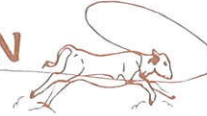


North Dakota
STOCKMEN'S ASSOCIATION



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March 10, 2020

Edward A. Boling
Associate Director for the National Environmental Policy Act
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

RE: Comments on the Notice of Proposed Rulemaking to Update the Procedural Provisions of the National Environmental Policy Act, CEQ-2019-0003

Dear Mr. Boling:

The North Dakota Stockmen's Association (NDSA) is a 90-year-old beef cattle trade organization representing approximately 3,000 cattle-ranching families in our state. Thank you for the opportunity to comment on the Council of Environmental Quality's (CEQ) Proposed Rulemaking to Update the Procedural Provisions of the National Environmental Policy Act (NEPA).

The NDSA is interested in NEPA reform, as our members operate on thousands of acres of public and private lands and NEPA and its various applications impact our members' ability to manage those lands. Unfortunately, the Act has all too often been used by opponents of responsible land management to halt progress, derail common-sense decision-making and delay federal action indefinitely across a range of issues. Through relentless, process-based litigation, activist organizations have transformed NEPA from its original purpose – analysis of potential impacts stemming from a major federal action – into a black hole of endless fear-driven processes initiated by federal agencies with the aim that such analysis might prevent legal challenges to otherwise proper decision-making. Of course, these extreme groups will never be satisfied. Many have mastered the use of litigation to force their way into the process as a stakeholder, often with as much or more standing than those with an actual interest or impact. The result: processes are postponed, extended beyond their original schedule or, even in some cases, shut down completely. Obviously, this pattern runs counter to the multiple-use missions of agencies like the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS) and is a deterrent to responsible land management decision-making.

For these reasons, we support the CEQ's efforts to streamline and modernize NEPA. This action is welcome and long overdue.

Here are some specifics to our support and suggestions for further enhancement:

The NDSA supports changes to Part 1500, which refocus the emphasis on timely and efficient decision-making. The changes will help ensure timely and easy-to-understand documents are released to stakeholders and the interested public. The proposed time limits of a year for Environmental Assessments (EAs) and two years for Environmental Impact Statements (EISs), absent approval by a senior official, are reasonable and much-needed changes, as are the proposed page limits of 150 for EAs and 300 for EISs, absent approval by a senior official.

Long-term special uses and permitted activities on public lands that are part of multiple-use objectives have become part of the baseline condition for public lands. In many cases, these uses have been ongoing and are authorized by statute for a century or longer. As such, our organization supports revisions to recognize that many federal actions should not qualify as a “major federal action” pursuant to NEPA. For instance, those categories of actions that have a de minimis impact on the environment, are non-discretionary or have already been subject to comparable analysis due to other statutory or regulatory processes should not be considered a “major federal action.”

The NDSA supports the adoption of a 30-day comment period on all final EISs. However, CEQ should recognize that parties with business relationships, contractual agreements or preference grazing rights impacted by federal agency actions are direct stakeholders with knowledge and expertise of on-the-ground conditions. As such, they should be included early and often in NEPA planning processes. Agencies undertaking permitting processes should seek constructive, meaningful engagement with direct stakeholders. There are already ample opportunities for public comment, and appropriate engagement of direct stakeholders early in the planning process prior to, during and after publication of a final EIS mitigate the need for lengthy final comment periods. Direct stakeholders should receive direct notice and a reasonable opportunity to provide feedback regarding decisions that may impact them. We support the rightful general public input into the NEPA process, but CEQ must require agencies to appropriately weigh the quality and basis for the comments.

The NDSA support revisions to Section 1501 to provide a more substantively defined role for state and local governments as cooperating agencies. Direct involvement of local governments is essential to NEPA’s charge to involve stakeholders in the decision-making process early and often. The revised process for engaging cooperating agencies in § 1501.8(h) takes an important step in that direction by improving local governments’ opportunities to share their knowledge and expertise, as well as the knowledge and expertise of individuals in their communities who are also direct stakeholders, for major federal decisions “at the earliest practicable time.” As written, § 1501.8(a) does not appear to provide a mechanism for local governments to appeal a denial of a request to obtain cooperating agency status. CEQ should revise the regulation to provide for such an appeal mechanism.

The NDSA believes that CEQ should encourage agencies to adopt a uniform process for scoping, comments, drafts and resolving objections to the extent practicable. As currently implemented, NEPA comment processes vary considerably and can be unclear.

Our organization also encourages CEQ to encourage agencies to expand the number and types of decisions, including grazing decisions by the Bureau of Land Management and U.S. Forest Service, that will qualify for a categorical exclusion (CE). Clear, enhanced use of CEs will focus resources to projects truly in need of analysis, while curbing opportunities for litigation abuse.

We strongly supports the clarification recognizing the concept of mitigated findings of no-significant impact in Section 1501.6(c). This clarification allows non-significant proposed actions to be analyzed in an EA instead of the more burdensome EIS. Additionally, it should be further clarified that, while NEPA allows for discussion of mitigation, the Supreme Court has explicitly recognized that NEPA does not require mitigation (*Robertson v. Methow Valley Citizens*, 490 U.S. 332 (1989)).

The NDSA support CEQ's recognition that economic and social effects, including effects on employment, must be considered alongside environmental effects. All too often, economic impacts to stakeholders and affected communities are given less weight than environmental impacts. This is a glaring oversight, which erases the "human" portion of NEPA's directive to consider the impact of federal actions on the "human environment."

Like the revised definition of "effects," CEQ has made some important revisions to the definition of "major federal action" that help bring the meaning more in line with NEPA's explicit goals and intent. In particular, the NDSA supports the clarifications that federal agencies should undertake NEPA analysis only for those actions within direct federal control and responsibility. A "major federal action" must have effects that are potentially subject to federal control. Any project that satisfies this requirement will, in its own right, be subject to separate and distinct NEPA processes prior to implementation.

The NDSA supports the CEQ's revised language in § 1502.24 explaining that agencies must make use of reliable data and resources, but are not required to undertake new scientific and technical research to inform their analyses. However, as currently written, it is unclear what "reliable and existing data sources" is and CEQ should clarify what constitutes "reliable existing data and research."

The NDSA likewise supports CEQ's proposed revisions addressing "functional equivalence" to NEPA analysis. Agency permitting processes that are functionally equivalent to a NEPA analysis should satisfy the requirements of the law. We recommend that the CEQ issue guidance that would explain to public lands permittees how to submit information to federal agencies showing that compliance with other federal statutes is functionally equivalent to an EA or EIS.

The CEQ pointed out that there are opportunities for agencies to combine data to streamline environmental reviews, such as a new single NEPA application that facilitates consolidation of datasets and can run several GIS analyses to help standardize analysis. We support that approach and encourage the CEQ to take steps to combine and share data wherever possible, reduce duplication and streamline environmental reviews. At the same time, the CEQ must seriously consider the potential for privacy violations and/or data breaches whenever storing, processing or evaluating private data. While increased public transparency is admirable, it must not come at the expense of increased risk to the private data of public land users, for example.

Thank you for the opportunity to provide comments on this proposed rulemaking. If you have any questions, feel free to contact our office at (701) 223-2522.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Rorvig". The signature is written in a cursive style with a large, sweeping flourish at the end.

Dan Rorvig
President