacts. He disputed the government's assertion that air and water pollution control laws would be sufficient to address these issues.

division of responsibilities that affect the envir- 
oom, and he expressed concern that agencies would continue to derive benefits from the decisions made. Muskie left a call for outside sanctions to public opinion, public interest in other agencies. In sum, Muskie and his team believed that air and water pollution laws were insufficient to address the environmental impacts.

Thus, Muskie was left to work out his differences with Jackson's S. 1075 before the conference committee met. Four important modifications of S. 1075 were made with regard to the EIS process. First, the requirement in section 102(c) for a "formal finding" of the environmental impacts was changed to a "detailed statement." Second, a new measure was added to make statements widely available and to require consultation with environmental agencies when developing an environmental impact statement. The consulting language had the profound effect of instigating an external review process that thereby improved environmental accountability and helped to reduce arbitrary and capricious bureaucratic decision making. Third, section 103 was amended to delimit the continued obligation of federal agencies to comply with other existing federal laws. This statement resolved Muskie's concern that air and water pollution laws would play second fiddle to Jackson's NEPA. Fourth, the language of section 303 was amended to require that the president's annual environmental quality report be submitted to all congressional committees having jurisdiction over the environment.

To blend policies and practices that impact the environment under some sort of similar rule and to balance the countervailing interests among the agencies and between Jackson and Muskie, the environmental assessment requirements were created. This aspect of NEPA was heavily influenced by Caldwell's idea for the environmental impact statement. Because of the Muskie-Jackson compromise, the amended version of Senate Bill 1075 was easily approved. On October 8, 1969, it was presented to the Senate during deliberation of Muskie's water pollution control bill. It was agreed that the revised S. 1075 be negotiated with House Resolution 12549 (formerly 6750) in the conference committee.

NEPA in the House-Senate Conference

Following the political jockeying that fashioned the Muscle-Jackson compromise, as well as the Dingell-Aspinall agreement, the final form of NEPA was settled in the House-Senate conference committee. Representing the House were Aspinall, Dingell, Edward Garmatz (D-Md.), William S. Mailliard (R-Calif.), and John Saylor (R-Pa.). Representing the Senate were Gordon L. Allott (R-Colo.), Frank Church (D-Idaho), Jackson, Len Jordan

Legislative History and Implications
(R-Idaho), and Gaylord Nelson (D-Wisc.), all from the Senate’s Interior and Insular Affairs Committee. The unique inclusion of Aspinall and Saylor (two representatives from other House committees) was a result of the Dingell-Aspinall compromise. The conference considered H.R. 12549, S. 1075 in its original form, and S. 1075 as revised by the Muskie-Jackson compromise. Three views were represented at the conference: the Senate conferees under Jackson, the House conferees controlled by Dingell, and Congressman Aspinall who was a part of the conference by the special agreement between Dingell and Aspinall.

The opening sentence of the Senate report to the Joint Conference on a National Policy for the Environment set the tone: “It is the unanimous view of the members of the Interior and Insular Affairs Committee that our Nation’s present state of knowledge, our established public policies, and our existing governmental institutions are not adequate to deal with the growing environmental problems and crises the Nation faces.” NEPA eventually changed this conundrum—on the legislative level at least. As the Senate report clearly documents, NEPA’s “purpose is to establish, by congressional action, a national policy to guide federal activities which are involved with or related to the management of the environment or which have an impact on the quality of the environment.”

Two issues were raised during the conference that would have a significant impact on the long-term prospects for strong federal environmental protection. The first was the deletion of Jackson’s provision that every citizen has a “right [to a] healthful environment.” The environmental rights provision was eliminated because of fear that this might give constitutional power to environmentalists and their interest groups to aggressively pursue such newly created “rights” in the courts.

The second important change emerging from the conference committee involved the structuring of section 102 in Title I of Senator Jackson’s S. 1075. This change, under the influence of Congressman Aspinall, involved two related aspects. First, the requirement that federal agencies’ procedures for evaluating unquantifiable environmental values be approved by the CEQ was deleted. This was changed to what now is section 102(2)(B), which simply requires agencies to consult with the CEQ when constructing such procedures. The second factor involved rearranging the placement of the words “to the fullest extent possible.” Again, Aspinall objected to the compromise Muskie-Jackson version of S. 1075 because it
all from the Senate's Interior Committee of Aspinall and Saylor (and of the conference by Dingell, and of the conference by the special report to the Joint Conference on a

the tone: "It is the unanimous and Insular Affairs Committee that is, our established public policies, ins are not adequate to deal with the crises the Nation faces." NEPA in the legislative level at least. As EPA's "purpose is to establish, by
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requirement that federal agencies' able environmental values be app
as changed to what now is section ries to consult with the CBO when second factor involved rearranging est extent possible." Again, Aspinall Jackson version of S. 1075 because it

appeared to be too strong and potentially disruptive to the status quo. Section 102 originally read, "The Congress authorizes and directs that the policies, regulations, and public laws of the United States, to the fullest extent possible, be interpreted and administered in accordance with the policies set forth in this Act." Aspinall's suggestion served to strengthen the "policies, regulations, and public laws" clause. The altered language, which was later passed as the final version of NEPA, reads: "The Congress authorizes and directs that, to the fullest extent possible; (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act." 42

This argument was crucial because some agencies would seek to limit their responsibility under the new act. For example, the Atomic Energy Commission (AEC, the licensing and regulatory functions of which are now under the Nuclear Regulatory Commission) argued that the thermal pollution caused by nuclear power plants was an issue beyond its jurisdiction. 43 The AEC's shifting of bureaucratic responsibilities was not an isolated incident in the federal departments and agencies. Given the disparate power bases in the bureaucracy, a unifying mechanism was needed to ensure that environmental considerations were taken seriously by all federal agencies. In the end, the conference committee did make it clear that "nothing in the bill altered the statutory responsibilities of any federal agency." 44 The final language in the bill granted "authority to every federal agency to implement the environmental policy act as part of its established responsibilities." 45

Aspinall's position on the conference committee allowed him to argue, not entirely persuasively, for the "no change in responsibility clause." The "fullest extent possible" change was accepted by the conferees in return for the elimination of Aspinall's "no change in authority" amendment, which would have essentially gutted the main intentions behind the Dingell and Jackson bills. According to Daniel Dreyfus and Helen Ingram, had "this provision not been modified by conference and its effect mitigated by the language of the conference report, this amendment would have negated [NEPAs] action-forcing mechanism." The statement of the House managers explained this: "It is the intent of the conferees that the provision 'to the fullest extent possible' shall not be used by any Federal agency as a means of avoiding compliance with the directions set out in Section 102.
... No agency shall utilize any excessively narrow construction of its existing statutory authorizations to avoid compliance."

The final bill delineated in the conference committee report was passed by a voice vote in the Senate on December 20, and similarly by the House on December 22, clearing the way for the president's signature twelve days later.

Nixon Signs NEPA into Law

On January 1, 1970, President Nixon enacted his first major piece of legislation of the new decade when he signed S. 1975, the final version of NEPA, in a ceremony held at the White House. Nixon sanguinely proclaimed the 1970s as the environmental decade, whereby "America pays its debts to the past by reclaiming the purity of its air, its waters, and our living environment." Nixon warned, "It is literally now or never."

Although only a few highly involved participants realized it at the time, NEPA was about to make major institutional changes and fundamental reforms throughout the federal bureaucracy. A very readable and concise document, NEPA was a relatively radical and unusual step forward in public policy making—especially environmental policy. Most congressional legislation is incremental in nature. In that respect NEPA is philosophically and procedurally very different from most legislation. With a profound—and ambitious—national environmental policy statement, NEPA mandated the wholesale rearranging of institutional decision making within federal agencies. Agencies were now held accountable for the environment on which their decisions had an impact.

NEPA created a law that significantly expanded the boundaries of regulation and institutional arrangements with respect to the environment. As a whole, NEPA broke new ground in environmental policy. Four areas are most important. First, NEPA declared a national philosophy and specific goals for the environment that did not previously exist. Second, the law provided an administrative tool for ensuring consideration of environmental ramifications resulting from federal agency actions. Third, NEPA provided a legal ground via the Administrative Procedures Act (APA) for citizen suits if NEPA's procedures are not properly followed by the agencies. Fourth, NEPA created an executive coordinating office for the natu-
- NEPA/ESA - dam by a third corp, favors tool of people who want to stop delay projects
- FERC- Cir case law, ESA's case is 900 pages long
- Sable Trail Court requires weekly
- FERC liaisons: agency didn't consider an issue (if they did consider, courts will defer)
- Transmission lines, gas pipeline (FERC), oil pipeline, seaward developments
- Gas pipeline (e.g., Sable Trail) = does FERC how to consider upstream clsmanship.
  Where offers: purchasing carbs upstream developers. LNG export cases before DC review will decide. = (PonziStyle fradulent practice)
  - Downstream development
  - FERC is first/only Coopers (prior to NYC and keep up),  
    - by supplementing FTS, Ensure the Coop process has resources to comply with FERC is failure, go by the [Manual ASAP]
    - No enforceable relief in NAFTA, ECT, ICSID
  - [Signature: Michael Wignar
    - Eric Green
    - April 26]
(Scope of Federal/many other linear projects in cross paths)
- Transmission/Oil pipelines: No compensation
  Federal reg., except when you cross federal
  33 CFR 325, procedures, ACE interface
  NEPA/ESA/MTA - (cf. Warehong Tribe)
  (cf. Flamingo South Pipeline, good case)
- Forest Service also will not look outside the
  narrow permitted needs.
- Ojibwe, Anishinaabeg, Neech Shire
- Impacts to "but for" the Federal/note TPL
  whole project on one federal look,
  Lisa Minnenski, is being to "USFWS Exempt"

(b) (5)

- Majority Bill Every Act = (Hilly Ireland Soliciting Letters)
- hunting season [forestry (Mall Lake) / 20 C.C.]
- Circuit Split = "Incapacity tree" prohibited by 50 C.F.R.
  § 7.41 - 8th Cir / 5th Cir - Two cases, (Cir.60)
- Issue in (Flamingo South)

- Dept of Interior guidelines (Regs)
Nick has continued his work to develop a regulatory reform agenda. Where? What?

- We are looking for First 41 (FPSCE = double refund)

- Commerce Dept KNAB - What is Commerce doing?

July: We need to prioritize the system.

- Concurrent reviews

- Recommit strategy meetings only - find the agencies by

- Two or two and one year of two years to still figure out how to meet their obligations

- When, who, who, risk of concern

Scott: Communication is a concern, not as well as initially thought

FERC is the

- Filings delayed. FERC needs ballots weekly calls

FERC - USFSWS - get coordinates back into annual roles

- Follow design for FERC?
I0A  - New York Mosaic Conservation Pipeline.

Access  - UA remote sensing available -> data & monitoring plan
          - more consistency across RCA districts
          - modernize agency processes
    = Model A/C data for SIP compliance
    EFH needs better modeling tools
    - its believed in combining NEPA
    -> CED guidance could facilitate this route of integration
Pipeline Infrastructure Development and Operations: Key Challenges and Solutions

FERC’s Role as Lead Agency

The Natural Gas Act makes FERC the lead agency with authority to approve the construction and operation of an interstate natural gas pipeline project. The statute mandates a balancing of interests and culminates in the issuance of a conditional certificate of public convenience and necessity. FERC’s authority preempts state and local law to the extent it conflicts with or unduly delays the federally authorized project. However, the statute does not preempt other federal statutes, whether implemented by other federal agencies or by state agencies acting under direct or delegated authority. Several of these other federal laws enshrine a single mandate—such as to protect the resource (e.g., species and their habitat)—without broader consideration of other factors that must be weighed by the lead agency, such as number of landowners affected and constructability. As a result, secondary agencies acting under a single-focus statutory mandate can effectively subvert the lead agency’s role. Pipeline projects feel this acutely as FERC—acting under the balancing mandate of the Natural Gas Act—wrestles with accommodating the single mandate perspectives of the U.S. Fish & Wildlife Service, the U.S. Army Corps of Engineers or, state officials acting under the federal Clean Water Act.

Where multiple federal statutory mandates apply to a single infrastructure project, the mandates need not be prioritized or preempted, but they can and must be harmonized. The governing principle for harmonization should be that a federal agency acting in parallel with a lead agency for a project cannot apply its mandate to usurp the mandate of the lead agency.

Resolving the proper role of single-mandate supporting agencies acting under a lead agency with a balanced mandate is a key challenge.

Clean Water Act 401 Water Quality Certifications

States have responsibility and authority under the federal Clean Water Act to certify whether a given project conforms to applicable water quality standards. States generally issue 401 certifications in line with Nationwide Permits (“NWPs”)—meaning that a 100% survey requirement should be unnecessary where the NWP has been tagged as consistent with water quality standards even before any specific pipeline was in view. Where an individual 404 is necessary, the certification should be a narrowly focused, short duration assessment of potential impacts to water quality standards. Yet some states use 401 authority to block or delay a pipeline project by withholding or delaying the certification. In addition, some states assert that the certification applies beyond the state’s federally-approved water quality standards under Section 401 of the CWA, arrogating broader authority and discretion to deny the 401 certification. The broader assertion provides an additional point of state leverage over pipeline projects, particularly because FERC’s record of decision does not necessarily address state water quality standards.

It is important to maintain a federal regime over water quality while acknowledging the political and practical reality that water is inherently local and parochial. Alternatives include seeking clarification from FERC (and perhaps CEQ) that (a) the certification should be based upon the facts in the federal record of the federal lead agency (e.g., FERC’s record) measured against federally enforceable water quality standards (and not against purely state water quality standards),
this continue, the geographic and temporal windows for pipeline construction will continue to shrink.

In addition to overreach under the ESA, the USFWS has also boldly attempted to expand their authority to regulate species impacts under the Migratory Bird Treaty Act (MBTA). FERC as lead NEPA agency has an obligation to consult USFWS more broadly concerning project related environmental impacts that may affect migratory birds. USFWS Regions and Field Offices wield their MBTA authority differently and have become increasingly aggressive in (a) demanding extensive field work, looking tree-by-tree for habitat, (b) demanding costly mitigation measures, (c) demanding additional “voluntary” payments, and (d) establishing rigid construction windows that both delay and complicate (and increase the cost of) construction. USFWS is currently attempting to develop an “incidental take” program under the MBTA, an act that was not intended to regulate incidental take. This would create another duplicative and unnecessary layer of species regulation. Lastly, USFWS has also sought to require FERC to withhold a certificate until USFWS is satisfied with the applicant’s mitigation (see, e.g., Rover). As a result, USFWS has become one of the stickiest wickets in the FERC approval process.

NEPA Environmental Impact Review and Mitigation

FERC (and other federal agencies) are constantly being challenged on the scope of the NEPA review with respect to (a) project purpose, (b) reasonable alternatives, (c) upstream and downstream impacts outside of FERC’s authority, and (d) impacts to and from climate change. Case law under NEPA varies widely across the appellate courts, providing fodder for challenges that frequently fail but nevertheless are costly in time and treasure.

Cultural / Historical Review and Mitigation

Under the National Historic Preservation Act (NHPA), the lead federal agency (in practice, the project developer acting in coordination with FERC) must consult with state historic preservation offices and with “consulting parties” concerning the potential impacts to cultural and historic resources. In practice this means extensive field work to try to uncover whether any such resources exist anywhere near the pipeline alignment. While important, this is both time-consuming and expensive, and the state agencies take widely divergent approaches to the requirements, mitigation demands, and schedule. Some state agencies have attempted to require mitigation even in the absence of specific, localized impacts, or have required substantial payments to be made to non-profits in the state before concluding the required consultation.

Tribal Consultation

Recognized tribes have aspects of sovereignty that are in tension with the subsidiary status of consulting parties under NEPA, NHPA, and other statutes. Especially recently, tribes have sought to assert a veto authority over energy infrastructure they deem objectionable, well beyond the role accorded to consulting parties. This has led to a dire misalignment in expectations among the tribes, the federal government, and the projects, leading to confrontation, delay, civil unrest, and worse. The geographic basis for a tribe’s influence has also crept well beyond designated reservations. Landowners opposing specific projects have leveraged this undefined scope of tribal influence in relation to their own private land.
Standard Subpart OOOOa ("Quad O-A") adds to the previous 2012 requirement first by requiring greenhouse gas limits for methane and second by adding stipulations for those sources that were not previously affected. Specific requirements include those relating to: leak detection and repair ("LDAR") for well sites and compressor stations; greenhouse gas limits for pneumatic pumps; and other emissions limits and controls.

**EPA’s Risk Management Rule**

In January 2017, EPA finalized amendments to the Accidental Release Prevention Requirements for Risk Management Programs under the Clean Air Act, Section 112(r)(7). The amendments aim to modernize EPA’s RMP regulations as required under Executive Order 13650, which directed the federal government to carry out a number of tasks intended to prevent chemical incidents, such as the explosion in West, Texas, in 2013. OSHA was expected to harmonize its analogous program (Process Safety Management, PSM) with EPA’s final rule.

Among other things, the new rule makes clear that an “incident . . . which could reasonably have resulted in a catastrophic release” includes a Near Miss, and that incident investigations are required for such Near Misses. The new rule also formalizes the requirement to prepare a report at the end of Incident Investigation and expands the information that must be addressed in the report. For third-party compliance audits, the new rule requires a Compliance Audit to evaluate compliance for each covered process every three years, and third-party audits when triggered by any “RMP reportable” release or “due to conditions at the source that could lead to the accidental release of a regulated substance.” Additional changes relate to the evaluation of safer technologies and alternatives analysis, as well as the responsibility of the private sector to ensure the sufficiency of training and resources available to first responders.

**ESA Habitat Conservation Plans May Impact Species Listings**

USFWS is authorized under the ESA to issue permits for the “incidental take” of listed wildlife species. As part of the process of seeking an incidental take permit, a developer must prepare a Habitat Conservation Plan that specifies how it will minimize and mitigate harm to any species that may be impacted by the proposed project. Recently, landowners have attempted to preempt listing of certain species through the use of large-scale voluntary conservation plans. Plans like the Western Association of Wildlife Agencies’ (WAFA) Range-wide Plan contain voluntary conservation measures to help the private sector protect species such as the lesser prairie chicken (LPC) across vast areas of the country.

In September 2015, a federal district court in Texas vacated the USFWS’s decision to list the LPC as threatened, in part because USFWS did not follow its own regulations for evaluating the impact of conservation efforts when making a listing decision. USFWS’s 2003 “Policy for Evaluation of Conservation Efforts When Making Listing Decisions” requires the agency to consider whether a certain conservation plan will be implemented and whether the conservation effort will be effective. In the case of the WAFA Range-wide Plan, USFWS argued that, since no landowners had yet enrolled in the plan, there was reason to believe that the plan would never be implemented. Consequently, it feared that not listing the LPC would discourage landowners’ participation. The Court disagreed, determining that the 2003 Policy is intended to look forward at the on-going
Permitting and Environmental Review Regulatory Reform Initiatives
Request for Information: Permit Streamlining and Modernization

To modernize the National Environmental Policy Act (NEPA) and rectify some of its current implementation issues, a combination of legislative and regulatory reforms and policy clarifications are needed. The following are general revisions to policy and guidance that should be considered to make NEPA more effective and efficient.

Revise Outdated Guidance: Guidance provided by the Council on Environmental Quality (CEQ), such as the “Forty Most Asked Questions Concerning the CEQ’s National Environmental Policy Act Regulations,” is outdated and does not reflect recent policy changes or advancements in technology and techniques. Since the document was published in 1981, firms have improved designs and engineering for linear projects, and their environmental stewardship has grown. Moreover, numerous lawsuits produced many legal interpretations of the otherwise ambiguous, high-level NEPA guidance. This created a confusing and difficult landscape for the permit approval process. In the second part of this document we provide specific suggested revisions to the NEPA guidance.

Align Policy and Guidance with Executive Branch Actions: CEQ should update policies and guidance to streamline and enhance the ability to build and maintain energy infrastructure. NEPA guidance should reflect Executive Branch actions and streamlining statutes that aim to improve the permit process such as the Presidential Memorandum “Spurring Infrastructure Development through more Efficient and Effective Permitting and Environmental Review” (August 31, 2011), Executive Order 13604 “Improving Performance of Federal Permitting and Review of Infrastructure Projects” (March 28, 2012), Executive Order 13766, “Expediting Environmental Reviews and Approvals for High Priority Infrastructure” (January 24, 2017), Executive Order 13805, “Establishing a Presidential Advisory Council on Infrastructure” (July 19, 2017), and “Fixing America’s Surface Transportation Act” (P.L. 114-94).

Clearly Define the Scope of NEPA Guidance: CEQ should define more precisely the scope of impacts under the guidance. Emphasis must be placed on determining the scope of impacts early in the NEPA process to avoid unnecessary enlargement of the NEPA analysis. Currently, the growing scope of a NEPA analysis increases costs through its unlimited requests for information without a corresponding benefit. Similarly, cumulative impacts must be defined and limited by an articulated rationale principle.

Emphasize Timelines in Guidance: NEPA guidance should also place significance on timelines found within agencies’ regulations and/or statutes. Agencies have displayed a tendency to expand the scope of their NEPA analysis beyond their statutory authorities. This can result in delays and expanded timelines. For example, an agency will provide a general time frame (e.g. 6 months) for a project that requires a NEPA analysis. During that time, preparations would be made to initiate said project such as mobilizing construction crews and/or ordering building materials. If a company is notified that the NEPA analysis and subsequent approval is delayed—even if only by a few months—this would have a detrimental impact on a company’s ability to efficiently build out energy infrastructure. An effort must be made to ensure that agencies honor decisions made during the scoping process. The Environmental Protection Agency (EPA) is the agency most in need of this type of reform. The EPA’s propensity to delay the NEPA process further by finding deficiencies in the Environmental Assessment (EA)/Environmental Impact Statement (EIS) process must be addressed with detailed guidance.

Provide Clearly Defined Terms in NEPA Guidance: NEPA guidance should provide clear definitions of integral terminology. Clearly defining terms such as “reasonably foreseeable,” “indirect effects,” the “extent of upstream and/or downstream effects,” and the “degree of mitigating and/or offsetting the
increase of greenhouse gas emissions” will aid regulators in implementing NEPA and avoid unnecessary litigation. Improvements must also be made in defining what constitutes “major/significant actions” that are subject to an EA/EIS review.

**Provide Guidance to ensure consistent use of Categorical Exclusions:** By providing clear guidance on what actions can be categorically excluded from NEPA, the process will become more efficient and consistent across the government. In addition, by rule, significant categorical exclusions could also be applied to the permit approval process (e.g., any work within an established right-of-way, regrading, etc.).

**Clarify Guidance to Avoid Frivolous Litigation:** Modernizing the NEPA guidance should also address agencies’ universal concern over future litigation. Frivolous litigation is a source of delay and increased expense, and a tactic often employed by those opposed to infrastructure development. This litigation often results in gathering substantial amounts of additional data which further delays the process. In this vein, public education efforts should be a part of the EIS process—specifically focusing on page 5 of the “Citizens Guide to the NEPA: Having Your Voice Heard”—which describes NEPA’s applicability and the NEPA process. Helping the public understand NEPA will alleviate the growing concern of public comment obstruction and the proliferation of misinformation.

**Agency Staffing Levels:** Agencies must have adequate staffing to manage and conduct the permit review process so NEPA policy can be consistently and efficiently applied.

**Recommendations to reform the “Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations”**

In addition to the general comments above on NEPA guidance modifications, the following specific comments on CEQ’s “Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations” are provided. The revisions are listed by question.

1a. Range of Alternatives. What is meant by “range of alternatives” as referred to in Sec. 1505.1(e)?
   b. How many alternatives have to be discussed when there is an infinite number of possible alternatives?

   *The question should be reworded to narrow down “infinite” to a reasonable number of possible alternatives. Companies spend considerable effort to look at up to three of the best options from a cost, socioeconomic, constructability, and environmental standpoint. The NEPA process would be more expeditious with a better upfront quantifiable criteria and definition of alternatives.*

5b. Is the analysis of the “proposed action” in an EIS to be treated differently from the analysis of alternatives?

   *The answer to this question states, “This regulation does not dictate an amount of information to be provided, but rather, prescribes a level of treatment, which may in turn require varying amounts of information, to enable a reviewer to evaluate and compare alternatives.” What is meant by the “level of treatment”? A better understanding/explanation of this phrase would be beneficial.*

7. Difference between Sections of the EIS on Alternatives and Environmental Consequences. What is the difference between the sections in the EIS on “alternatives” and “environmental” consequences?

   *The answer to this question states, “it should include relevant comparisons on environmental and other grounds.” The term “other grounds” needs to be clearly defined because as currently stated, this provides for ambiguous interpretations.*
8. Early Application of NEPA. What must and can agencies do to apply NEPA early in these cases?
   
   In general, the lead federal agency should better define interagency cooperation with a statement that a communication plan and deliverables schedule will be developed. Even though every project is unique, there can be some general standardization in this area.

9. Applicant Who Needs Other Permits. To what extent must an agency inquire into whether an applicant for a federal permit, funding or other approval of a proposal will also need approval from another agency for the same proposal or some other related aspect of it?
   
   This question can be combined with #8. Why are only “Federal” agencies invited to participate in scoping? There are State agencies that will also need to provide approval.

35. Time required for the NEPA Process.
   
   Remove vague language regarding how long the NEPA process should take. Specifically, revise third sentence in first paragraph to read: “The Council has advised agencies that under the new NEPA regulations even large complex energy projects would require only about no longer than 12 months for the completion of the entire EIS process.” It is also recommended that in paragraph 2, the second and third sentences should be struck.

The following questions in the document were identified as problematic. Given these questions have significant issues that go beyond simple clarifications, it is recommended that they be revised in full:

14a. Rights and Responsibilities of Lead and Cooperating Agencies.
   
   b. How are disputes resolved between lead and cooperating agencies.

15. Commenting Responsibilities of EPA.

28. Advance or Xerox Copies of EIS.

29a. Responses to Comments.
Reconciling Multiple Statutory Mandates to Facilitate Energy Infrastructure

Large infrastructure projects like interstate natural gas pipelines are governed by multiple Congressional mandates executed by different federal agencies. Reconciling these mandates is essential to ensure that these projects are reviewed coherently, efficiently, and defensibly by the federal Executive Branch. This can be accomplished by following a few governing principles.

Governing Principles

1. Each Congressional mandate must be fulfilled according to its nature.

   - The White House Council on Environmental Quality and Heads of federal Departments must work to ensure that no federal agency prevents another from fulfilling Congress’s legislative direction.

2. Project-wide mandates differ from other mandates focusing on specific impacts of a project.

   - Project-wide approval mandates provide authority to approve a project as a whole (e.g., Natural Gas Act Section 7).

   - Impact-focused mandates provide authority to review and mitigate impacts from a project through issuance of a permit or through consultation (e.g., Clean Water Act Section 404 permit and Endangered Species Act consultation).

3. The execution of impact-focused mandates must not infringe the authority of an agency with a project-wide approval authority to decide whether the project will be approved.

   - The Executive Branch should prohibit the exercise of impact-focused mandates in a manner that prevents, delays, or impedes fulfilling a project-wide approval mandate.

4. An agency with a project-wide approval mandate must establish and communicate a process and timetable by which all applicable mandates can be executed coherently.

   - All agencies must seek to fulfill their informational needs through the development of the lead agency’s record and the concurrent, rather than sequential, analysis of information relevant to their respective mandates.

   - All agencies must clearly and timely communicate to the lead agency informational gaps that legally preclude the initiation or the conclusion of their agency reviews, after making full use of practicable and available alternative sources of information.

The governing principles do not alter the scope or nature of any statutory mandate. These principles help to reconciles potential conflicts among agencies while fulfilling their statutory duties as defined by Congress. They promote coherence, by integrating federal reviews and promoting shared expectations; efficiency, by focusing agency and applicant resources where needed; and defensibility, by building a factually and legally robust record for agency decisions.
Examples of Authorities to be Reconciled According to the Governing Principles

Where projects are subject to multiple Congressionally-mandated reviews, following the governing principles will help to ensure that the reviews are coherent, efficient, and defensible. Interstate natural gas pipelines are a case in point. These pipeline projects are governed by Section 7 of the Natural Gas Act, which is implemented by the Federal Energy Regulatory Commission, but they are also subject by numerous other statutory programs that address impacts from the pipeline but do not confer authority to decide the siting, construction, or operation of the pipeline, since these are preemptively the responsibility of the Commission.

For example:

U.S. Fish and Wildlife Service

- Mandate to control the pipeline project’s impacts to protected species and habitats.

U.S. Army Corps of Engineers

- Mandate to control impacts to wetlands from the pipeline project.

Advisory Council on Historic Preservation and State Historic Preservation Officers

- Mandate to control the pipeline project’s impacts to cultural and historic resources.

National Park Service

- Mandate to control impacts to park resources from the pipeline project.
MODERNIZING NEPA GUIDANCE

New guidance from CEQ would help streamline federal review of infrastructure projects by clarifying NEPA duties and procedures that are routinely subject to legal challenge.

- This is as important for agencies and projects as for the public and the reviewing courts.

While the underlying NEPA statute is largely sufficient, CEQ guidance has not kept pace with the specific issues and arguments that are now commonplace.

- New guidance should directly and specifically address these modern issues, using examples.

- Existing guidance tends to be high-level and conceptual, effectively leaving it to the courts to discern what is or isn't required by NEPA.

Areas for special focus include:

- **Purpose and Need** – NEPA analysis must properly reflect the purpose of the proposal before the agency, not the preferences of policy-makers or opposition groups.
  
  - For example, the purpose of a proposed interstate natural gas pipeline is generally to transport natural gas by pipeline from one or more regions or interconnections, to specific market areas or interconnections. This purpose is more specific than simply meeting the energy needs in a geographic area. Such a general purpose could theoretically be met by providing oil, coal, solar, or hydro power, requiring demand reduction, etc. But none of these is the proposal before the agency, and none expresses the purpose of the project or reflects the jurisdiction of the reviewing agency (in this case, FERC). To remain pertinent and useful, the scope of the NEPA review should reflect the project’s purpose.

- **Alternatives** – The alternatives analysis must be tailored to the purpose of the proposal before the agency, otherwise it leads to excessive analysis of irrelevant, tangential, or infeasible projects that are not before the agency for action.
  
  - In the example above, solar or hydro power are not appropriate alternatives to the gas pipeline project, even if these energy sources are preferred by certain agencies or groups.

  - The breadth of alternatives being considered has increased to the point where scores of major and minor route alternatives are put under the microscope for an interstate gas pipeline project. As a result, NEPA has evolved incorrectly into the vehicle to select the route – which is properly the province of the Natural Gas Act – and to ensure that it has least environmental impact – which is not NEPA’s charge.

  - The depth of analysis has also increased to the point where full mapping and resource-by-resource analysis is often expected for many alternatives, setting up impact comparisons between alternatives measured in fractions of a wetland acre, etc.

  - Such broad and intensive analyses require months of effort and entail enormous costs out of proportion to the purpose of the alternatives analysis. They also lead the public to expect a greater degree of control – by the public and by the agency – over project development than NEPA affords, fostering litigation and eroding public trust in the reviewing agencies.
New guidance is needed to tie alternatives, first, to the proper purpose and need and, second, to a more general level of analysis sufficient to discern whether an alternative is significantly more or less burdensome to the environment. In addition, new guidance is needed to harmonize the varying approaches to alternatives analysis taken by federal agencies that review the same project.

Scope of Impacts — A dearth of CEQ guidance has been exploited in a barrage of lawsuits aimed at expanding the scope of NEPA analyses far beyond what NEPA intended or what is useful for an agency of limited jurisdiction to consider. Clear and practical limits are needed.

- For example, upstream production and downstream use of natural gas are generally not direct or indirect impacts of interstate gas transport by pipeline. Cumulative impact analyses have also grown out of proportion and would benefit from clear, practical guidance on the appropriate areal (or other) extent of potential cumulative impact for analysis purposes, as well as on an acceptable level of detail where available information is either incomplete or changeable.

- Likewise, speculation is inappropriate in impact analysis (because speculation is not a reliable basis for decision-making), yet is often demanded on the basis of low-grade, generic statistical analyses rather than facts.

Sufficiency of Information — Significant site-specific data-gathering is now routinely expected, to a level of detail that consumes immense resources and time and that converts NEPA into an information-gathering statute rather than an aid to agency decision-making. The balance needs to be adjusted. Similarly, new information technologies and methods now exist that should be used in lieu of defaulting to new site-specific data-gathering wherever it is sufficient to inform agency decisions. Finally, where multiple federal agencies are reviewing a project, the lead agency's NEPA process should be designed from the start to encompass, to the extent practicable, the information needed by all agencies, so that multiple or sequential NEPA analyses are avoided.

Brevity and Duration of Analysis — Current guidance suggests EAs can be 150 pages (or more) and EISs can be 300 pages (or more), and the preparation time has grown ever longer. (Original guidance suggested 10-15 pages for an EA.) The size of EAs/EISs and their apparently limitless growth over time reflects both the misdirection of analytical resources and data-gathering efforts noted above as well as the increasing use of NEPA has a litigation weapon (and shield) rather than an informative aid to agencies. Renewed guidance is needed to ensure that NEPA efforts and documents are tailored to the task.

Forward Direction

- While the areas for special attention noted above are not new, fresh guidance that is concrete and up-to-date will help streamline agency reviews, balance regulatory burdens and benefits, and align NEPA practice with statutory intent.
ORDER NO. 3355


Sec. 1 Purpose. This Order is intended to: 1) immediately implement certain improvements to National Environmental Policy Act (NEPA) reviews conducted by the Department of the Interior (Department); 2) begin assessment of additional such opportunities; and 3) begin implementation of Executive Order 13807 of August 15, 2017, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects" (E.O. 13807).

Sec. 2 Authorities. This Order is issued under the authority of section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended. Other statutory authorities for this Order include, but are not limited to, NEPA, 42 U.S.C. 4321-4347.

Sec. 3 Background. The Department has broad responsibilities to manage Federal lands and resources for the public’s benefit. The NEPA applies to the execution of many of the Department’s responsibilities with the goal of ensuring that information regarding environmental impacts is available to decisionmakers and the public before decisions are made. The NEPA accomplishes this goal by requiring Federal agencies to prepare an Environmental Impact Statement (EIS) for major Federal actions significantly affecting the quality of the human environment.

Both the Department and the Council on Environmental Quality (CEQ) have issued regulations to implement NEPA. Because the purpose of NEPA’s requirements is not the generation of paperwork, but the adoption of sound decisions based on an informed understanding of environmental consequences, the regulations encourage agencies to: 1) focus on issues that truly matter rather than amassing unnecessary detail; 2) reduce paperwork, including by setting appropriate page limits; 3) discuss briefly issues that are not significant; and 4) prepare analytic (rather than encyclopedic) documents, among other measures.

In recognition of the impediments to efficient development of public and private projects that can be created by needlessly complex NEPA analysis, I am issuing this Order to enhance and modernize the Department’s NEPA processes, with immediate focus on bringing even greater discipline to the documentation of the Department’s analyses and identifying opportunities to further increase efficiencies.

This NEPA-streamlining effort dovetails with E.O. 13807. Among other requirements, E.O. 13807 requires CEQ to take actions to enhance and modernize the Federal environmental review process and to form an inter-agency working group to identify agency-specific
(a) bureau/office NEPA regulations, policies, guidance, and processes to identify: 1) impediments to efficient and effective reviews; 2) best practices and whether they can be implemented more widely; and 3) whether the Department should consider establishing additional categorical exclusions or revising current ones;

(b) requirements and process improvements under Title 41 of the Fixing America’s Surface Transportation (FAST) Act, 42 U.S.C. 4370m-1(c)(1)(D), to determine whether any best practices can be broadly applied, including to projects beyond the terms of the FAST Act;

(c) requirements and process improvements required by E.O. 13807, to determine whether any best practices can be broadly applied, including to any projects beyond the terms of E.O 13807; and

(d) CEQ NEPA regulations and guidance to assess whether to recommend changes to facilitate agency processes.

(2) Within 30 days of the effective date of this Order, each Assistant Secretary, in coordination with bureau heads, should provide recommendations for actions to streamline the NEPA process to include potential regulatory revisions, development of revised or additional categorical exclusions, revised or new guidance or policies, and recommendations on streamlining the naming process.

d. Implementation of E.O. 13807. The Deputy Secretary will also coordinate implementation of E.O. 13807.

(1) In order to begin implementation of E.O. 13807, each Assistant Secretary, in coordination with the bureau heads, is hereby directed to identify:

(a) potential impediments to efficient and effective reviews for infrastructure and develop an action plan to address such impediments as a subset of the review required in Sec. 4c(1)(a) above;

(b) potential actions that could be taken by CEQ to facilitate a review of major infrastructure projects, as a subset of the review required in Sec. 4c(1)(d) above; and

(c) pending proposals for major infrastructure projects, as defined in E.O. 13807 and that are not yet the subject of a NOI issued by the Department, that could be candidates for the “One Federal Decision” process.

(2) Within 30 days of the effective date of this Order, each Assistant Secretary, in coordination with the bureau heads, should provide the information requested in Sec. 4d(1)(a)-(c) above.

Sec. 5 Implementation. The Deputy Secretary is responsible for implementing all aspects of this Order, in coordination with the Solicitor and the Assistant Secretaries.
Overview of Economic Impact of Railroad Permitting Challenges

U.S. railroads operate across nearly 140,000 miles of rail network and deliver approximately 40 percent of intercity freight volume. The permitting process experienced by railroads and their customers is broken, hindering the rail industry’s ability to access new markets, grow and is eroding the strength of the U.S. supply chain. Rail network maintenance and rail expansion projects are critical to keeping U.S. farmers, miners, drillers and processors, manufacturers, and retailers competitive in domestic and world markets. Customers’ rail-served facilities represent billions of dollars of investment and economic activity and face the same permitting challenges.

Freight rail line, bridge and facility infrastructure projects are privately funded. Over the last ten years, railroads spent approximately $130 billion on these investments (This excludes additional private spending on equipment which brings Class I freight rail capital investments to almost $240 billion over the same period). In 2016, customers served by BNSF invested nearly $3.5 billion, which is expected to generate more than 3,000 new jobs in local communities. This marks the sixth consecutive year that BNSF customers and local economic development organizations have invested more than $1 billion in a calendar year for new or expanded facilities.

Railroad infrastructure projects range from relatively routine maintenance or technology installation projects in existing rights-of-way to very complex projects requiring full-scale environmental impact statements with multi-jurisdictional and multi-agency review. Too often, even routine projects are delayed months at a time as they wait to receive the necessary approvals, and large projects can languish five to ten years or more before receiving necessary permits to go forward or being denied altogether.

Permitting delays may mask a greater threat—important infrastructure projects may not even be considered or initiated due to investment risk and uncertainty created by permitting delays and arbitrary denials. The risk of delay and associated lower returns can be a disincentive for any private capital participation.

In recent years, it has become increasingly difficult for railroad and rail-served projects to receive necessary permits. The process is already long and complex but when there is opposition of any nature—such as anti-carbon, environmental justice or NIMBY—opponents succeed in appropriately expanding the scope and complexity of environmental impact statements and lengthening the review process, either effectively killing projects with the ever-expanding study of impacts or significantly increasing their permitting costs.

Operating the Private Rail Network

- Annually, railroads undertake replacement of over 15 million rail ties and 6,700 miles of rail.
- Equipment: Requires approximately 31,000 locomotives and 1.56 million rail cars
- 61,000 Class I Rail Bridges
- The industry is in the process of installing Positive Train Control (PTC) technology that requires the installation of:
  - 32,654 track-side signal systems
  - 3,968 base station radios are installed

Private investments of Class I railroads alone supports:

- 1.5 million jobs
- $274 billion in economic output
- $88 billion in wages
- $33 billion in tax revenue
Further, federal agencies must create coordinated projects plans, set timetables for review, provide explanations for missed deadlines, and post the timetable for individual projects on the federal permit dashboard. FAST-41 also reduces the statute of limitations for claims against a covered project from six years down to two years.

There are limitations on the types of railroad projects that can benefit from the FAST-41 permit streamlining provisions. The Act specifically preclude projects eligible for streamlining under Title 23, so a railroad project that falls under the jurisdiction of DOT is not eligible for the streamlining provisions in FAST-41 (However, a railroad project led by an agency such as the USCG or the USACE is likely eligible; these projects would still need to qualify as covered projects under FAST-41 requirements). In short, a number of critical rail projects are not subject to the streamlining benefits made available in Title 23 or FAST 41. Congress should clarify that railroad projects fall under both FAST-41 and Title 23.

One of the most necessary permitting reforms relates to the processes of local and State permitting authorities and associated negative decisions from courts related to these processes. Rail projects have been slowed—adding cost or stopping the project—by local and State regulation even though under the Interstate Commerce Commission Termination Act (ICCTA), many State or local regulations are preempted with respect to rail transportation including zoning and land use regulation, construction and environmental permitting of rail facilities and other activities that have the effect of regulating railroad operations. While certain types of rail projects are covered by ICCTA, the STB recently declined to extend those protections to rail-served customer-owned facilities, even when a city planning commission’s primary reason for denying authorization for a project was based on key aspects of service to the facility by a freight railroad. Consistent, strong application of preemption is necessary to ensure that important rail and rail-served projects are not shelved or abandoned altogether, and that the flow of interstate commerce is not impeded. The Administration and/or Congress should consider:

- Directing the Surface Transportation Board (STB), which has jurisdiction under ICCTA, to intervene as requested by their railroad and shipper constituents to ensure that State or local regulations do not block railroad projects or otherwise limit transportation of important energy commodities.
- Clarifying that ICCTA preemption can apply to rail-served facilities or expand the ICCTA for the same purpose.
- Statutorily prioritizing project permitting for international commerce, ensuring that international commerce is prioritized in the exercise of State and local jurisdiction.
- Requiring the scope of state implementation of federal statutes to remain consistent with that of federal regulators for projects in interstate commerce.

Federal permit processes under NEPA must be reformed. In short, there is no way for an applicant or an agency to know “how much analysis is enough.” The scope of NEPA analysis and the EIS process and output must be reformed by adding some common-sense boundaries and made more transparent for the benefit of all interested parties. The President could appoint a commission and/or direct the Council on Environmental Quality (CEQ) to completely rewrite regulations implementing NEPA. New NEPA implementing regulations should:

- Provide an exhaustive list of studies that if undertaken by an agency should render the document legally sufficient under NEPA.
- Define geographic scope reasonably so that analyses are not overly broad.
Consistency among field offices

Need to address
Adequacy of Evidence Revealed
Category Exclusions

(b)(5)
Guide to 3d Army Complexes of Corp Army works

(b)(5)
(b) (5)
ESA Score 7 consultation
Possible updates?
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DRAFT Preamble Outline and explanatory footnotes to be removed before finalizing.

For convenient navigation, open the View tab and select Navigation Pane.
Scoping

Efficiency x Sreenly

Current Technologies
CES + NEPA problem
Wyoming County Commissioners Association Meeting

Council on Environmental Quality Chair Mary Neumayr

9:00 am, Wednesday, March 6, 2019

CEQ Townhouse, 730 Jackson Place

Meeting Agenda

I. Introductions

II. WCCA's proposed changes to the National Environmental Policy Act Implementing Regulations
   a. Making the NEPA process more efficient — length of documents and timelines
   b. Using county-prepared analyses, including socioeconomic profiles
   c. Including counties on an interdisciplinary team
   d. Redefine “cooperating agency” to always include states and counties having jurisdiction by law or special expertise.

(b) (5)
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Prioritzación

(b) (5)
What is Justification?

Rpts - CRS
2003 Task Force

2005 Congress

GA Rpts
SAFE Rpt
MAP 21

2011 Obama PM
2012 EO 13604 (3/22/12)
2013 Obama PM (5/17/13)

Fast 41
30+ Guidance Docs

EO 13807
Obama

NEED MORE LITIGATION TIMELINES/ Timelines

Time Frame

DINRC

Timeline Data 2016 MAP

2016 DOE
DOE Data
CEO Timeline Data
ANPRM
August 20, 2018

Comments of Blueprint 2025

Re: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

AGENCY: Council on Environmental Quality (CEQ).
ACTION: Advance Notice of Proposed Rulemaking.

Docket No. CEQ-2018-0001 - RIN: 0331-AA03

The Blueprint 2025 ("BP2025") initiative is a collaboration among infrastructure professionals, leading infrastructure development companies and public sector project managers, which advances and supports plans and policies to restore the U.S. position as the country with the world's best, most efficient and most productive infrastructure. A central tenet of BP 2025's policy is the recognition that reform of the permitting process for major infrastructure projects is absolutely essential if the U.S. is to modernize its infrastructure in time to allow development of the new technologies which will enable us to keep pace with the modernization programs of our major global competitors. As outlined in our recently updated position paper on modernization of the NEPA process (Annex A attached), the current process is cumbersome, inefficient and antiquated, it needs to be modernized and brought into the 21st century through better use of available technology.

A major reason for the failure, up to this point, to optimize the NEPA process lies in the facts, outlined in Annex A, that no one knows what NEPA review costs the government and the private sector and there are no performance metrics to evaluate the government’s performance. In this context, there has been no incentive to make the process more efficient or to reduce its cost. These deficiencies should be addressed as priority subjects pursuant to this ANPR as it is clear that the NEPA process imposes very direct and substantial costs on both government and the private sector. Perhaps more important, costs arising from NEPA delays may increase project costs by 50% or more and, for cutting edge projects, may substantially reduce the useful life between startup and technical obsolescence.

Against that background, we have the following comments in response to the specific questions presented in the advance notice:

1. Should CEQ’s NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?

Both the FAST 41 efforts and those pursuant to the President’s “One Federal Action” order have operated on the basis of consensus among agencies and, as a result, have yielded complex and convoluted compromise procedures. An appropriate environmental
review procedure would adopt the “one window” approach mandated by laws such as the Deepwater Port Act and the Deep Seabed Hard Mineral Resources Act in which the lead agency is, in fact, the lead agency, with final decision making authority. Other affected agencies should be required to participate and exercise only the authorities granted by the laws which they are responsible for implementing. Experience shows that, by this approach, complex and controversial environmental reviews can be completed in less than a year.

As noted above, the time delay associated with the current NEPA review process not only imposes substantial costs on both government and the private sector, it impedes the development of the technology of the future and handicaps our Country’s efforts to maintain its global leadership position. 1

2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions, and if so, how?

Yes. As noted in the attached Update, the use of modern technologies can facilitate the development and maintenance of a National Environmental Database which can be drawn upon as necessary and relevant. Modern Data analytics can speed and regularize the environmental review process, minimize opportunities for agency bias and make judicial review more expeditious and predictable.

3. Should CEQ’s NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?

Yes. See response to Question 1 above.

Scope of NEPA Review:

4. Should the provisions in CEQ’s NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?

The current suggested page limits seem appropriate, but should be enforced through appropriate entry software. To the extent necessary, supporting data can be included in

1 As we have noted on a number of occasions, the Congress used to identify and “put its shoulder behind” projects which it believed to be of national importance and the agencies were by and large responsive to directives under laws such as the Trans Alaska Pipeline System Act, the Deepwater Port Act, the Deep Seabed Hard Mineral Resources Act and the Alaska Natural Gas Transportation System Act. In recent years, there has been more reluctance to address specific projects and projects which have been high on BP 2025’s top fifty list, such as the Cadiz Water Project in California, the Clean Line Transmission Project, the Texas Central Rail–Project the SeaOne Energy Transportation Project have languished and a few have been stalled by opposition from a very small number of members. President Trump’s Executive Order 13766, directing priority processing of critical infrastructure projects has largely been ignored. If we are to keep pace with “Made in China” this situation must be remedied.
searchable and linked data attachments. A digitized process would allow more expeditious review and enforcement of hard time limits.

5. Should CEQ's NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decision makers and the public, and if so, how?

In accordance with the existing statutes and regulations, NEPA analysis should address only the direct and indirect effects which are subject to regulation by the lead or participating agencies, NEPA documents should not address federal actions which are non-discretionary or impacts which are not subject to federal regulation. Agencies should participate in the lead agency process throughout the life of the project and their input should be limited to matters within their jurisdiction.2

6. Should the provisions in CEQ’s NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?

Public involvement regulations should be predicated on an assumed basic level of computer literacy, should be developed with a view towards maintenance of efficient digital processes and should have timing requirements consistent with the capabilities of digital processes. Software protocols should seek to enforce basic requirements regarding relevance and supporting references.

7. Should definitions of any key NEPA terms in CEQ’s NEPA regulations, such as those listed below, be revised, and if so, how?

a. Major Federal Action;

The existing formulation—a federal action which will have a direct or indirect effect which is within federal jurisdiction and which has the potential for significant environmental impacts—is appropriate but often not followed. The “within federal jurisdiction” element is too often ignored. Agencies often interpret the “no action” alternative to mean “no project” and thus allow them to expand their jurisdiction to cover the entire project rather than only the aspect, such as an air or water discharge, over which they exercise jurisdiction. It needs to be made clear that NEPA does not expand agency jurisdiction but only permits agencies to consider effects within their jurisdiction. It should also be made clear that “categorical exclusion” is not the first step in the environmental review process. The CATEX

2 The Deepwater Port Act provides for a perpetual license which functions to provide all authorizations required for the construction and operation of the Ports and put in place a continuous environmental review process to assure that the Ports continue to utilize best available technology to minimize impacts on the marine environment. EPA participates in the licensing process and issues Clean Water Act Permits for the very minor domestic and cooling water discharges associated with Port Operations. Some EPA officials have taken the position that since the Ports are originally “new sources” and since water permits expire every five years, new and separate environmental reviews addressing the Ports’ operations are required at five year intervals. PS.
review should only take place after the decision maker has concluded that a federal action has the potential to significantly affect the environment.

b. Effects;

Again, the effect must be within federal jurisdiction. NEPA does not expand federal jurisdiction and an interpretation which would, for example, allow consideration of the construction of a facility which is beyond the agency’s jurisdiction would be contrary to the clear intention that agencies’ jurisdiction should not be affected. A proper interpretation of this requirement would be consistent with NEPA’s original intent and would greatly simplify its application.

c. Cumulative Impact;

Effects to be considered in cumulative impact analysis must be subject to federal regulatory authority. For example, if the federal government is prohibited from restricting the export of crude oil, crude oil exports should not be the subject of cumulative impact analysis. Cumulative effects, like other effects, must be within in an agency’s jurisdiction in order to merit consideration in the environmental review process.

d. Significantly;

Under the Act, the decision maker must exercise discretion, subject to judicial review, to decide whether the a proposed federal action may have an effect, within her or his agency’s jurisdiction, which has the potential to be “significant.” As noted above, limitation of this requirement through improper application of the “categorical exclusion” is inappropriate and counterproductive. The “significantly” definition might be amended to make clear that the decision maker retains this authority.

e. Scope;

Environmental reviews must focus precisely on the foreseeable direct and indirect effects subject to federal regulation of the proposed federal action or reasonable alternatives to the federal action. Alternatives which are not within federal jurisdiction need not be assessed. The No Federal Action alternative need not be addressed unless the agency has discretion to take no action.

8. Should any new definitions of key NEPA terms, such as those noted below, be added, and if so, which terms?

a. Alternatives;

b. Purpose and Need;

c. Reasonably Foreseeable;

d. Trivial Violation; and
9. Should the provisions in CEQ's NEPA regulations relating to any of the types of documents listed below be revised, and if so, how?

a. Notice of Intent;

b. Categorical Exclusions Documentation;

As noted above, the "categorical exclusion" methodology is being misapplied in many agencies to impose additional limits on decision makers' discretion rather than to provide a "safe harbor" to be relied upon by decision makers facing decisions on close questions. It needs to be made clear that categorical exclusions do not preclude the exercise of agency discretion regarding the question of whether a "major federal action" is proposed and that extensive documentation and public comment is not required. Otherwise the CATEX functions essentially as a redundant environmental assessment. The millions and perhaps billions that have been spent by agencies in adopting CATEX regulations will have been wasted. Finally the exception in many agencies' CATEX regulations for matters involving substantial public interest or opposition essentially defeats the purpose of CATEXs. Those exceptions should be eliminated.

c. Environmental Assessments;

We need to know what Environmental Assessments cost, in both federal and private sector dollars and in project delay costs. Since nearly all EAs result in FONSIIs the cost benefit ratio of this process may be subject to question. Fortunately, the EA process should be amenable to radical attenuation through the application of modern technology. That potential should be explored intensively.

d. Findings of No Significant Impact;

e. Environmental Impact Statements;

f. Records of Decision;

As noted in the attached report, all of these elements of the NEPA review process have become unnecessarily complex and stylized. Digitization of the review process will provide an opportunity to enhance clarity and predictability. CEQ must take full advantage of that opportunity, and

f. Supplements;

The role of supplements should be clarified. There is no need for supplementation where there is no continuing federal oversight or periodic permitting. Where there is continued oversight or regulatory engagement, periodic updating should be a matter of course. Scoping and public participation requirements for supplements are likely very different from those for original EISs and should be tailored accordingly.
10. Should the provisions in CEQ’s NEPA regulations relating to the timing of agency action be revised, and if so, how?

Addressing at the earliest practicable date is important and should be rigorously enforced. Particularly in adjudicatory proceedings, environmental documentation should be available prior to finding and application to be complete, certainly prior to commencement of the proceeding. Any necessary environmental review should be integrated into the proceeding and certainly should not be a basis for reopening a proceeding after the record is closed. There is no need for FEIS or ROD when a judicial decision is issued after a trial type proceeding. Time limits for final approval should be provided.

11. Should the provisions in CEQ’s NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?

Existing procedures for third party preparation of environmental review documents are cumbersome, create perverse incentives and should be eliminated. Reasoned review of applicant prepared documents should be a fully accepted protocol.

12. Should the provisions in CEQ’s NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?

Programmatic documentation is extremely useful and should be more effectively utilized. It should be made clear, however, that there is not a moratorium on permit issuance during the pendency of programmatic review and reviews should be completed within a reasonable time period. Digitization and data analytics will allow continuous input to programmatic review processes and would greatly improve the usefulness of this tool.

13. Should the provisions in CEQ’s NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?

Alternatives which are not within the regulatory purview of the reviewing agencies should be eliminated. Where an agency lacks authority to withhold action based on public interest considerations, the “no action” alternative is not available. Agency regulations restricting consideration of “mitigation” in choosing among alternatives or requiring selection of the “least impact” alternative should be examined to determine their statutory basis.

General:

1. Are any provisions of the CEQ’s NEPA regulations currently obsolete? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.

As noted above, the NEPA regulations require a comprehensive overhaul to enable full utilization of modern technology.
2. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient?

As noted, we believe a comprehensive review of the entire process is required.

3. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents, and if so, how?

Reliance on relevant State Environmental Review Documents should be mandatory.

4. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?

The Regulations should include a specific expedited review procedure with time limits for priority projects identified pursuant to E.O. 13766.

5. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ's NEPA regulations, and if so, how?

6. Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible, and if so, how?

Although it is clear that delays in permit issuance can have environmental consequences as adverse and severe as those of imprudent permit issuance, there are few consequences or disincentives for unnecessary or unreasonable delays in permit issuance. CEQ should work to provide appropriate performance metrics, cost monitoring and related mechanisms for providing a more appropriate balance.

7. Are there additional ways CEQ's NEPA regulations related to mitigation should be revised, and if so, how?

While the basic concept of mitigation may be relatively well understood, the details are not. Is it appropriate to require mitigation when the statute does not allow for a broad "public interest" determination? (We think the answer should be "No"). Should mitigation be taken into account in determining the "best" environmental alternative? (We think the answer must be "Yes"). There are a number of these kinds of questions which must be answered in order to achieve fair and predictable results in this context.

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3 In circumstances where environmental review is linked with a substantive finding such as the Corps of Engineers LEDPA determination on water projects the question of how mitigation should be taken into account is critical. The provision in the Corps' guidance to the effect that mitigation cannot be taken into account in LEDPA determinations is unauthorized by law and counterproductive. In general, the basis for agency authority to require mitigation need to be clarified.
Blueprint 2025 greatly appreciates the opportunity to submit these comments and is, of course, available to clarify or expand upon them at your convenience.

Respectfully Submitted,

[Signature]

Norman Anderson
President
Over the last fifty or so years (since enactment of the National Environmental Policy Act “NEPA”) serious deficiencies have developed in the way the U.S. Government goes about the planning and authorization of infrastructure projects. This unnecessarily burdensome administrative process delays decisions on critical infrastructure projects, severely restricting our country’s ability to modernize infrastructure to enable the technologies of the future or even to maintain the infrastructure which is now in place.

China and our other competitors have in place not only programs to plan and prioritize the infrastructure to be built, but highly efficient computer aided approaches for individual projects beginning with the early planning stages and continuing throughout their development. Though the governance systems of these major competitors might be more conducive to efficient management of the development process than is our “rule of law” system, it should be possible to at least narrow the gap by simplifying and improving the U.S. system as it has evolved (or devolved) over the last 50 years and enabling the use of modern technology to make the authorization process work more efficiently. This note outlines possible steps toward that end.

The Process for Achieving NEPA’s Goals is Outmoded and Inefficient

Despite the well-intentioned goals of NEPA to help public officials make decisions based on an informed understanding of environmental consequences, there is a large and growing number of actors in both the public and private sectors that feel the Act has evolved into an unintended project-stalling process of administrative hurdles. What was originally designed to encourage simple informed decision making has become a burdensome and expensive process resulting in undue delays, loss of investment and, perhaps, even environmental harm.¹

According to this view:

- Environmental analyses are routinely conducted for actions that reasoned judgment would conclude are not major and should not be subject to such onerous agency oversight.
- Though the act was intended to facilitate public input and participation, the environmental review process as it currently exists is esoteric and inaccessible to the average citizen who might like to weigh in. Data on the average length of an EIS is lacking, but it is not uncommon for these reports to span in excess of 1,000, 2,000, and

even 3,000 pages, though CEQ regulations state that the text of final EIS reports should “normally be less than 150 pages and for proposals of unusual scope or complexity ... be less than 300 pages.” This added complexity often means that participation only comes from well-funded organizations or experts in a particular field. While expert comments are appreciated, and encouraged, the process was meant to invite participation on a much broader scale.

- While agencies do not routinely track data on the cost of completing NEPA analyses, it is clear that the cost of an environmental review process for a single project can run into the millions of dollars. For instance, the Department of Energy (DOE) tracks limited cost data associated with NEPA analyses, specifically, funds the agency pays to contractors to prepare NEPA analyses. According to DOE data, the average payment to a contractor to prepare an EIS from calendar year 2003 through calendar year 2012 was $6.6 million, with the range being a low of $60,000 and a high of $85 million. DOE’s median EIS contractor cost was $1.4 million over that time period.4

Though the extent and impact of these problems may be subject to debate, it seems clear that there is a great deal of room for improvement in order to mitigate what many interpret to be excessive delay, cost, and complexity.

As a recent House Natural Resources Committee hearing on the need to modernize NEPA highlighted, there remains broad support for the act’s basic objective of informing agency decision makers.5 However, there seems to be a consensus that the process is plagued by the kinds of problems outlined here and that as a result, NEPA has failed to fulfill the basic purpose for which it was enacted, resulting in unintended adverse impacts on the U.S. economy, the quality of our infrastructure, and in fact, on the environment itself. Solutions like those suggested at the hearing, by former CEQ General Counsel, Dinah Bear, that more and better-trained federal employees are needed—are both unrealistic and rooted in the past.6 NEPA, like other elements of our infrastructure, needs to be updated and brought into the 21st century. New tools including data analysis, artificial intelligence, and even virtual reality modeling can and should be effectively utilized to expedite and simplify the NEPA process, making it more accessible to ordinary citizens and yielding superior analytical results.

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2 40 C.F.R. § 1502.7.
3 U.S. GOVT ACCOUNTABILITY OFFICE, GAO-14-370, NATIONAL ENVIRONMENTAL POLICY ACT: LITTLE INFORMATION EXISTS ON NEPA ANALYSES 13 (2014) (According to DOE, the cost for the $85 million Hanford Tank Closure and Waste Management EIS includes the costs for three major EISs—waste management, high-level waste tank closure, and disposition of a nuclear reactor—that were started separately and ultimately integrated into one document spanning 3,600+ pages including agency responses to public comments).
4 Id.
5 See 42 U.S.C. § 4321 (NEPA’s congressional declaration of purpose states that the purposes of the act are “to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.”).
Current Process Dynamics

NEPA requires federal agencies to analyze both the nature and the extent of a project's potential environmental effects and, in many cases, document these analyses. While much has been said about the merits of this process in furthering a public dialogue and improving the quality of decision making at the federal level, CEQ regulations make explicit the need for a level of analysis that is timely, efficient, and genuinely useful. For instance, under the CEQ's own articulation of NEPA's purpose, "NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail." NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. "Ultimately, it is not better documents but better decisions that count." The regulations go on to include specific instructions targeted at two additional goals: (i) to reduce paperwork and (ii) reduce delay. These instructions highlight the needs for agencies to reduce the length of environmental impact statements (EIS); emphasize the portions of the EIS that are useful to decision makers and the public; integrate NEPA requirements with other environmental review and consultation requirements; require comments to be as specific as possible; eliminate duplication with state and local procedures by providing for joint preparation; emphasize interagency cooperation before the EIS is prepared; establish appropriate time limits for the EIS process; and use accelerated procedures for proposals for legislation.

Title 41 of the "Fixing America's Surface Transportation" Act ("FAST Act") --- establishes a new interagency committee (the Federal Permitting Improvement Steering Council "FPISC"), which is directed to ensure use of the most efficient and timely processes for environmental review, and establishment of performance schedules for the completion of the environmental reviews. Title 41 thus both confirms the basic principles outlined above and augments them by a requirement that the Council established by the Act must ensure that "best technology" will be fully utilized in the environmental review process. The Title 41 mandate requires timely action to integrate modern technology into the NEPA process. An approach to such an effort is roughly outlined below.

The Process Now in Place

NEPA is primarily a procedural statute. It does not require an agency to pursue the least environmentally harmful alternative, only that the agency give adequate consideration to the potential benefits and harms of the proposed action in order to demonstrate informed decision making.

Over the last 50 years, NEPA practitioners and the courts have developed a well choreographed set of procedures designed to fulfill these procedural requirements.

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7 Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (CEQ regulations), 40 C.F.R. Parts 1500-1508, set out the level of analysis and documentation for complying with NEPA. The scope and form of these analyses can take the form of a Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS).
8 40 C.F.R. § 1500.1(b).
9 Id. at § 1500.1(c) (emphasis added).
10 Id.
11 See 40 C.F.R. §§ 1500.4-1500.5.
12 Id.
• Identify the need for action in connection with a proposal.

• Determine whether the action is a federal action subject to NEPA review.

• Determine whether the proposed action is a “major federal action” i.e. could it have direct or indirect effects which have the potential to significantly affect the quality of the human environment.\footnote{See Council on Environmental Quality, A Citizen’s Guide to the NEPA: Having Your Voice Heard 8 (2007).} 
  
  o If “yes,” determine whether the project qualifies for a categorical exclusion (CE).

  o If significant environmental effects are uncertain and the action fails to qualify for a CE, then agencies must move forward with an environmental assessment (EA) providing for public involvement to the extent practicable.\footnote{See 40 C.F.R. § 1508.27.}

• Determine whether the EA reveals a potential for significant environmental effects.
  
  o If “no,” then agencies must issue a Finding of No Significant Impact explaining the reasoning for their decision.

  o If, however, in the process of completing the EA, it is determined that significant environmental effects are likely to result, a notice must be published in the federal register of intent to prepare an Environmental Impact Statement (EIS).

• A public process to determine the “scope” of the EIS must be conducted.

• A draft EIS will be prepared and published, with a minimum 90-day period for public review and further comment.

• After addressing public input, a final EIS is published (no time limit).

• Finally, a Record of Decision is issued by the lead agency detailing its decision to move forward with the proposal or not.

**NEPA for the 21\textsuperscript{st} Century**

Clearly there is ample room for this process to benefit from the economies and efficiencies associated with the digitization, data analytics and networking available to us in 2018, but, unfortunately, much of the analysis and “streamlining” attempted to date, whether pursuant to the FAST Act or the several Trump Administration executive orders in furtherance of those objectives,
has been developed by consensus among multiple agencies and predicated on traditional “paper trail” oriented administrative processes. It has failed to take into account the advances achievable through use of modern technology.

As a result, the environmental review process has yet to embrace the efficiencies associated with software development and technological integration. While people who wish to comment on a draft EIS can now do so through online portals instead of having to mail in written comments, there are additional opportunities to take the choreographed stages of review and introduce coordination that is currently missing.

Under the framework of a modern, digital, analytic protocol, there would be opportunities to introduce disciplines for reviewing some of the mistakes and inefficiencies embedded in the existing regulations and guidance, and perhaps even codify and replace the countless pages of existing guidance proven to be redundant or unnecessary. Just as important, broad use of interactive digital platforms would enable the development of a broadly accessible national environmental data network which would limit the need to “reinvent the wheel” in environmental reviews of previously studied areas. The result might be creation of a comprehensive environmental database that includes subject specific information capable of being drawn upon to inform future projects. For example, U.S. Fish and Wildlife has a rudimentary system for archiving conservation plans across the country. It’s not terribly user-friendly but it does allow landowners and developers a chance to see what’s been done before and what they might reasonably expect going forward in similar situations. Artificial intelligence and networking capabilities ought to be employed to compile something that is (i) informative; (ii) comprehensive; (iii) user-friendly; and (iv) capable of cutting down redundancy with previous work.

In addition to introducing efficiencies that could cut down on delay and associated development costs, there is reason to believe that digitization and analytics could not only provide a quality of analysis currently lacking in NEPA review but could also substantially reduce Government costs. Two NEPA-related studies completed by federal agencies show clearly that there is no current “handle” on the total governmental cost of NEPA compliance. A 2007 Forest Service report on competitive sourcing for NEPA compliance stated that it is “very difficult to track the actual cost of performing NEPA. Positions that perform NEPA-related activities are currently located within nearly every staff group, and are funded by a large number of budget line items.

There is no single budget line item or budget object code to follow in attempting to calculate the costs of doing NEPA.”17 Similarly, a 2003 study funded by the Federal Highway Administration evaluating the performance of environmental “streamlining” noted that NEPA cost data would be difficult to segregate for analysis.”18 Since, as noted the outside contractor cost of environmental review of a single proposal can range to $85 million or beyond it is clear that the overall cost of NEPA review is very, very substantial. Digitization could introduce analytics that break down the silos of knowledge described in the Forest Service report and allow us to know, at least, what NEPA is costing.

Even more important, the use of modern communications and analytical technologies can allow us to obtain more effective reviews, more expeditiously and at a much lower cost. Witnesses at a recent hearing before the Senate Environment and Public Works Committee estimated that NEPA related delays in permitting processes may be inflating our nation’s infrastructure costs by as much as 50% and there is at least some evidence to suggest that estimate is on the low side. There is little doubt that inefficiencies in environmental review processes, in addition to handicapping our country’s ability to keep pace with global competition, are resulting in costs well into the billions and possibly beyond.

**Conclusion**

Over the past several decades, we’ve split the atom, we’ve spliced the gene, and we’ve harnessed the modern electron. New science and new technology is fostering change at a breakneck pace and we are at a crossroads. The need to bring NEPA — arguably one of the most influential pieces of environmental legislation ever enacted — up to speed in a way that’s attendant to the needs of 21st century development is not a partisan issue. This was recognized in the FAST Act by specifically including a title designed to improve the timeliness, predictability, and transparency of the Federal environmental review and authorization process for covered infrastructure projects. President Trump has issued executive orders which further support the FAST 41 objectives and has targeted nearly a trillion dollars in infrastructure packages across the country given the state of our bridges, highways, and waterways. We are in a unique position to leverage knowledge available from actors in both the public and private sectors to bring to bear the full measure of our know-how on environmental review. Now is the time to bring the full resources of the federal government and the full reach of our collective expertise to this fundamental goal: we must modernize the NEPA environmental review process.

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19 See 42 U.S.C. § 4370m *et seq.*
Ms. Mary Neumayr, Chief of Staff
Council on Environmental Quality
Executive Office of the President
730 Jackson Place, N.W.
Washington, D.C. 20503

RE: ADVANCE NOTICE OF PROPOSED RULEMAKING
CEQ-2018-0001

Dear Ms. Neumayr:

You face the difficult challenge of reconciling this administration’s direction to reduce the amount of time spent on environmental review of federal actions with your essential responsibility of maintaining the integrity of the nation’s premier environmental law, the National Environmental Policy Act (NEPA). As you know, the Council on Environmental Quality (CEQ) NEPA regulations were specifically designed to accomplish many of the goals implied in the questions posed by the Advance Notice of Proposed Rulemaking (ANPRM). Developed to meet President Carter’s direction to issue regulations “designed to make the environmental impact statement process more useful to decision-makers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives,”1 the regulations are based on applicable case law and insights from both federal agencies and broad-based public involvement. They also incorporated recommendations from the General Accounting Office and the Commission on Federal Paperwork regarding streamlining and reduction of paperwork.

CEQ’s regulations codify the essential steps of the NEPA process that have now been adopted in various forms around the world. The fundamental provisions of the regulations are excellent and should not be changed. Many of the provisions regarding management of the process target

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1 Executive Order 11514, as amended by Executive Order 11991, Sect. 3 (h).
precisely the issues of present concern. Yet those provisions are significantly underutilized. Agency employees and public participants alike are often unaware of their existence or uncertain how to implement them. CEQ's 2012 guidance, *Improving the Process for Preparing Efficient and Timely Environmental Review Under the National Environmental Policy Act* is a good reminder of those provisions, but again, underutilized. An additional challenge is that most of the experienced senior agency employees responsible for NEPA have retired over the past few years.

While offering some recommendations for regulatory revisions in response to the questions posed, I have to stress that in my view, the biggest gains to be realized in terms of achieving time savings and other efficiencies can be realized through the less contentious and more vital work of ensuring agency capacity to implement the current regulations. By agency capacity, I mean not only the number of personnel assigned to implement NEPA in each department and agency (although that in and of itself is an issue), but that the agencies be staffed in such a way that implements the requirements of 40 C.F.R. § 1507.2 ("Agency capability to comply"). This means a staff that can handle interdisciplinary issues and public involvement, can write well and are trained and directed by agency leadership to implement the regulatory provisions that address management of the NEPA process.

I understand that advocating for an increase in agency capacity to implement NEPA is to some ears, the least attractive possible recommendation imaginable. Indeed, on a bi-partisan basis, administration after administration has slashed staff to implement NEPA, sometimes closing entire offices set up to oversee implementation. The "let's do more with less" mantra did not begin with this administration. But while not every single problem can be accurately associated with lack of capacity, many can be.

The substitute for staff in many agencies is consultants, often paid for by applicants for proposed actions. Conversations abound among contractors about weeks wasted while waiting for direction that comes late, is internally inconsistent or is at odds with best practices. Meanwhile, members of the public are often told by agencies that they can't process various permit applications for actions on public lands because of staff shortages. Agency representatives in the little NEPA training that is offered admit in hallway conversations that they have had little understanding of the requirements they are supposed to be executing and don't know how to oversee their contractors.
These are, of course, anecdotal observations. But they are widespread and pervasive. That is why groups who otherwise have quite divergent views are urging CEQ to focus on the hard work of ensuring that the current regulations are implemented rather than going through a lengthy, controversial and possibly litigated rulemaking to try to achieve what the current regulations already require, at least in the area of management of the process. If doubt exists as to the validity of these concerns, CEQ should systematically survey executive branch agencies in a manner that objectively and transparently identifies resources actually available and utilized for NEPA implementation. CEQ's own capacity for systematic oversight also deserves attention.

That said, below, I identify some positive steps that CEQ could take to clarify particular points in the regulations, make NEPA more inclusive and increase efficiency. Many of these actions do not require rulemaking. I also include a few recommendations for revisions if rulemaking is initiated.

1. Should CEQ's NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?

CEQ's regulations already provide an excellent framework for conducting concurrent, synchronized, timely and efficient environmental reviews that

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2 "Although a rulemaking would be required to make some of the updates and changes discussed below, it should not be necessary to enforce the existing rule. In fact, a new rule would not necessarily ensure better compliance with the page and time limits and other provisions . . . . . " Letter from Barbara Coppola and Debra Struhsacker, Women's Mining Coalition, to Edward A. Boling, CEQ, August 14, 2018; "In our considered view, the single most important key to efficiency and effectiveness is having competent, trained, and adequate agency staff to implement NEPA." Letter from 350 Bay Area and 340 other organizations to Ms. Mary Neumayr, August 20, 2018, Q. 17; "NMA members have routinely experienced NEPA process delays resulting from inexperienced staff managing reviews. . . . CEQ should encourage agencies to prioritize resources towards hiring and retaining qualified staff who can expeditiously complete reviews." Letter to Edward Boling from Adam Eckman, National Mining Association, August 20, 2018, pp. 7-8; "We believe that problems in applying NEPA and its implementing regulations stem primarily from agencies' failure to devote sufficient resource to this important work. Agencies are not given sufficient appropriations, or chose not to properly apply funds they are given, to ensure personnel in each office have adequate training in application of NEPA." Letter from Rocky Smith and 23 other individuals and organizations to Edward A. Boling, August 14, 2018; all letters filed on www.regulations.gov.
involve multiple agencies at the federal, state and local level (see responses to Questions and 18 for discussion regarding tribal governments). Indeed, were the regulations fully implemented, I suspect there would be few, if any, complaints about this issue. That said, implementation could be significantly improved and the regulations present opportunities for focused oversight and additional direction. For example:

a. **Lead agencies should be unequivocally directed to routinely invite all other potentially affected government agencies with either jurisdiction by law or special expertise with respect to any impact cognizable under NEPA related to the proposed action or alternatives to be a cooperating agency.** This has been said before in the context of inviting non-federal agencies to be cooperating agencies but bears repeating for agencies at all levels of government.

b. **CEQ should reinstate, reinvigorate and streamline reporting requirements regarding lead and cooperating agencies.** In twenty-five years of working at CEQ, I never observed a situation in which a lead agency had a good reason to deny cooperating agency status to a qualified local, tribal or state agency. It is not beyond imagination that such a reason could exist, but clearly, for the most part, very human problems such as bungled communication, misunderstandings about requirements and expectations, turf issues, personality differences and fears about including others drives such situations. As the result of these problems, in 2002, CEQ began requiring bi-annual reports from agencies, documenting their progress in inviting agencies to become cooperating agencies. However, the last report posted on CEQ’s NEPA website covers FY 2015. It is 48 pages long with detail about all 95 executive branch agencies that implement NEPA.

CEQ needs to identify the problems in a quicker timeframe. Agencies should be directed to set out in writing their reasons for denial of any request for

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3 Memorandum for Heads of Federal Agencies from George Frampton, Jr., Acting Chair, “Designation of Non-Federal Agencies to Be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act”, July 28, 1999;

4. Memorandum for the Heads of Federal Agencies from James Connaughton, Chair, “Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act”, January 30, 2002. Two years later, the reporting mechanism was modified to require an annual report covering both EISs and EAs. Memorandum for the Heads of Federal Agencies from James Connaughton, Chair, “Reporting Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act”, December 23, 2004; both documents available at https://ceq.doe.gov/guidance/guidance.html
cooperating agency status by a government agency and a copy of that communication should be immediately sent to CEQ's Associate Director for NEPA Oversight. The key to resolving these types of issues is CEQ intervention in a timely manner. CEQ has usefully intervened on a number of occasions, but can only do so when it knows about the situation. Potential cooperators do not always understand that they can ask CEQ for assistance.

The same vehicle for receiving and potentially posting denials of requests to be a cooperating agency could also be utilized to receive the notifications required from any agencies with special expertise that declines cooperating agency status. 40 C.F.R. § 1501.6(c). Note that the regulations allow a potential cooperating agency by way of special expertise to decline a request to assist in preparing an EIS, but agencies with jurisdiction by law may not decline. 40 C.F.R. 1501.6(c); Response to Question 14A of 40 Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations.

c. CEQ should assist in facilitating funding mechanisms for cooperating agencies. Recall that while cooperating agencies are normally to use their own funds, CEQ's regulations provide for the possibility of the lead agency funding "major activities or analyses it requests from cooperating agencies" with the direction to include such funding requirements in their budget requests. 40 C.F.R. §1501.6(b)(5). This is not practical for every EIS, but certainly agencies can often anticipate some potentially difficult and complex EISs for which important scientific data must be obtained such a programmatic scale EIS or an EIS for an especially controversial proposed actions like oil and gas development in the Arctic National Wildlife Refuge. Funding is not always easily transferrable between agencies, but the Office of Environmental Quality Management Fund could justifiably be utilized for such needs.

2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions, and if so, how?

The regulations do not require revision for these purposes. Indeed, rather than relying on environmental studies and analyses made in an earlier process (often posing knotty problems of how long ago is too long and whether the analyses needs to be supplemented), the emphasis should be on identifying all potentially involved agencies at all levels of government when an agency initiates the NEPA process. Cooperating agency status, as discussed immediately above, is part of the answer but so is implementation of the underutilized provisions in 40 C.F.R. § 1506.2, dealing with the elimination of duplication with state and local procedures. Undertaking joint planning
processes, environmental research and studies, public hearings and joint lead agency status in situations where states, tribes or municipalities have environmental impact assessment procedures would go a long way towards eliminating duplication and frustration.

In 2014, CEQ and the State of California published a useful guide to the integration of compliance with NEPA and the California Environmental Quality Act. Consider the possibility of publishing other such guides with states, tribes and municipalities (i.e., New York City) that have environmental impact assessment procedures.

I would also note that besides the recent provisions in the so-called “FAST 41” Act that encourage the adoption or incorporation by reference, as appropriate, of an analysis prepared under State laws and procedures that are “substantially equivalent” to NEPA, Section 102(D) of NEPA has long allowed state agencies, under a few very reasonable conditions, to prepare EISs for federal actions funded by federal grants. To my knowledge, few states have embraced this provision other than highway departments, but it does provide another opportunity for increased cooperation.

What the regulations cannot do is to abandon all federal involvement in a process intended to comply with NEPA. Ultimately, absent statutory change, NEPA is a federal law applying to federal actions. The regulations provide the maximum possible collaboration and cooperation with state and local agencies but still require federal agencies to exert independent judgment in both the analysis and balancing of impacts leading to the federal decision. *Calvert Cliffs v. Atomic Energy Commission*, 449 F.2d 1109 (1971).

3. Should CEQ’s NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?

As discussed above, there are many provisions of CEQ’s regulations that provide for optimal interagency coordination. Three factors often stand in the way of their implementation: a) lack of agency leadership making such coordination a priority, b) lack of understanding on the part of staff as to how to implement the regulations; and c) scarcity of resources that impedes agency staff from being available at the optimum time when another agency needs its involvement. Leadership, training and resources are the solutions here; not regulatory revisions.

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5 The implementation of this provision should be analyzed before any move is made to expand the scope of that authority to all federal actions.
4. Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?

The current regulations for all three topics in the CEQ regulations are sound and should be retained. However, the regulations dealing with format and page length are specific to EISs and the process could benefit from CEQ's direction, whether in the form of guidance or additions to the regulations regarding categorical exclusions (CE) and environmental assessments (EA).

CEQ has never required any documentation for a CE and for many years, discouraged any documentation. Yet some agencies file extensive records for categorical exclusions, sometimes amounting to hundreds of pages. In my view, one reason for the proliferation of paper to implement a process specifically intended to bypass the need for documentation is the ever expanding creep of CEs either administratively or by Congress into ground disturbing activities that do indeed have some level of impact. In recognition of this reality, CEQ offered guidance documenting categorical exclusions in its 2010 guidance on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act. This guidance essentially endorses the approach of agencies that have a two-tiered approach: 1) CEs that require no documentation because they intrinsically do not carry a risk of environmental impacts, and 2) CEs that do have some impact on the environment and thus are subject to documentation to verify whether circumstances are such that the agency should proceed to an EA. Though well intended, I am concerned that the latter category turns into, essentially, an EA/FONSI process of its own which inevitably becomes at least the length of an EA.

CEQ's guidance on EA regarding the suggested length of 10-15 pages is generally disregarded. In hindsight, given the desirability of integrating compliance with all applicable federal, state, local and tribal laws into the NEPA process, that was probably always too short for many EAs. Something more like 30-60 pages likely makes more sense. What does not make sense are EAs that are hundreds of pages along, essentially an EIS masquerading as an EA. We saw a fair amount of this in the early 1980's at CEQ when agencies would prepare a document that had all the elements (and length) of an EIS but was published as an EA with the not very thinly disguised intent of avoiding robust public involvement.6

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6 Two weeks ago, I came across another such instance of an EA that was over 800 pages. There were scoping meetings but no comment period on the EA, despite considerable concern expressed regarding the environmental impacts of the proposed action. Further, the EA was not available online but rather only in the agency office.
A recalibrated approach to NEPA that resulted in nothing more than a memo to the file about which categorical exclusion was utilized for a particular action, EAs that were routinely a few dozen pages and EISs that met the regulatory requirements would, frankly, result in an increase in EAs and EISs. But they would be shorter, more readable and more in tune with the original intent of the statute and regulations. None of this needs regulatory revision to achieve in terms of CEQ’s regulations; rather, it takes enforcing the current regulations. CEQ has an opportunity to reconsider classifications of actions under 40 C.F.R. §1507.3 each time it reviews an agency’s proposed changes to its NEPA procedures. CEQ should make a conscious decision of whether it wants to codify the distinction between two classes of categorical exclusions and put parameters around it along with revised direction on the length of EAs or initiate a reformation of NEPA practice to meet the original intent of vision of CEs and EAs.

In regards to the time the NEPA process takes, I strongly caution against universal, one-size-fits all time limits. Even if reasonable mechanisms exist to invoke exceptions, agency personnel will work hard to avoid invoking them out of concern for irritating their management. Especially given the weaknesses in agency capacity at present, the results are likely to result in flawed analyses and decisions, greater frustration on the part of the public and more losses for federal agencies in federal court.

5. Should CEQ’s NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decisionmakers and the public, and if so, how?

The regulations don’t need to be revised to accomplish this, but the practice of NEPA in the field needs to be significantly improved. The most critical time for identifying significant issues is, of course, the scoping process. CEQ issued terrific guidance on scoping in 1981, but it needs to be refreshed in light of experience and today’s technology.

As one component of updated guidance, consider including information and examples of how agencies should best convey the purpose of scoping to all participants, including the public. Effective scoping takes active participant by people reasonably knowledgeable about the nature of the proposed action and potential impacts. As a predicate to that type of useful communication occurring, participants, whether from other agencies or the public, need more information than is typically available in a Notice of Intent to prepare an EIS. This is not an argument for expanding the information in the Federal Register notice, but rather for the lead agency making widely available as it initiates scoping enough information about the proposed action and possible alternatives
for people to engage in a constructive manner. To paraphrase a participant at a recent NEPA workshop describing her experience at a scoping meeting, “The agency said there was a meeting about this but they didn’t tell us what the purpose of the meeting was.”

Further, agencies need to do a much better job of connecting with the affected communities (both geographical or communities of interest) to understand the best way to conduct scoping in each situation. The 1981 guidance stresses this. However, too many times, the mechanism used for scoping seems to be selected by the agency or the agency and a contractor with no outside consultation. Some communities really want public meetings for scoping sessions; others prefer the “issue by issue” tabling approach or a different approach. Timing is everything – holding a scoping session at a time when many community members can’t attend ultimately hurts the agency. Of course, no one approach is likely to satisfy everyone but rather than going into scoping blindly, agencies should think through in consultation with interested parties the optimum way to achieve the essential work of identifying issues for study and analysis.

Finally, implementation of CEQ’s regulation on writing in plain language, using appropriate graphics and employing staff trained in organizing information, writing and editing would go far in improving the quality of NEPA documents. 40 C.F.R. § 1502.8. 1

6. Should the provisions in CEQ’s NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?

With the exception of revising references to tribal governments, discussed comprehensively in response to Question 18, the regulations in this area do not need revision. However, the major challenges are in creative and effective implementation. Agency staff, often hired because of expertise in a particular substantive area, are often not trained in and not comfortable with public involvement procedures. Contracting out the job of running public meetings undermines what should be an important opportunity for communication, distancing the agency even further from the public.

It would do no harm to update 40 C.F.R. § 1506.6 in a general way to include references to agency websites. Indeed, most agencies now post some level of information about NEPA compliance on their websites, although the amount of information available varies significantly. However, public involvement, including notices and documentation, should not be confined only to websites or other technological mechanisms. A sizable percentage of Americans do not have home internet access and public access is often severely
limited. Further, individuals trying to rely on computer based commenting often run into technical difficulties through no fault of their own.

Finally, some proposed federal actions directly impact communities in which English is not the predominant language. Agencies should make efforts to provide translation services and publish at least executive summaries of documents in such areas.

7. Should definitions of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised, and if so, how?

   a. Major Federal Action
   b. Effects
   c. Cumulative Impacts
   d. Significance
   e. Scope; and

Terms "a through e" are well defined and understood and should not be changed.

f. Other NEPA terms - "Human environment"

One source of confusion that could be usefully addressed relates to the definition of term "the human environment" at 40 C.F.R 1508.14. The current definition correctly reflects the legal threshold for preparation of an environmental impact statement (EIS) that requires an impact on the natural or physical environment. However, the regulation is frequently misinterpreted to mean that social and economic effects that are interrelated with environmental effects do not need to be analyzed in an environmental assessment (EA). That is incorrect; both EAs and EISs need to include analysis of the relevant types of effects identified in §1508.8. The omission of interrelated social and economic effects in EAs because of this misunderstanding is contrary to Congress' carefully chosen focus on "the human environment"; i.e., how humans affect the environment and conversely, how the environment affects human beings. Indeed, the frequently unsatisfactory melding of what is commonly labeled "socio-economic impacts" in NEPA documents reflects a lack of care and sophisticated treatment of these issues that, in turn, reinforces the notion that environmental laws put people last.7 Consider the following modest revision (new language in bold:

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§1508.14 Human environment. "Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (§ 1508.8).) While this means that economic or social effects are not intended by themselves to require preparation of an EIS [delete period], [w]hen an environmental impact statement or an environmental assessment is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement or environmental assessment will discuss all of these effects on the human environment."

8. Should any new definitions of key NEPA terms, such as those noted below, be added, and if so, which terms?

   a. Alternatives
   b. Purpose and Need
   c. Reasonably Foreseeable
   d. Trivial Violation
   e. Other NEPA terms

   In my view, none of these terms need new definitions.

9. Should the provision in CEQ’s NEPA regulations relating to any of the types of documents listed below be revised, and if so, how?


   b. Categorical Exclusions Documentation – Please see comments in response to Question 4. In addition, agencies should make their use of categorical exclusions public, per CEQ’s guidance on categorical exclusion.

   c. Environmental Assessments –

      As many commentators have observed, the regulations focus primarily on the process of developing EISs while on a routine basis, NEPA is primarily implemented through EAs and categorical exclusions. The preparation and dissemination of EAs would benefit from provisions that address three issues: (a) public comment; (b) conflict of interest, and (c) page limits.

      a. Public comment. The general direction to agencies buried in Section 1501.4 ("Whether to prepare an environmental impact statement") to agencies to “involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by §
1508.9(a)(1)" is frequently overlooked. 40 C.F.R. § 15006.5 (b). The flexibility CEQ afforded agencies regarding EAs has resulted in some satisfactory processes and some situations in which members of the public has literally been reduced to filing Freedom of Information requests for EAs. CEQ should either require a standard of always making EAs available to the public for review and comment for 30 days (subject to extensions and, of course, to the provisions for classified proposals per 40 C.F.R. § 1507.3(c)) or develop an alternative approach by identifying a subset of EAs that require public comment. For example, an alternative approach would be to require a 30 day scoping prior to EAs with the requirement to then publish a draft EA for a minimum of 30 days if there is interest or concern expressed about the impacts of the proposed action during scoping period.

b. Conflict of interest. The regulations permit an applicant to prepare an EA, subject to the agency “making its own evaluation of the environmental issues” and taking responsibility for the scope and content of the EA. 40 C.F.R. § 1506.5(b). However, currently there is no requirement to identify the preparer of an EA as there is for EISs. This should be corrected as shown below (new language in bold):

40 C.F.R. § 1508.9 “(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of preparers and their affiliation and agencies and persons consulted.”

c. Page limits. Consider defining “brief discussions” in § 1508.9(b); for example:

“(b) Shall include brief discussions (normally less than 60 pages in all) of the need for the proposal, of alternatives . . . . “


e. Environmental Impact Statements – No.


g. Supplements – CEQ should consider developing guidance or possibly a regulation on the issue of how agencies should go about deciding whether to supplement a NEPA document. As one Court of Appeals pointed out a number of years ago, “. . . the CEQ regulations are silent on the issue of how agencies
are to determine the significance of new information". Idaho Sporting Congress Inc. v. Intermountain Forest Industry Association, 222 F.3d 569 (9th Cir. 2000) and thus agencies have developed various approaches, such as Supplemental Information Reports (SIRs) and Determinations of NEPA Adequacy (DNAs). These are not NEPA documents and the public rarely, if ever, has an opportunity to weigh in.

10. Should the provision in CEQ’s NEPA regulations relating to the timing of agency action be revised, and if so, how?

The criteria related to setting time limits in 40 C.F.R. §1501.8 are sound and should prevail over a “one size fits all” approach for both EIS and EAs. Similarly, the direction in 40 C.F.R. § 1502.5 regarding the timing of various stages of the EIS process in relationship to agency action is useful and should not be changed.

The provisions in 40 C.F.R. §1506.10 related to a 30 day window of time between the notice of availability for a final EIS and an agency’s ability to execute a Record of Decision (absent an internal appeal process defined as described in the regulation or rulemaking for protection of public health and safety) should be retained. Clearly, there is an interest on the part of some in eliminating that 30 day time period by authorizing the execution of a Record of Decision simultaneously with or contained in the Final EIS. One rationale is that this period isn’t a formal comment period, so it’s a wasted 30 days that can be eliminated. But such reasoning fundamentally overlooks the major purpose of NEPA – to inform decisionmaking. Of course, the final EIS carries the agency’s preferred alternative and many times does reflect what the agency’s final decision. But, in fact, the decision-makers do, at times, choose a different alternative all together or a combination of alternatives. The chances of a decision-maker reflecting on the analysis in an EIS to inform his or her decision is substantially greater if there is a mandatory window of time in which to consider the analysis. Otherwise, the very types of pressures that are behind the recommendation to eliminate this period will be brought to bear many times over on a decision-maker to make a decision within the final EIS itself or the day after it is published.

11. Should the provisions in CEQ’s NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?

No. As noted in response to Question 9, preparers of EAs should be identified. The conflict of interest disclosure and prohibition provisions in the regulation should be retained.
12. Should the provisions in CEQ’s NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?

(No), but this an area that need attention in training and oversight in practice. CEQ’s current guidance on “Effective Use of Programmatic NEPA Reviews” is excellent, but implementation is uneven. Far too often, the public and agency personnel themselves are unclear about the concept of tiering and, in particular, what issues and what depth of analysis is appropriate at each level of analysis. In some cases, agencies state that a particular component of analysis will come later, only to point to the earlier NEPA analyses when that later time comes, thus undermining the credibility of the entire concept. Some agency personnel have also expressed confusion about how whether a Finding of No Significant Impact can ever be appropriately executed as a document tiered from a programmatic EIS. The guidance addresses these issues well and needs to be used as a teaching tool.

13. Should the provisions in CEQ’s NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?

Absolutely not. The regulations have it right by characterizing alternatives as the “heart” of an EIS (or, in many cases, an EA). It goes against the nature of human beings to consider alternatives once they have decide on a course of action. Without the requirement to analyze reasonable alternatives, the NEPA process loses its most significant value and instead, becomes documentation of a decision already made, with, at best, perhaps the addition of mitigation measures. The most significant positive changes brought about by the NEPA process have been through implementation of the alternatives requirement. Alternatives, whether developed within the lead agency, another involved agency or members of the public have resulted in very real changes in the agency decisions.

14. Are any provisions of the CEQ’s NEPA regulations currently obsolete?

Section 1506.12 (a) regarding the effective date of the regulations could be modified to delete the references to the transition from guidelines to regulations. However, 1506.212(b) (“NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible” should be retained).

Further, given that EPA has not published the 102 Monitor in decades, the references to it in Sections 1506.6(b)(2) and 506.7 of the regulations could be deleted.
15. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient?

The regulations do not need to be revised to utilize new technology and in fact, I would caution against any regulatory references that are too specific. Referencing today's particular modes of technology will lead to obsolescence tomorrow. However, in terms of NEPA practice, two areas of the NEPA process that can benefit from technology are public involvement and the work of developing analysis. Agencies, of course, are already employing website and other means of technology to disseminate information related to NEPA compliance with varying degrees of comprehensiveness and effectiveness. CEQ might do well to highlight some of the better approaches. But in relationship to public involvement, agencies should be discouraged from practices founded on the faulty assumption that everyone is on the internet. A substantial percentage of Americans either do not have home access or have limited, slow access. Public access to computers at libraries are often severely limited (for example, our county library system limits use of a computer to one hour a day per individual and limits printing to 45 pages a day.) While agency websites should carry a full range of agency NEPA procedures, notification, documents, etc., traditional means of notification and document production must be retained for now.\(^8\)

Technology should certainly be employed in the interests of more efficient and better quality analyses. In 1978, CEQ took comment on the possibility of establishing a "national data bank", the purpose of which would have been "to provide for the storage and recall of information developed in one EIS for use in subsequent EISs." At the time, cost and technical challenges persuaded CEQ not to forward with the concept.\(^9\) The time is now to advance this concept, possibly with interested partners from the academic and technology world. Done well, this could be a boon not only to analysts preparing NEPA documents, but to all interested parties, including the public, in understanding the trends and conditions in areas affected by multiple federal actions. A publicly accessible, well maintained data-base of such information could certainly contribute to more accurate and timely analyses.

16. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents, and if so, how?

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\(^8\) Comment by computer is not always the most efficient, either. Computer glitches have required some agencies to reopen comment periods because of technical difficulties.

The regulations already provide for integration of NEPA documents into other documents, such as management plans, and authorization decisions, such as combining Records of Decisions with publication of final regulations. However, many agency staff are either unaware of these opportunities or reluctant to implement them. This is another situation in which sustained training of NEPA staff could greatly improve NEPA practice.

17. Are there additional ways CEQ’s NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?

One other possible area to explore is enhancement of CEQ’s dispute resolution role, currently codified in part 1504 of the regulations. This can be a useful mechanism and was employed frequently during the two terms of the Reagan administration. More recent administrations have, for reasons I think are unpersuasive, not favored its use. A possible enhancement would be to allow governors, mayors and tribal chairs to refer matters to CEQ.

18. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ’s NEPA regulations, and if so, how?

Yes. The role of tribal governments is too narrowly defined in CEQ’s regulations. Specifically, the language in 40 C.F.R. §§ 1502.16 (environmental consequences), 1503.6(a)(2)(ii) (commenting), 1506.6(b)(3)(ii) (public involvement) and 1505.5 (cooperating agencies) should be modified to exclude the phrase “when effects may occur on [a] reservation[s]”. Most Native Americans live off reservation and sacred sites as well as resources used for traditional cultural purposes by a tribe are often off reservations. The 1978 language is inappropriately narrow. Tribal governments, including those in Alaska, should have the ability to fully engage in the process on an equal footing with federal, state and local agencies.

19. Are there additional ways CEQ’s NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible and if so, how?

I have no further recommendations at this time.

20. Are there additional ways CEQ’s NEPA regulations related to mitigation should be revised, and if so, how?

Yes. CEQ’s guidance on “Appropriate Use of Mitigation and Monitoring
and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact" is an excellent document, but certain core concepts discussed in the guidance need to be codified in the regulations. It is essential to the integrity of the process that mitigation be capable of being implemented, that it is implemented and that it is monitored. To that end, I suggest the following:

Adding a sentence to §1502.14(f) that states, "The EIS must identify how each mitigation measure will be funded."

Adding a definition of monitoring to after the definitions of mitigation that states:

"(a) Enforcement monitoring ensures that mitigation is being performed as described in the Record of Decision or other decision document and in any legal document implementing the action (for example, contracts, leases, permits or grants).

(b) Effectiveness monitoring measures the success of the mitigation effort in achieving the desired outcome."

An addition to § 1508.13, relabeling the current provision subsection (a) and adding subsection (b) as follows:

"If an agency incorporates mitigation measures into a Finding of No Significant Impact such that the mitigation measures reduce environmental impacts to the degree that they are no longer significant, it must identify those specific mitigation measures. If any of the identified mitigation measures appear unlikely to occur and significant adverse environmental effects could reasonably be expected to result, the agency must prepare an EIS."

Thank you for the opportunity to comment.

Sincerely,

Dinah Bear
Deputy General Counsel, CEQ,
1981-1982
General Counsel, CEQ
1982-1993
1995-2008
Possible Amendments to the 1978 CEQ Regulation
Possible Amendments to the 1978 CEQ Regulation¹
6/18/2018 All Staff Mtg
ANPM

6/20 Fleet Steering Committee Kick Off

Ted out from Thursday → mid. July
CED is NEPA implementing regulations

- Problems that we are trying to solve
- Do outs for next week
NEPA Req. Mfg.

Submit to OIRA: Nov. 2018
Projected publication date: Feb. 2019

(b) (5)
Possible Modifications

(b) (5)
CEQ's NEPA Implementing Regulations Working Group

AGENDA

September 6, 2018, 1:00 – 2:00PM
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Reducing Delays

Justification and Proposed Amendment Discussion Text
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Statement of the Issue/Problem
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###
NEPA Guidance

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<th>Subject</th>
<th>Background</th>
<th>Current Status</th>
<th>Staff</th>
<th>FOCs</th>
</tr>
</thead>
<tbody>
<tr>
<td>CEQ Advance Notice of Proposed Rulemaking (ANOPR)</td>
<td>CEQ issued an ANOPR soliciting recommendations on updating the CEQ NEPA implementing regulations.</td>
<td>(b) (5)</td>
<td>Boling, Drummond, Mansoor, et al.</td>
<td></td>
</tr>
<tr>
<td>One Federal Decision Guidance (OFD)</td>
<td>To comply with Section 5(b)(iv) of Executive Order 13807, CEQ developed with OMB, and in consultation with the Federal Permitting Improvement Steering Council, a framework providing for the implementation of One Federal Decision. This framework may be supplemented with additional guidance and directives as needed.</td>
<td></td>
<td>Boling, Drummond</td>
<td>OMB, CEQ, EPISC</td>
</tr>
<tr>
<td>Categorical Exclusion (CE) Guidance and List</td>
<td>EO 13807 Section 5(c)(ii); CEQ is compiling all agencies' CEs. Each CE is tagged and cross-linked to similar CEs for other agencies. This list will be hosted on NEPA.gov.</td>
<td></td>
<td>Boling, Drummond, Smith, Mansoor</td>
<td>CE Working Group</td>
</tr>
<tr>
<td>NEPA EIS Data Compilation and Timelines Analysis</td>
<td>CEQ is collecting EIS data (dates of NOI, draft EIS NOA, final EIS NOA, ROD) and analyzing timeline intervals for final EISs issued 2010-2017.</td>
<td></td>
<td>Drummond, Mansoor</td>
<td></td>
</tr>
</tbody>
</table>
### Environmental Assessments

EO 13607 Section 5(e)(i): CEQ is developing guidance on the effective, timely, and efficient use of environmental assessments (EAs), in response to longstanding interest and recommendations, including the "Guidance on Best Practice Principles for Environmental Assessments" prepared by the National Association of Environmental Professionals (NAEP) as one of CEQ’s NEPA Pilot Projects.

### Mitigation and Monitoring

EO 13807 Section 5(e)(i): CEQ intends to revise, modify, or supplement existing guidance regarding an appropriate use of mitigated findings of no significant impact.

### Efficient and Timely Environmental Reviews under NEPA

EO Section 5(c)(i): CEQ intends to revise, modify, or supplement existing guidance regarding improving the process for preparing efficient and timely environmental reviews under NEPA.

### Consideration of GHG Emissions and the Effects of Climate Change in NEPA Reviews

CEQ published revised draft guidance for public comment in December 2014. The final guidance, published in August 2016, addressed when and how Federal agencies should analyze GHG emissions and climate change impacts under NEPA. It also provided a common, CEQ-validated approach that is entitled to substantial deference. Pursuant to EO 13783, the final guidance was withdrawn on 4/4/17.

### NEPA Tracker

<table>
<thead>
<tr>
<th>Subject</th>
<th>Background</th>
<th>Status / Deadline</th>
<th>Staff</th>
<th>POCs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Infrastructure Permitting and EO 13807 Implementation</td>
<td>CEQ was one of three co-chairs of the Infrastructure Permitting Steering Committee (with OMB and DOT), each contributing staff resources to undertaking an extensive list of proposed innovations to improve environmental permitting and review processes. These included the creation of an online Dashboard for publicly posting new infrastructure projects, the development of coordinated project procedures and IT tools, research into barriers to landscape-scale mitigation, and multiple agency-specific</td>
<td>(b) (5)</td>
<td>Boling, Drummond, Harney, et al.</td>
<td>CEQ: Legal, Front office, Infra. BOP: OMB, NEC Federal: Exec. DOT, DOI, USFWS, BLM, USDA-FS, DOE, EPA, USACE, NOAA, USCG, HUD, ACHP</td>
</tr>
</tbody>
</table>
goals. This work stream is now governed by Executive Order 13807.

<table>
<thead>
<tr>
<th>ECCR</th>
<th>BO 13807 Section 5(e)(i): CEQ to revise, modify or supplement its existing guidance regarding BCCR.</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAFTA</td>
<td>First round of negotiations of the Environment Chapter of the new North American Free Trade Agreement focused on proposed text from Canada.</td>
</tr>
<tr>
<td>Gateway/Hudson Rail Project</td>
<td>The Federal Railroad Administration and New Jersey Transit have issued a Draft EIS for the Gateway project, with a two year schedule for the EIS. The nonprofit Common Good has released a report requesting Executive action to expedite the environmental permitting process to 18 months.</td>
</tr>
</tbody>
</table>
### Continued Development and Implementation of the Unified Federal Review (UFR)

Since 2013, CEQ has worked with FEMA, DHEC, and ACHR to develop and implement the Unified Federal Review (UFR) process to expedite the environmental review for disaster recovery projects. CEQ supports the continued development and implementation of the UFR by co-leading the Steering Committee and Interagency Working Group. CEQ also ensures UFR is coordinated with other streamlining efforts. CEQ’s convening role and ability to engage the interagency is helpful in continuing to keep this effort a priority, and in maximizing efficiencies by coordinating federal streamlining tools and mechanisms, where possible.

### NEPA Analysis of the Value of Ecosystem Services

On 16/7/2015, CEQ and OMB released Federal ecosystem service guidance that asks agencies to incorporate efforts to maximize nature’s benefits into decisionmaking. NEPA team focus is guidance on integrating ecosystem services with decision making and not focused on NEPA.

### HUD Tribal Housing Environmental Coordination

The Senate Report accompanying the FY 2015 HUD Appropriations directed HUD to collaborate with the Council on Environmental Quality and affected agencies to develop a coordinated review process to simplify tribal housing development and its related infrastructure needs.

### Broadband Working Group

CBQ is working with a set of agencies to implement Executive Order 13616 "Accelerating Broadband Infrastructure Deployment."

<p>| NEPA Analysis of the Value of Ecosystem Services | On 16/7/2015, CEQ and OMB released Federal ecosystem service guidance that asks agencies to incorporate efforts to maximize nature’s benefits into decisionmaking. NEPA team focus is guidance on integrating ecosystem services with decision making and not focused on NEPA. |
| HUD Tribal Housing Environmental Coordination | The Senate Report accompanying the FY 2015 HUD Appropriations directed HUD to collaborate with the Council on Environmental Quality and affected agencies to develop a coordinated review process to simplify tribal housing development and its related infrastructure needs. |
| Broadband Working Group | CBQ is working with a set of agencies to implement Executive Order 13616 &quot;Accelerating Broadband Infrastructure Deployment.&quot; |</p>
<table>
<thead>
<tr>
<th>Environmental Justice (FJ)</th>
<th>Institutionalization of the Promising Practices of FJ Analysis in NEPA Reviews.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of State Draft Agreement for Biodiversity Beyond National Jurisdiction (BBNJ)</td>
<td>State seeks CEQ assistance in the drafting of an international agreement on the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction (BBNJ); includes areas beyond the BEZ and OCS. CEQ focus is on the associated EIAs, as required by UNCLOS. In December 2017, the UN General Assembly decided to convene an intergovernmental conference to elaborate the text of an international legally binding instrument under the Law of the Sea (LOS) Convention on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.</td>
</tr>
<tr>
<td>Arctic EIA with Arctic Council Sustainable Development Working Group (SDWG)</td>
<td>State Department contacted CEQ to gauge interest an Arctic EIA project through the Arctic Council SDWG proposed by the Finnish government during its Arctic Council chairmanship from 2017-2019.</td>
</tr>
</tbody>
</table>
| Canadian Bilateral Meeting | The Canadian Environmental Assessment Agency extended the comment deadline to June 1, 2018, for two regulations to support the government’s proposed Impact Assessment Act:  

--- The Regulations Designating Physical Activities (Project List), would be used to determine whether projects would be subject to the proposed Act.  

--- The Information Requirements and Time Management Regulations would set out the information that a project proponent is required to provide at the beginning of an impact assessment, the documents the Agency is required to provide to guide the impact assessment process, and the circumstances in which the Minister could pause the legislated timelines during the impact assessment process.  

Discussion papers on the proposed regulatory approaches [www.impactassessmentregulations.ca](http://www.impactassessmentregulations.ca). |
| Disaster Resilience Group (DRC) and Critical | Draft Charter received 1/16, comments due 1/26/2018. |
Infrastructure Security and Resilience (CISR) Policy Coordination Committees (PCCs)

Federal NEPA Contacts Meetings
Quarterly virtual meetings hosted by GSA.

NEPA Educators Initiative (Training Modules)
Developing NEPA training modules to share with federal NEPA contacts.

OCS Oil and Gas Leasing Program 2019-2024
EO 13795 (4/28/17) outlines an America First Offshore Energy Strategy. As a key piece of this strategy, BOEM is initiating a new National Outer Continental Shelf (OCS) Oil and Gas Leasing Program development process to replace the 2017-2022 Program. The new National OCS Program will cover the years 2019-2024. CEQ and BOEM are coordinating on efforts to streamline the NEPA process for the new National OCS Program.

NEPA Team Administrative Tasks

<table>
<thead>
<tr>
<th>Task</th>
<th>Background</th>
<th>Status</th>
<th>Staff</th>
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</thead>
<tbody>
<tr>
<td>(b) (5)</td>
<td>All</td>
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</table>
Revisions to Agency NEPA Procedures

<table>
<thead>
<tr>
<th>Agency</th>
<th>Background</th>
<th>Status</th>
<th>Staff</th>
<th>POCs</th>
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</thead>
<tbody>
<tr>
<td>USDA/APHS Animal and Plant Health Inspection Service</td>
<td>On 3/9/2018, OIRA circulated draft USDA/APHS final rule and economic analysis accompanying the rule.</td>
<td>(b) (5)</td>
<td>Boling, Drummond</td>
<td>Courtney Higgins</td>
</tr>
<tr>
<td>USDA/USFS U.S. Forest Service</td>
<td>USFS is updating its NEPA procedures to clarify and simplify its processes to create a more efficient and effective environmental review program.</td>
<td></td>
<td>Boling, Drummond, Mansoor</td>
<td>Sam Cauzush</td>
</tr>
<tr>
<td>DOD/Army Department of the Army</td>
<td>The Deputy Assistant Secretary of the Army is updating Army NEPA procedures (32 CFR 651).</td>
<td></td>
<td>Boling, Mansoor</td>
<td>David Goldensoopf</td>
</tr>
<tr>
<td>DOD/Navy Department of the Navy (&amp; U.S. Marine Corps)</td>
<td>New and revised CATEXs and extraordinary circumstances</td>
<td></td>
<td>Boling, Mansoor</td>
<td>Dan Cecchini</td>
</tr>
<tr>
<td>Agency</td>
<td>Description</td>
<td>Contact</td>
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<tr>
<td>DOD/WHS</td>
<td>Promulgating NEPA procedures through notice of proposed rulemaking.</td>
<td>Boling, Mansoor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Washington Headquarters Services</td>
<td></td>
<td>Bob Kluglewicz, 703-692-4799, <a href="mailto:rkluglewicz.jsd@mail.mil">rkluglewicz.jsd@mail.mil</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DOI/BIA</td>
<td>BIA proposes to revise its CATEX.</td>
<td>Boling, Mansoor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bureau of Indian Affairs</td>
<td></td>
<td>Dr. BJ Howerton, 703-399-4824, <a href="mailto:bj.howerton@bia.gov">bj.howerton@bia.gov</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DOI/BLM</td>
<td>BLM is revising its land use planning procedures and environmental reviews under NEPA to make them more timely and less costly, as well as ensure responsiveness to local needs. This effort to improve the planning and NEPA processes comes after the President's March 27 approval of House Joint Resolution 44, which nullified the BLM's January 2017 Planning 2.0 rule.</td>
<td>Boling, Drummend, Mansoor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DOI/BOR</td>
<td>BOR proposes to establish a new categorical exclusion for transfer from Federal ownership of facilities and lands.</td>
<td>Boling, Mansoor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bureau of Reclamation</td>
<td></td>
<td>James Hess, Chief of Staff, Bureau of Reclamation, 202-513-0345, <a href="mailto:jjhess@reclamation.gov">jjhess@reclamation.gov</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DOT</td>
<td>DOT is revising DOT Order 5610.1D, Departmental NEPA Procedures, updating the 1983 version.</td>
<td>Boling</td>
<td></td>
<td></td>
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<tr>
<td>Department of Transportation</td>
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<tr>
<td>NBRC</td>
<td>Starting process to develop NEPA procedures.</td>
<td>Boling, Mansoor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Northern Borders Regional Commission</td>
<td></td>
<td>Christine Frost, 613-369-3001, <a href="mailto:cfrost@nbrc.gov">cfrost@nbrc.gov</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NEH</td>
<td>NEH is developing NEPA procedures.</td>
<td>Boling, Drummond, Mansoor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>National Endowment for the Humanities</td>
<td></td>
<td>Adam Kress, 202-806-8525, <a href="mailto:akress@neh.gov">akress@neh.gov</a></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Agency</th>
<th>Description</th>
<th>Contact Person</th>
<th>Contact Info</th>
</tr>
</thead>
<tbody>
<tr>
<td>SBA</td>
<td>Updating 2004 NEPA procedures for re-submission to CEQ.</td>
<td>Christopher Pilkerton</td>
<td>General Counsel</td>
</tr>
<tr>
<td></td>
<td></td>
<td>202-619-1848</td>
<td><a href="mailto:christopher.pilkerton@sba.gov">christopher.pilkerton@sba.gov</a></td>
</tr>
<tr>
<td>TVA</td>
<td>Revised CATEXs and procedures.</td>
<td>Matthew Higdon</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>865-632-8051</td>
<td><a href="mailto:mshigdon@tva.gov">mshigdon@tva.gov</a></td>
</tr>
<tr>
<td>USDA/RUS</td>
<td>Amendment to allow obligation of funds prior to completion of NEPA.</td>
<td>Kelli Kusena</td>
<td>202-720-1649</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:kelli.kusena@usda.gov">kelli.kusena@usda.gov</a></td>
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Deliberative/Pre-Decisional/Attorney Work Product

(b) (5)
Deliberative/Pre-Decisional/Attorney Work Product

(b) (5)