

Measure Twice. Cut Once.

NEPA: Preventing Mistakes and Making Good Projects Better since 1970.

The federal government wields an extraordinary amount of power that reverberates in all corners of this nation. The National Environmental Policy Act is one way ordinary citizens can weigh in on federal decisions that affect their lives. From highways to oil wells NEPA ensures that a variety of factors, including public input, are considered before the dirt is moved. NEPA is a common sense process that works and any action taken to weaken its provisions would be an assault not just on environmental and health protections but the value of public participation. The evidence is everywhere—public input and a thorough review process lead to good, broadly supported projects.

ARIZONA

Fossil Creek Restoration

Fossil Creek is a major tributary to the Verde River, which provides water, recreation and wildlife habitat along its course through central Arizona. Fossil Creek has been dammed for power generation since 1908, largely drying up more than 14 miles of natural stream bed – until now. Thanks to the public review process mandated by National Environmental Policy Act (NEPA), alternatives to continue operation of this outmoded power plant were reviewed by the public and were so broadly supported that the plant owner decided to close the plant and allow the stream to run freely.

The NEPA public review process, brought together wildlife experts, conservation groups, the Yavapai-Apache Tribe, APS and others who then got involved in planning the best way to restore the stream's wildlife and manage the area for visitor use. The result will be an opportunity to restore five rare native fish populations, and to reestablish the unusual travertine mineral formations that once created miles of waterfalls and deep pools.

Without NEPA, the dam on Fossil Creek would probably still be there and the plant's neighbors might not know about alternatives to keeping this outmoded plant. . But with NEPA, the public voice was heard and better choices were made. As a result, that rare opportunity to restore a special place for future generations has been realized at Fossil Creek.

I believe NEPA is among our best tools for planning federal projects. It gives voice to our citizenry and provides a predictable avenue for democratic involvement in our government. While I would advocate for more consistent implementation and better resources for those involved in a NEPA process, I do not see the need for any wholesale changes to the law. The only way to dramatically streamline NEPA would be to reduce or eliminate the mandatory public comment periods. This would result in more frustration, more litigation, and the elimination of the most important part of this law, the involvement of our citizenry in our federal decision making process.

*Martin Heinrich
City Councilor
District 6 – Albuquerque, New Mexico*

*Testimony Before the Committee on Resources
Task Force on Improving the National Environmental Policy Act
U.S. House of Representatives
August 1, 2005*

Condors Fly At The Grand Canyon

The largest land bird in North America, the California condor, almost vanished until efforts were made to restore it to its native habitat. To increase its chances for survival, a second wild population outside of California was needed. Thanks to the NEPA process, which considers alternatives and potential impacts before a project begins, the Vermilion Cliffs of northern Arizona, overlooking the Grand Canyon, was identified as the most desirable site with the least number of conflicts with human development. The site has proven that process a success. Today more than 50 condors soar on wings more than 9 feet across through the Southwestern skies, and three wild-born chicks have hatched. There are more California condors in Arizona now than anywhere in the world.

Protecting New National Monuments

Congress recently created five new national monuments in Arizona recognizing the irreplaceable character of these special places. Thanks to opportunities for public review and input provided by NEPA, the public is commenting on proposals for roads, grazing, recreation, wildlife and cultural site protection in these new areas. The public interest in these monuments is clear: BLM gathered nearly 20,000 responses, almost all favoring strong measures to conserve and protect the natural and cultural values within the monuments. Hundreds more have taken the time to attend public hearings. Across these five monuments, NEPA is the single vehicle that ensured the public had an opportunity to voice their concerns and assist BLM in making the best decisions possible.

COLORADO

Aspen Clearcutting in Grand Mesa National Forest

In 1989, the Grand Mesa, Uncompahgre and Gunnison National Forests (GMUG) in western Colorado released a draft environmental impact statement (DEIS) that would have authorized clearcutting every aspen grove on the forests to supply a waferboard plant operated by Louisiana Pacific Corporation. The DEIS was met by public outrage, because scenery, wildlife habitat and water quality on the GMUG are essential to the region's quality of life and tourism-recreation economy. Faced with record-setting numbers of letters from private citizens, businesses and local officials, the Forest Service substantially scaled back the clearcutting proposal in the final EIS.

Absent the NEPA public review process, hundreds of thousands of acres of the most majestic landscapes in the Rockies would have been sold to a company with a history of air quality violations and poor corporate citizenship. The process worked by scaling back the authorized cut to sustainable levels that would not sacrifice other uses and natural values.

Seismic Exploration in Canyons of the Ancients National Monument

The Presidential order designating Canyon of the Ancients National Monument grandfathered valid existing rights, including oil and gas leases. However, the designation also provided that no new leases would be issued after current leases expired. On the eve of termination of the ten year base term of several federal oil and gas leases, lessees proposed a seismic exploration project.

A coalition of groups led by San Juan Citizens Alliance opposed the project because of the sensitive nature of the threatened resources. The Monument encompasses one of the highest density, highest quality incidence of cultural resource sites in the southwest - and the entire nation - as well as other outstanding natural values. Negotiations between all stakeholders - the conservation groups, BLM and lessees - resulted in a compromise exploration project that allowed lessees to obtain the desired seismic information while avoiding the most significant cultural features and endangered species habitat.

All in all, it was a win-win situation that balanced energy exploration with cultural resource protection and sustained yield, multiple use management of the public domain. The balanced plan would not have been possible had this project been exempted from NEPA. This success story protected vital components of America's cultural heritage for future generations and scientific study without sacrificing the potential to develop minerals.

NEPA does not dictate a specific final decision about a project, but rather guarantees informed decisions. NEPA has been attacked as leading to delay and higher costs.

While the NEPA process may entail some additional delay and additional cost, the better decisions that result save time and money in the long run. Bad decisions can be made quickly, and initially they are cheap, but spending a little more time and money in making a good decision rather than rushing to a bad one can really pay off. The costs and delays of living with bad decisions or of trying to fix them after-the-fact are vastly greater than any costs incurred in complying with NEPA.

LARRY D. SHELTON

Trustee, Texas Committee on Natural Resources (TCNR)

Testimony Before the Task Force on Improving National Environmental Policy Act

Nacogdoches, TX July 23, 2005

NORTH CAROLINA

Protecting Old Growth in our National Forests

When local people got involved in the proposed Steels Creek, Upper Creek, and Big Choga timber sale projects the NEPA process revealed the presence of old growth forests within these proposed projects. Local residents did not want to see these rare special places cut down. In response to public input the Forest Service adjusted each of these projects to protect the publicly identified old growth forests.

Preserving Fishing Streams, Water Quality

One of the best gifts within our national forests are the outstanding fishing streams they provide. When a project proposing the re-routing of a portion of the South Toe River came to the attention of local anglers, they were understandably concerned. The NEPA process gave local citizens, concerned with the impacts to water quality and the prize trout fishery resource this river supports, a chance to ask for alternatives. In response, the Forest Service has withdrawn that proposal and is now considering less resource-damaging options for minimizing erosion.

"In woodworking, the saying goes 'measure twice, cut once.' It means take the time to verify that the planned action is correct and then you get to take that action without making mistakes and without having to do the work over. For NEPA analysis, the same is true. Take the time to make sure what you are doing is right and done well, then you can do it without having a judge tell you to go do it over again.

"NEPA is a tool for exploring environmental issues and public concern about these issues at a point when true problems can be resolved without impeding projects. When the NEPA process is followed in the spirit of collaboration, only flawed projects will be challenged. NEPA results in improved agency work."

*Sandra Nichols
Staff Attorney, WildLaw
Testimony Before the Committee on Resources
United States House of Representatives NEPA Task Force
Field Hearing on the Role of NEPA in the States of Texas, Louisiana, Mississippi and
Alabama.
July 23, 2005*

Navy Outlying Landing Field

The U.S Navy proposed building an Outlying Landing Field (OLF) in eastern North Carolina. This jet training facility would be located adjacent to the Pocosin Lakes National Wildlife Refuge, in the heart of the Atlantic migratory bird flyway, posing a severe safety risk to Navy pilots and a serious threat to large flocks of migratory birds such as tundra swans and snow geese.

The proposed OLF has garnered strong opposition from local farmers who found out through the NEPA process that their land would be taken for construction before a truly accurate study of the environmental and public health impacts was completed.

The Navy's own documents further showed that an existing facility in southeastern Virginia meets the Navy's needs, yet, responding to political pressure, the Navy "reverse engineered" the process and mischaracterized scientific studies to justify the new OLF in North Carolina. As the District Court Judge, Terrence Boyle, observed, "NEPA's purpose is ... to foster excellent action. ... The very purpose of the environmental due process afforded by NEPA is eradicated if a federal agency makes a decision without proper consideration of the environmental impacts of the proposed project."

This is a crucial example of the importance of the NEPA process. For centuries, this unique area has coexisted in a harmonious union of rural farming communities and vast wildlife. Thanks to NEPA, the Navy will have to take a hard look at their proposed plans and thoroughly evaluate their impact on the Refuge and the rural community.

Interstate-26

Many local leaders, officials and citizens questioned the size and scope of the proposed Interstate 26 highway widening project, especially the proposed 8-to-10-lane section through the heart of west Asheville. NEPA's public disclosure and review process, is the only way the community learned that the government had wildly overstated the highway accident rates in order to justify the first phase of the project. Through NEPA review the community found out that proceeding with that first phase actually would exacerbate traffic congestion, rather than alleviating it. A federal district court ultimately ruled that the information brought to the agency by the public was crucial and NEPA required the agency to re-assess the project with accurate data and to take a comprehensive look at the overall project. NEPA worked to ensure sensible and informed decision-making, rather than a piecemeal and misinformed approach to a project that will carry very significant and long-term impacts for Asheville and western North Carolina.

"Federal agencies cannot pick and choose when they will comply with NEPA, and do so in a way that will destroy family farms, social structures, communities, and the environment. A massive change in historical operations requires NEPA compliance."

*William Kennedy
Chairman of the Board, Family Farm Alliance
Testimony Before the Task Force On Improving the National Environmental Policy
Act, Field Hearing, Spokane, Washington
April 23, 2005*

UTAH

Protecting Drinking Water From Radioactive Waste

Almost 12 million tons of radioactive uranium mill tailings are piled near Moab, Utah next to the Colorado River, a primary drinking water supply for Phoenix, Las Vegas, San Diego and Los Angeles. Southern California's Metropolitan Water District has measured increasing levels of radioactivity in the river hundreds of miles downstream near Lake Havasu. Thanks to NEPA, the Department of Energy was forced to review alternatives to continued storage of these leaking tailings where they were, and gave ordinary citizens a chance to voice their concerns about the health risks involved.

There was a remarkable outpouring of public comment during the Draft EIS stage of the NEPA process. This public involvement included comments from a bipartisan coalition of western Governors from Arizona, California, New Mexico, Nevada and Utah, and a bipartisan western congressional coalition, which included members of the House Resources Committee. The State of Utah commissioned a study by the USGS showing that the tailings pile lies directly in the path of large floods in the river. The EPA filed comments to the effect that capping the wastes would

be environmentally unacceptable and should be dropped from consideration in the FEIS. The National Park Service and Fish and Wildlife Service also participated in the NEPA process, asking for the wastes to be moved to a safer place. Thousands of individuals and many conservation groups also took advantage of the public participation requirements of NEPA to file comments.

On April 6, 2005 Department of Energy Secretary Spencer Abraham announced that the Final Environmental Impact Statement (FEIS) for the Moab mill site will recommend moving the 12 million tons of radioactive waste by train to the Crescent Junction site thirty miles north of Colorado River. This decision was the direct result of public involvement and a victory for Moab as well as the 25 million people downstream who depend on the Colorado River for water.

"This is perhaps NEPA's most important authority: Ensuring the government tells the truth about the way in which its action will affect people, local communities and the land, water, life itself."

*Calbert A. Seciwa
Pueblo of Zuni Tribal Member
Testimony Before the Committee on Resources Task Force on Improving the
National Environmental Policy Act
Monday August 1, 2005*

WASHINGTON

Avista Relicensing

Avista Corporation is currently in the process of applying for a new license from the Federal Energy Regulatory Commission to operate five of their dams on the Spokane River. The NEPA process, along with the requirements of other federal laws, ensures that Avista, agencies, tribes, and the public have the information needed to understand the impacts of these dams and what mitigation measures exist to address these impacts. This is the first time in the one hundred year history of the projects that such a detailed review will have occurred and ensures that the decision makers will understand the impact of the projects on water quality, fisheries, recreation, and a number of other river values.

Hanford's Nuclear Options

In the mid-1990's, the Department of Energy (DOE) decided that it would need to build a number of new high-level radioactive waste tanks. This decision would have diverted a great deal of money (nearly \$500 million dollars) from Hanford's proactive cleanup activities to build the tanks. Through the NEPA process, analyses clearly demonstrated that the rationale and technical case for building these tanks was flawed. In other words, DOE was making the wrong decision by building tanks. But because of the NEPA process DOE was able to base their decision on good information and ultimately decided not to build the tanks.

NEPA analysis has also been critical in providing the public and decision-makers a clear picture of the risks posed by Hanford's high level radioactive waste tanks. Prior to NEPA analyses in

1995, the risk posed by Hanford's tank waste to humans was widely debated. The NEPA analyses provided the first comprehensive picture of risk posed by the tank wastes over a long period of time (thousands of years). While these risk assessments are not perfect, they still provide the best understanding to date of the risks posed by Hanford's tank waste.

The Bush administration and the Department of Energy (DOE) recently proposed shipping more highly radioactive, transuranic waste from around the country to Hanford, in addition to the existing waste awaiting clean-up. In November 2004, 70 percent of Washington voters chose to keep new waste from being transported through their communities and onto Hanford until the waste currently there is cleaned up properly. The NEPA process was critical to temporarily stopping new waste from being transported until an adequate analysis of impacts and alternatives could be completed.

‘Over the past few years, there have been several significant limitations placed on the protections that NEPA provides to communities in order to speed up the NEPA process, including side stepping NEPA by creating categorical exclusions for certain types of projects. This severely limits the information available, as well as the opportunities to provide public review for my customers and interested businessman like myself; essentially cutting us out of the process. Limiting public involvement, restricting information, and weakening environmental review won't avoid controversy or improve projects, it will increase divisiveness and risks and additional resource damage that is bad not only for my business but for the region over the long haul.’

*Paul Fish
President, Mountain Gear Inc.
Testimony Before the Committee on Resources
Unites States House of Representatives
Spokane, WA
Saturday, April 23, 2005*

WEST VIRGINIA

Canaan Valley Wildlife Refuge

“It is said that in the mid 1700's, George Casey Harness was out tracking an enormous black bear one morning, when he came to a spot “on the western slope of the Alleghenies which overlooked a wide, well-watered, wooded and grassy valley. The breath-taking beauty of the wild valley so impressed young Harness that he involuntarily cried out, ‘Behold! The Land of Canaan!’ “ The story, quoted from Jack Preble’s book Land of Canaan, (1960, McClain Printing Company, page 1), is but one of the ways that the valley may have gotten its name.” West Virginia’s Canaan Valley Wildlife Refuge is a NEPA success story decades in the making. Now 15, 254 acres in size, public involvement has been integral to the way the refuge has developed. In addition to priceless wildlife habitat, NEPA has helped facilitate 31 miles of designated trails for pedestrian use, 23 miles for bicycle use, 22 miles for horseback use and 7 miles of roads for

licensed vehicles to provide public access for wildlife observation, photography, and learning about nature. Hunting and fishing are also available on the Refuge.

"The federal government directly or indirectly controls much of this region's land area. The federal government owns forty percent of Norfolk and sixty percent of Portsmouth. Large expanses of Virginia Beach and Chesapeake are under federal government ownership as well. Navigable waterways, which thread throughout this region, are under the control of the USACE.

"NEPA is one major protection available to the citizens of this region when the federal government is considering projects affecting our lives, property, and communities. NEPA guarantees that citizens can see and comment upon analyses of the project's environmental costs and economic benefits, its environmental impact, alternatives to the project, and long-term impacts on the community."

William A. Stiles, Jr.

Vice President, Wetlands Watch

*Testimony before the House Committee on Resources Task Force on Improving the National Environmental Policy Act
Norfolk, Virginia*

WYOMING

Seismic Survey

Public input required by NEPA is helping the BLM correct a flawed environmental analysis (EA) for a proposed seismic survey on BLM, Forest Service, and private land near Clark, Wyoming. The proposal submitted by Windsor Wyoming Inc. calls for drilling 74 shot holes per square miles on 47 square miles north and south of the Clark River, Wyoming's only designated Wild and Scenic river. Explosive charges would be fired into the holes to gain 3-D picture of the resources available in the area. After reviewing the draft analysis, private property owners and other local citizens groups noted that the initial EA failed to consider how these explosions would affect scarce water resources, game species, hunting opportunities, Native American historical sites, private property value, and crucial winter wildlife habitat.

The BLM readily admits that public input led them to reexamine the EA and consider the use of a new survey technology which would mitigate the damaging effects of the explosive charges. The BLM plans to take a second, considerably longer, look at wildlife, habitat and traffic issues, as well as testing alternatives like "passive seismic." Through the public input process required by NEPA, private property owners, land managers, and industry are working towards a survey which will be appropriate for the area.