



City of Glenwood Springs
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Mary B. Neumayr, Chair
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503
Submitted via web portal: <https://www.regulations.gov/document?D=CEQ-2019-0003-0001>

Friday, February 28, 2020

Re: Update to the Regulations Implementing the National Environmental Policy Act, RIN 0331-AA03

Dear Chair Neumayr:

Thank you for this opportunity to comment on the Council Environmental Quality's (CEQ's) proposal to amend regulations implementing the National Environmental Policy Act (NEPA) for all agencies. The ability to provide public comment during rule changes is essential and must be preserved in any federal action, including NEPA. As a local governing body with 'Cooperating Agency' (CA) status provided for under NEPA, and an obligation to represent the best interests of our constituents and the jurisdiction we oversee, we ask that CEQ withdraw the proposal published in the Federal Register on January 10, 2020, due to concerns discussed herein.

The City of Glenwood Springs is surrounded by federal public land managed by the Forest Service (FS) and the Bureau of Land Management (BLM). These scenic lands are critical to the City's identity, economy, recreation amenities, clean water, and quality of life. We deeply value not only these landscapes but our productive partnership with the federal agency professionals with whom we work to protect and wisely manage these resources. Our cooperative efforts are encouraged and facilitated by the public process at the heart of NEPA, as well as our CA status conferred under the law.

NEPA has played a vital role in effective communication between Glenwood Springs and federal agencies for the last half-century, and in furthering our mutual understanding of the impacts and wisdom of federal agency actions. We value NEPA for its success in: (1) ensuring that federal agencies 'look before they leap' by using the best available science to disclose the environmental impacts of, and alternatives to, their proposed actions; (2) informing the public of agency plans, and including the public in agency decision-making by seeking and responding to its input; and (3) maintaining our voice in the process as a CA, to work side-by-side with the lead agency to identify important issues, determine what scientific data are needed for analysis, help to form alternatives, analyze impacts of the alternatives, and give input on selecting the final alternative.

We are therefore deeply concerned that CEQ has proposed to fundamentally weaken NEPA regulations in a manner that will impose arbitrary timeframes and deadlines for data gathering and analysis, limit the scope of possible project alternatives and impact analysis of each alternative, and reduce the disclosure of environmental impacts and the effectiveness of, and opportunities for, the public to participate in federal agency decisions.

While CEQ has proposed dozens of changes that will fundamentally alter the NEPA process, we focus on seven significant aspects of the proposed revisions herein.

Ignoring all but the most direct environmental consequences. Current NEPA regulations require federal agencies to disclose the direct, indirect and cumulative impacts of a proposed action, thus ensuring that decision-makers and the public understand the full range of a project's effects. The proposed rule would eliminate an agency's duty to disclose "cumulative" impacts and apparently allow agencies to ignore "indirect" impacts as well. Analysis would be limited to those deemed to have "a reasonably close causal relationship to the proposed action," with no analysis of indirect or cumulative effects that are considered to be "remote in time, geographically remote, or the product of a lengthy causal chain." Proposed 40 C.F.R. § 1508.1(g). The City of Glenwood Springs opposes this approach for at least two reasons.

First, eliminating federal agency consideration of cumulative impacts appears designed to end all disclosure of an action's potential to worsen climate change. Climate change is, by its nature, the product of cumulative actions, with thousands of individual and governmental decisions making small contributions, which add up to a massive global threat. That threat is already causing damage in western Colorado. Temperatures in our state have risen in recent decades, leading to a longer fire season, longer and more sustained insect infestations in nearby forests, and threatening the stability and volume of water that supplies our homes and supports local business.

The City of Glenwood Springs is committed to doing its part to create a sustainable future. Last year, we became the seventh city in the U.S. to be powered entirely by renewable energy. Federal agencies must do their part, too. Turning a blind eye to the climate pollution impacts of decisions about energy and transportation infrastructure, and fossil-fuel development on federal public lands in Colorado could undermine our local and state policy goals and harm residents. We oppose what is effectively climate denial.

Second, the proposal to ignore indirect and cumulative effects will eliminate the disclosure of more "conventional" environmental impacts as well. For example, the BLM is currently evaluating a proposal to greatly expand a limestone quarry just outside the city, including a proposal to drill test wells to evaluate the area's hydrology. The City and many of our residents have expressed concerns that drilling could impact our town's namesake mineral hot springs, which fuel our economy and are a key part of our city's identity. Under the proposed new regulations, BLM could conceivably decide that any impacts to the springs would be "remote in time, geographically remote, or the product of a lengthy causal chain," and so it would not need to disclose such impacts at all. Proposed 40 C.F.R. § 1508.1(g). This demonstrates the dangerous ignorance that CEQ's proposal could permit.

Setting arbitrary deadlines for the completion of environmental reviews. The proposed rules generally require that agencies complete an Environmental Impact Statement (EIS) within two years, and an Environmental Assessment (EA) within one year, regardless of project size, complexity, or controversy. Proposed 40 C.F.R. § 1501.10(b). Such timelines may make it impossible for agencies to gather necessary site-specific information about potential impacts, particularly where values important to consider – stream levels, the presence of wildlife or rare plants – may vary from year to year. Compressed timelines also make it more likely that agencies will not have time to carefully consider public and local government input, and change course to reflect that input, resulting in less responsive decision-making.

We appreciate that a primary goal of CEQ's draft rule is to speed agency reviews. We understand that a primary limitation on the speed with which agencies can analyze and prepare projects is not NEPA regulations, but federal fiscal constraints. We fully support adequate federal funding for staff and budgets to facilitate the analysis and outreach required to ensure that project decision-making reflects NEPA's fundamental principles.

We do not believe that restricting public – and local government – involvement by curtailing consideration of sound science and environmental impacts on a compressed schedule is a sound way to build support for, and to effectively complete, important projects.

Restricting the scope of projects subject to environmental disclosure. The draft rules allow agencies to avoid preparing NEPA reviews altogether by claiming that they are providing “minimal” funding for or have “minimal” involvement in a private development proposal. Proposed 40 C.F.R. §§ 1501.1(a)(1) & 1508.1(q). The proposed rules would allow an agency to claim that complying with NEPA would be inconsistent with Congress’ intent under another statute or that an entirely different process designated to satisfy other goals can serve as a substitute for environmental analysis and public review under NEPA. Those decisions could be made on a case-by-case basis (i.e., behind closed doors with the project proponent). Proposed 40 C.F.R. §§ 1501.1(a)(4)-(5) & (b). For example, BLM could attempt to argue that it need not analyze a proposed mining operation with the potential to leach pollution into a nearby river because the operation would be situated mostly on nearby private land. Restricting the scope of NEPA reviews will reduce the public’s ability to understand the potential threats to their water, air, and communities.

Discouraging comprehensive review. Where NEPA would apply, the draft regulations encourage agencies to undertake the bare-minimum level of analysis. Detailed environmental impact statements would only be prepared as a last resort, and the likelihood that a proposed action would impact irreplaceable archaeological resources, parks, wilderness, endangered species, or other sensitive resources would no longer be a factor in considering whether detailed analysis is necessary. Proposed 40 C.F.R. §§ 1501.3, 1501.4, 1501.5, 1501.10.

Raising private over public interests. In the rare instance that a proposal would need to go through full environmental review, the draft regulations would authorize a project proponent (e.g., a mining, drilling, logging, or highway-building firm) to define the project’s “purpose and need” to fit only what the company wants. Proposed 40 C.F.R. § 1502.13. Then, the only “alternatives” to the proposed action the agency must consider would need to accomplish that proponent’s purpose and would have to be “economically and technologically feasible” for the company. Proposed 40 C.F.R. §§ 1502.14, 1508.1(z). In other words, the proposed rules would permit agencies to ignore alternative courses of action proposed by members of the public that meet public, rather than private, goals. For example, a land management agency could decline to consider an alternative pipeline or road alignment that protected a critical municipal watershed or important Tribal cultural sites because the project proponent considered spending more money to avoid those resources to be economically “infeasible.” Federal agencies should serve the people, not just private interests who may value their own bottom-line above the public interest.

Imposing barriers to public participation and accountability. The proposed regulations allow an agency to ignore public comments that it asserts are not “specific” enough or do not include reference to data sources and scientific methodologies. Proposed 40 C.F.R. §§ 1500.3(b), 1503.3(a), 1503.4. Comments that are not submitted within the agency’s strictly imposed time limits would be rejected out of hand. Proposed 40 C.F.R. §§ 1500.3(b), 1501.10, 1503.3(b), 1503.4. Further, if aggrieved communities or individuals seek to hold an agency accountable for failing to comply with the law, they may be precluded from doing so if they do not meet strict new “exhaustion” requirements. One of the cornerstones of our democracy is that no one is above the law, including federal agencies. Restricting the public’s ability to participate in agency decision-making and to challenge unlawful behavior undercuts that democratic principle.

Risking conflicts of interest in preparation of environmental reviews. Under proposed rule 40 C.F.R. § 1506.5(c), companies would be allowed to write environmental impact statements on their own projects, and federal contractors would no longer need to disclose conflicts of interests or financial stakes in the projects they are reviewing. This would increase the potential for the analysis to be skewed to minimize a project’s damage, and

would decrease public confidence in the impartiality of the analysis. NEPA should improve, not diminish, the transparency of federal decisions.

The current NEPA regulations are not perfect, but they have largely achieved the twin goals of requiring agencies to look before they leap and of permitting the public a voice in decisions that impact their communities, their air, their water, and wildlife. We believe that the proposed regulations undermine both goals. We therefore request that the CEQ withdraw the proposed rulemaking.

Sincerely,

Jonathan Godes
Mayor