

March 10, 2020

Edward A. Boling
Associate Director for NEPA
Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503

RE: Comments of The Nature Conservancy regarding CEQ's Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act [Docket No. CEQ-2019-0003].

Dear Mr. Boling:

The Nature Conservancy ("TNC") is a non-profit conservation organization working nationally and internationally to deliver on our mission to conserve the lands and waters on which all life depends. We offer these comments on the Council on Environmental Quality's ("CEQ") notice of proposed rulemaking ("NPRM") to update the regulations implementing the procedural provisions of the National Environmental Policy Act ("NEPA") promulgated by CEQ.

Since our founding in 1951, TNC has pursued our mission to conserve the lands and waters on which all life depends. Today, we operate in all 50 U.S. states and contribute to conservation outcomes in 78 countries around the world. We deliver our mission through ownership and stewardship of lands and water areas, through partnerships and cooperation with private owners and other organizations in fostering conservation, and by active participation in addressing the impacts of actions by federal, state and local agencies in the United States, and by other governmental actors internationally. As a result of our efforts, TNC has significant experience in federal agency implementation of NEPA. Our comments on the changes proposed in the NPRM are informed by that expertise and by TNC's interest in ensuring that the NEPA process is thoughtful, effective, efficient and transparent in seeking to help strike a balance between conservation and development.

These comments build upon and are consistent with previous comments shared with CEQ in response to the advanced notice of proposed rulemaking published in June 2018. We continue to urge the Administration to focus its NEPA work on process improvements that will maintain or enhance environmental outcomes while improving the NEPA process. Unfortunately, we have concluded that this NPRM falls well short of this standard. Accordingly, we urge you not to promulgate the proposed changes in a final rule.

General Comments on proposed changes to NEPA implementing regulations:

Congress was clear in laying out the purpose of NEPA:

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 Nation¹

Section 101 of NEPA established a national policy “to use all practicable means and measures ... in a manner calculated to foster and promote the general welfare, 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.”² The statute continues by outlining the ongoing responsibilities of the federal government under NEPA to:

[U]se all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

- (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- (2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;
- (3) attain the widest range of beneficial uses 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, an environment which supports diversity and variety of individual choice;
- (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life’s amenities; and
- (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

We have significant concerns with changes proposed in the NPRM, many of which appear to be facially inconsistent with the clear purpose of NEPA: to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate human health and welfare. We provide more detailed comments on specific provisions below, but at base, take issue with changes that seek to limit the scope of impacts federal agencies must consider in the NEPA process and singularly focus on faster – not necessarily better – decisions. Should CEQ promulgate this proposed rule as final we believe it will actually undermine CEQ’s stated goal of facilitating more efficient, effective, and timely NEPA reviews. Because the proposed rule includes so many entirely new provisions that run counter to longstanding practice, regulations, case law, and the statute, this proposed rule is sure to invite multiple substantive legal challenges.

¹ 42 U.S.C. 4321 (emphasis added).

² 42 U.S.C. 4331(a).

Further, each agency would be required to significantly revise their NEPA guidance and regulations, resulting in additional uncertainty and likely delays for project proponents. The Nature Conservancy recognizes that there is real opportunity to improve the NEPA process, but we urge CEQ not to advance the changes outlined in the NPRM.

A better approach would be to focus on targeted process improvements that maintain or enhance both environmental outcomes and NEPA review processes and decision-making. As we highlighted in our 2018 letter in response to the advanced notice of proposed rulemaking process, we believe the following measures would advance these goals:

- Improve implementation and enforcement of existing CEQ regulations and guidance, which already emphasize the importance of efficiency, encourage interagency cooperation and the use of mitigation to get to faster decision making.
- Consider focusing environmental analysis and documentation on actions with significant *adverse* effects and work to create a streamlined process for agency actions with significant *beneficial* effects.
- Adopt technology requirements that allow interactive use of internet databases for environmental documents and enable the public to view those works.
- Emphasize that environmental documents should take advantage of available technologies to ensure documents are searchable and to allow comparisons across different documents and different agencies.
- Advance programmatic or landscape-scale environmental impact statements such as those drafted on a watershed scale (or equivalent regional ecosystem scale such as a forest) for restoration-related projects.
- Encourage NEPA action agencies to incorporate NEPA best practices and existing guidance into agency-specific NEPA implementation procedures.
- Commit substantial resources to training action agency NEPA officers on how to improve implementation practice.

CEQ notes throughout the preamble and summary documents provided with this rulemaking that this is the most significant rewrite of the regulations implementing NEPA in the 50-year history of this bedrock environmental law. This complex and wide-ranging proposed rule demanded more time to thoroughly review and understand the multitude proposed changes. The limited comment period and CEQ's unwillingness to extend it or add additional public hearings is particularly egregious given NEPA's foundational principle of supporting public involvement in federal government decision making. Your refusal to extend the comment period for this rule undercuts the legitimacy of this effort and the central goal of public participation – to improve the content of rules – which is foundational to NEPA. The Nature Conservancy opposes the proposed regulations for the substantive reasons discussed herein, as well as the process that the Administration has used to solicit and consider public input.

Specific Comments on proposed changes to NEPA implementing regulations:

§1500.1 proposed “Purpose & Policy”

The proposed consolidation of §1500.1 and §1500.2, with significant reduction in emphasis on analyzing relevant environmental information and elimination of key policy directives, is deeply concerning and runs contrary to the spirit and intent of NEPA.

The proposed language states that the purpose of NEPA is satisfied if federal agencies consider relevant environmental information and *inform* the public. The proposed revisions de-emphasize the role of the public by replacing language emphasizing that federal agencies must encourage and facilitate public involvement with the requirement that the agencies must simply *inform* the public regarding the decision-making process. This change is inconsistent with 50 years of NEPA implementation and contrary to NEPA’s mandate to involve, not simply inform, the public in decision making processes. The federal government has an ongoing responsibility to affirmatively and pro-actively engage the public to ensure effective public participation in environmental review and decision-making. Accordingly, we object to this proposed change as it would undercut that continuing responsibility.

The proposed changes also shift the emphasis of NEPA from directing agencies to analyze data in furtherance of the goals of NEPA to merely considering environmental data and informing the public of a decision. These changes are significant and cannot be understated. They fail to give public agencies direction on *how* and *to what end* environmental information should be considered and fail to meet the statute’s mandate to use all practicable means to safeguard the environment for future generations. For these reasons, we strongly object to the proposed elimination of the language clarifying that NEPA analysis must: provide the public and agencies with high quality information and accurate scientific analysis; demonstrate that all practical means have been undertaken to restore and enhance the environment and avoid or minimize any possible adverse effects; and identify and assess reasonable alternatives that may avoid or minimize adverse effects. Without this emphasis in the “Purpose and policy” section of the regulations, we believe NEPA will become a hollow exercise focused solely on collecting and providing environmental information to the public.

We strongly object to the proposed removal of §1500.2 (e)³ and (f)⁴ from the new purpose and policy section. We provide additional comment below specific to changes proposed elsewhere by CEQ that would fundamentally alter the consideration of alternatives under NEPA. Inclusion of this language is neither duplicative nor redundant as CEQ suggests. The longstanding regulatory

³Proposed for deletion: §1500.2(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

⁴ Bracketed text proposed for deletion: §1500.2 (f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, [to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.]

language in these sections provides appropriate emphasis on the essential role of the purpose and policy sections in setting the overarching direction and fundamental purpose of NEPA and agency responsibilities under the statute.

§ 1500.3 NEPA Compliance – Limitations on Agency-Specific NEPA Procedures

Proposed §1500.3(a) (and nearly identical language in proposed §1507.3(a)) provide that “agency NEPA procedures shall not impose additional procedures or requirements beyond those set forth in these regulations, except as provided by law or required for agency efficiency” and, further, provide a 12-month window for agencies to revise their agency-specific NEPA regulations. If finalized in current form, this language would apparently nullify many existing agency procedures that address issues such as cumulative impacts, identification of alternatives, and use of programmatic NEPA approaches, among others.

Notwithstanding specific concerns with proposed changes to these substantive areas of NEPA practice, which we address separately in these comments, this limitation on agency implementation of NEPA procedures to the four corners of CEQ’s regulations is unnecessary. Clearly, agency procedures should be consistent with implementing procedures established by CEQ, but this language goes well beyond that and we urge reconsideration.

Categorical Exclusions

The Nature Conservancy recognizes the importance of categorical exclusions (CEs) in practice and has previously supported efforts by CEQ to catalogue existing CEs being utilized across federal agencies. We have concerns, however, with several aspects of the proposed expansion of the use of CEs in the NPRM.

We strongly oppose the deletion of “cumulative” from the definition and discussion of CEs in §1501.4 and throughout the proposed rule. CEs are currently applied to categories of actions that “normally do not individually *or cumulatively* have a significant effect on the human environment” (emphasis added). We recognize that this deletion is made consistent with CEQ’s proposal to eliminate consideration of cumulative effects, which we address in greater detail elsewhere in these comments, but find this proposed limitation deeply troubling in general and particularly as applied to CEs.

These significant changes are contrary to longstanding practice and CEQ guidance on CEs that recognize “consideration of the potential cumulative impacts of proposed actions is an important and integral aspect of the NEPA process.”⁵ Further, CEQ guidance states that it is “clear that both individual and cumulative impacts must be considered when establishing [CEs].”⁶ With recent expansions of CE authority from Congress and efforts by federal land management agencies to significantly expand their own CE authority through rulemaking, this proposal to

⁵ Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act, 23 November 2010. Available at: https://ceq.doe.gov/docs/ceq-regulations-and-guidance/NEPA_CE_Guidance_Nov232010.pdf. Accessed February 28, 2020.

⁶ *Id.*

entirely stop considering the cumulative effects of individual or multiple CE projects on our lands and waters would, if adopted, represent a dangerous abdication of agency NEPA obligations. Environmental impacts of any given project, including one authorized as a CE, cannot be fully understood without considering cumulative impacts because such impacts often arise from multiple individual actions over time and space. Any environmental document cannot completely and accurately consider the impacts of a given project without considering cumulative impacts.

The proposed language in §1501.4(b)(1) authorizing agencies to apply mitigation or other conditions sufficient to avoid significant effects for CEs, when taken together with preamble language, appears to establish an entirely new class of project – a mitigated CE. We have concerns with allowing projects to proceed under a CE when they would ordinarily require an environmental assessment or environmental impact statement due to the presence of extraordinary circumstances. While The Nature Conservancy supports the use of mitigation in the context of mitigated Findings of No Significant Impact (FONSIs) and to otherwise avoid, minimize, and compensate for impacts, we have concerns with how this mitigated CE authority would operate to ensure that the public is aware of and has opportunity to comment on projects and to ensure that mitigation required to avoid, minimize, or offset impacts from a project is funded, implemented, and monitored.

Finally, we do not support the proposal to allow federal agencies to use other agency CEs in carrying out NEPA responsibilities. While we believe there is value in understanding the range of CEs adopted across agencies and, perhaps, opportunities for agencies to adopt substantially similar CEs, this should be done through existing processes consistent with CEQ guidance on establishing CEs to ensure that each is tailored to different agency organic statutes and considers unique obligations, expertise, and limitations of each agency.

Time and Page Limits

We understand the desire to keep environmental documents to a reasonable size and that some benefits could flow from doing so. We are not persuaded, however, that establishing hard page limits or timelines beyond those already in regulation will produce significant time savings or add value to the environmental review process. When taken in the context of the entire NPRM and the many proposals from CEQ that seek to both limit the actions that require NEPA review in the first instance and then further limit the environmental effects that must be considered as part of the NEPA review process, we do not support the establishment of time and page limits in CEQ's NEPA regulations as outlined in §1501.5(e), §1501.10, §1502.7 and throughout the NPRM.

Additionally, we are concerned that proposed changes to §1501.2 regarding the early integration of NEPA in other planning processes could result in NEPA being applied later in agency decision making processes. The proposed replacement of “shall” in the sentence “*shall* integrate NEPA process with other planning ...” with “should” is concerning because it deemphasizes the importance of early integration of NEPA in agency decision making processes.

§1501.5 Environmental Assessments

Among other changes, the proposed rule would add new language stating that an environmental assessment is required “for a proposed action that is not likely to have a significant effect *or when significance of the effects is unknown ...*” (emphasis added). We object to this new language allowing projects to proceed with insufficient information pertaining to the significance of their effects. If promulgated, this language would create a loophole and opportunity for gaming of the NEPA process by intentionally advancing projects with unknown effects. This approach is counter to the precautionary principle and would inappropriately relieve project proponents of their burden to demonstrate the impacts of proposed actions while placing the risk of significant impacts and potential harm that could flow from inadequately analyzed projects on the general public. Additionally, the proposed language is overbroad as it does not address whether unknown effects might simply be unknown because they have not been properly investigated or because they are unknowable. Accordingly, we object to this proposed change.

§1502.4 Major Federal Actions Requiring the Preparation of Environmental Impact Statements – constraining proposals and alternatives to agency authority

We object to the proposed changes asserting that consideration of project proposals and alternatives must be bound by the statutory authority of the action agency. Such a narrow approach is inconsistent with the plain language of the NEPA statute which directs agencies “to use all practicable means and measures ... in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony....”⁷ The proposed deletion of §1502.14(c) requiring agencies to “[i]nclude reasonable alternatives not within the jurisdiction of the lead agency” continues this narrow approach and is equally problematic.

Proposed language in §1508.1(g)(2) takes this ill-advised effort a step further to even limit consideration of “effects that the agency has no ability to prevent due to its limited statutory authority or would occur regardless of the proposed action.” Again, this significant constraint on the consideration of alternatives and subsequently of the effects arising from them is ill-advised and inconsistent with both decades of NEPA practice and the plain language and purpose of the Act.

The NEPA process is designed to help inform and give the public a voice in federal agency actions and to support better decision making; this proposed language would represent a step backwards for both. The NEPA process should support consideration of a full range of alternatives and effects without arbitrary limits imposed by any single agency’s statutory authorities. Limiting this process to agency authorities will not support better decisions and will ultimately cause additional delay by inviting legal challenge.

Finally, the proposed definition of reasonable alternatives in §1508.1(z) continues this concerning trend of limiting consideration of a full range of alternatives by stating that reasonable alternatives must, *inter alia*, be “economically feasible,” and meet the goals of the

⁷ 42 U.S.C. 4331(a).

applicant without regard for whether the goals of the applicant may be extreme and even counter to public health and welfare. This new language, including introduction of the term “economically feasible” is vague and has no basis in the NEPA statute. Accordingly, we object to the new and unsupported constraints throughout the proposed rule on agency consideration of a full range of alternatives and impacts arising from them.

§1502.24 Methodology and Scientific Accuracy

One of the hallmarks of NEPA is the support of better, more informed decision making through the early integration of scientific and other knowledge in the environmental review process. Changes proposed by CEQ to language in this section stating that “[a]gencies shall make use of reliable existing data and resources and are *not required to undertake new scientific and technical research to inform their analyses*” (emphasis added) will have a negative impact on the quality of NEPA reviews. If adopted, this language will cause a significant change in NEPA practice.

First, we are concerned that this language could be interpreted to limit collection of basic field data to support environmental analysis. Additionally, this language would inappropriately limit new scientific or technical research required to adequately and fully assess environmental impacts with respect to areas or activities of first impression. When taken together with proposed language in §1502.22 on collection of incomplete or unavailable information to provide that the cost of obtaining such should not be “unreasonable” instead of the “exorbitant” standard from current regulations, this proposed change could provide incentive to avoid science and assessments for emerging issues. This would be a troubling result and run counter to the clear purpose of NEPA in supporting informed decision making.

§1502.16 Environmental consequences

Among the various changes in this section, we have concern with the addition of §1502.16(a)(10) stating that, in considering the environmental consequences of alternatives the agency shall include: “[w]here applicable, economic and technical considerations, including the economic benefits of the proposed action.” This language risks inappropriately elevating projects that would have an economic benefit but could also result in significant environmental harm.

Likewise, in §1502.16(b) we have concern that the changes could support equal consideration and establish a false equivalency between long-term or permanent environmental damages and short-term economic impacts.

§1506.9 Proposals for regulations – Expansion of Functional Equivalence

Proposed changes to §1506.9 would establish that, in cases of major federal action involving the promulgation of a rule or regulation, “analyses prepared pursuant to other statutory or Executive order requirements may serve as the functional equivalent of the EIS and be sufficient to comply with NEPA.” These proposed changes represent a significant expansion of the doctrine of functional equivalence and are deeply problematic. We oppose this approach as it is inconsistent with the underlying rationale for narrowly applying this doctrine to agencies whose mission is to protect the environment and that have robust processes in place to ensure full consideration of

public input while supporting the need to make quick decisions to protect public health and safety.

The proposed three-part test⁸ to allow an agency to determine that its regulatory processes are functionally equivalent to NEPA sets a low and inappropriate threshold that would expand the doctrine of functional equivalence well beyond current application. As written, arguably nearly any notice-and-comment rulemaking under the Administrative Procedure Act could qualify. Applying functional equivalence to all federal agencies is inappropriate given the varying missions – some which may be focused on extraction or production of natural resources – and the fundamental purpose of NEPA to promote efforts that will prevent or mitigate damage to the environment. We object to this section as an inappropriate expansion of the functional equivalency doctrine that could have the practical impact of narrowing federal agency environmental review processes and limiting consideration of a full suite of alternatives and impacts.

Likewise, we have similar concerns and object to the proposed language in §1507.3(b)(6) which restates the same three-part test to support the substitution of other processes as functional equivalents to NEPA.

§1508.1 Definitions – Effects & Mitigation

The definition of mitigation in existing NEPA regulations and the definition of direct effects, indirect effects, and cumulative effects is the gold standard for mitigation globally. Other U.S. federal regulations echo and cite to these definitions. The Nature Conservancy strongly opposes CEQ's proposal to collapse the distinction between direct and indirect effects and the proposal to eliminate the requirement to analyze and consider cumulative effects. The proposed NPRM language, if adopted, would be deeply damaging not only to the quality of environmental reviews and the projects that they produce across the United States, but would also significantly undermine the country's global standing as a leader in conservation and protection of the environment around the world.

The impact of these proposed changes would be felt through the entire NEPA process. First, cumulative impacts would not be considered and indirect effects would be de-emphasized while considering the threshold question of significance of an action in determination of whether or what level of NEPA analysis is appropriate. This risks allowing projects that would have significant indirect or cumulative impacts to slip through the cracks and avoid more rigorous review and analysis. Second, consideration of indirect and cumulative effects would be diminished or completely absent in all facets of the NEPA process, including for CEs, EAs and EIS impact analysis.

⁸ §1506.9(b): To determine that an analysis serves as the functional equivalent of an EIS, an agency shall find that: (1) There are substantive and procedural standards that ensure full and adequate consideration of environmental issues; (2) There is public participation before a final alternative is selected; and (3) A purpose of the analysis that the agency is conducting is to examine environmental issues.

These proposed changes are unprecedented, extreme, and run contrary to the spirit of the statute, courts' interpretations of the statute, and 50 years of NEPA practice. Without full consideration of indirect and cumulative impacts, the NEPA regulations will fall short of meeting NEPA's mandate to use a systematic approach to insure full consideration of the environmental impacts of proposed actions and "any adverse environmental effects."⁹

Consideration of cumulative effects has been an integral part of NEPA analysis dating back to some of the first guidance issued in the early 1970s¹⁰ and has remained a cornerstone of the NEPA process. In 1997, for example, CEQ again emphasized the fundamental importance of cumulative impacts, stating that "[e]vidence is increasing that the most devastating environmental effects may result not from the direct effects of a particular action, but from the combination of individually minor effects of multiple actions over time."¹¹ Finally, several courts have also determined that the NEPA statute itself requires analysis of cumulative effects.¹²

In practice, eliminating cumulative effects analysis and constraining consideration of indirect effects will have wide-ranging consequences for habitat, species, and renewable resources, including climate impacts to fisheries, watersheds, forest health and many others. We urge CEQ to reconsider this draconian proposal which would fundamentally alter 50 years of NEPA implementation and result in irreparable harm to the environment. As a practical matter, any time savings that CEQ hopes to realize from severely constraining effects analysis through this ill-conceived proposal would be lost to legal challenges as this proposal appears to be in direct conflict with the plain language of NEPA.

Furthermore, in place of consideration of direct, indirect, and cumulative effects CEQ proposes to add text to §1508.1(g) narrowing the scope of effects considered to those that are reasonably foreseeable *and* have a reasonably close causal relationship to the proposed action. For the reasons outlined above related to the importance of assessing cumulative impacts, the proposed criteria of a close causal relationship would inappropriately constrain consideration of impacts of a proposed federal action in determining how a proposed decision may affect the quality of the human environment, thereby undermining the purpose of NEPA.

This section goes on to state that economic effects considered in the NEPA process could include things like employment stemming from a project. We have concern that inserting consideration of job creation to the NEPA process is not consistent with the statutory purpose of NEPA and risks inappropriately favoring projects that may have long-term environmental consequences but deliver a short-term or temporary boost to employment. This language is inconsistent with the Congressional purpose of NEPA and should be removed.

⁹ 42 USC 4332(C).

¹⁰ Council on Environmental Quality: Statements on Proposed Federal Actions Affecting the Environment, 36 Fed. Reg. 7724-29 (Apr. 23, 1971).

¹¹ Considering Cumulative Impacts Under the National Environmental Policy Act. Available at https://ceq.doe.gov/publications/cumulative_effects.html.

¹² For example: Hanly v. Kleindienst, 471 F.2d 823, 830-831 (2d Cir. 1972), cert. denied, 412 U.S. 908 (1973); Kleppe v. Sierra Club, 427 U.S. 390, 413-414 (1976).

Section 1508.1(s) largely maintains the longstanding definition of mitigation. However, given the proposed changes to the definition of effects and elimination of consideration of cumulative effects, the addition of the proposed requirement for a nexus between mitigation measures and the effects would have the practical impact of narrowing available mitigation options. Particularly given the absence of a definition of “nexus” in §1508, we believe this addition would constrain the ability of agencies to rely on mitigation to support mitigated FONSI and would cause uncertainty and project delays when determining whether “appropriate mitigation measures” have been considered during the alternatives analysis (§1502.14(f)). This is yet another reason that we oppose CEQ’s proposal to sharply constrain consideration of direct, indirect, and cumulative effects.

We are also concerned with language in the preamble stating that “[o]ther actions may be effectively mitigated through use of environmental management systems that provide a structure of procedures and policies to systematically identify, evaluate, and manage environmental impacts of an action during its implementation.” This language does not appear to be referenced in the proposed rule itself, but seems to suggest an alternative mitigation approach without providing any additional information or proposed regulatory text for the same. Without more details we cannot adequately consider the impacts of this proposal or whether it would meet the standards for enforceable mitigation requirements or commitments set forth in the 2011 Mitigation Guidance¹³ and otherwise supported by these proposed regulations.

Finally we have concerns with proposed changes to the definition of “human environment” in section §1508.1(m). The proposal would limit the human environment for the purposes of NEPA to “present and future generations of Americans.” We believe the current regulation’s broader view of the human environment is appropriate. This proposed change will have real impacts on the ground; for example, on the Colorado River this change will affect the upcoming Interim Guidelines, which outline how all major federal reservoirs on the river operate. With operations currently being coordinated with Mexico through Minutes to the 1944 U.S.-Mexico Water Treaty as well as the Drought Contingency Plan signed by the President last April, it is possible that this important component – effects on downstream communities and the environment in Mexico – might be left out if the definition of “human environment” changes as proposed by CEQ.

§1506.5 Agency responsibility for environmental documents

The proposed changes in §1506.5(c) risk compromising the objectivity and integrity of the NEPA process. While project proponents may fund preparation of environmental documents under current regulations there are appropriate procedures in place to protect the integrity of the NEPA process. The proposed language would eliminate these protections, including those requiring the agency, not the project proponent, to select a third party to complete the analysis and further, the proposed changes would no longer require any disclosures to avoid conflicts of interest between the third party preparing the environmental documents and the project

¹³ Final Guidance for Federal Departments and Agencies on the Appropriate Use of Mitigation and Monitoring and Clarifying Appropriate Use of Mitigated Findings of No Significant Impact, 76 FR 3843 (Jan. 21, 2011).

proponent. Under the proposed language, a project proponent could even complete their own environmental documents for the NEPA process; a clear conflict of interest. These changes would significantly undercut the credibility of environmental documents along with the objectivity and integrity of the entire NEPA process. Accordingly, we object to these proposed changes.

Conclusion:

Congress was clear in laying out the purpose of NEPA: to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate human health and welfare. Unfortunately, CEQ's proposed changes to the NEPA regulations falls well short of this statutory purpose and goal.

Based on our concerns outlined above, we conclude that the NPRM does not strike an appropriate balance between supporting efficient decision-making, public participation, and environmental protection. Because the NPRM falls well short of this standard, we urge you not to promulgate the proposed changes in a final rule. We welcome the opportunity to work with CEQ to advance the improvements in NEPA implementation that address real process issues while maintaining or enhancing environmental outcomes. We would endeavor to do this without creating significant new uncertainty by wiping away decades of guidance, longstanding regulations, and judicial interpretations of the same.

We cannot support this effort which would significantly erode the regulatory foundation and undermine longstanding agency NEPA processes and legal interpretations of the same. We therefore urge you to reconsider the entire proposed rule and engage interested parties in additional dialogue around ways to improve the environmental review process that meet the spirit and the letter of the NEPA statute.

Thank you for the opportunity to provide comment on the notice of proposed rulemaking to update the regulations implementing the procedural provisions of the National Environmental Policy Act promulgated by CEQ. Please contact Brent Keith (Brent.Keith@tnc.org) with any questions regarding our comments.

Sincerely,


Lynn Scarlett
Chief External Affairs Officer
The Nature Conservancy