

NEPA'S PROMISE: A FUTURE IN WHICH WE ALL THRIVE

by Sharon Buccino

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I landed at Atlanta's Hartsfield Airport low on sleep and weary. I had come for a workshop designed to share information about the National Environmental Policy Act (NEPA)¹ and how it can help local leaders reach the vision they have for their communities. I have helped convene such citizen workshops many times. This time, I arrived weighed down by my work in our nation's capital. As I scan the paper each morning, society seems to be coming apart at its seams.

With family in Atlanta, I have visited often. As I prepared to go this time, I reread some of Reverend Martin Luther King Jr. I came across a book with which I was unfamiliar. Perhaps destiny was involved. I had not been to church in a while, but I went the Sunday before leaving for Atlanta. The minister read from King's *Chaos or Community: Where Do We Go From Here?*

Martin Luther King chose community. He spoke of the need to work together. In a society such as ours of multiple interests and multiple identities, no group can make it alone. The U.S. Congress chose community when it passed NEPA 50 years ago.

NEPA is not about my agenda or your agenda. It is about solutions that work for all of us. We do well ourselves by taking care of others. NEPA speaks of the continuing responsibility of the government "to assure for all Americans safe, healthful, productive and aesthetically and culturally pleasing surroundings."² NEPA speaks of the government's obligation to "fulfill the responsibilities of each generation as trustee of the environment for succeeding generations."³ NEPA promises a world in which we can all thrive. It provides a path to get there.

But the path is not easy. Thirty years of practice have taught me the work it takes to fulfill NEPA's promise. It takes commitment, persistence, and patience. I am falling short. And so is the nation. Instead of coming together to

understand and balance each other's interests, we retreat to our corners. We have gotten lost in pages of environmental analysis that fail to focus on the issues that really matter to those affected by the decision. We have gotten lost in detailed rules about categorical exclusions (CEs). By trying to use these for controversial actions like logging or drilling for oil and gas, we have lost sight of where such exclusions make sense.

This Comment offers a litmus test. The first section explains the promise NEPA makes to each of us. It describes the integration, information, and inclusion that NEPA brought to our federal statutory framework in a way not previously seen. It describes how NEPA enhances our democracy by holding the government accountable to the people it serves—by giving the public a right to information, as well as the right to provide information.

The second section measures how we have done in fulfilling NEPA's promise. It describes what it takes to deliver effective and efficient environmental analysis and public participation. By using this two-part litmus test to evaluate past actions, as well as proposals for change, we can chart a constructive path forward.

I. What NEPA Provides

Signed into law by President Richard Nixon, NEPA speaks of the nation's commitment "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."⁴ NEPA provides a vision of a future that we all can get excited about. It is a future built on respect—for animals, for land, and for each other. In addition to this vision, NEPA provides a mechanism for getting there.

A. Integration

Twenty-first century challenges are testing the resiliency of our nation's environmental laws. Laws focused on a single resource, like the Clean Air Act,⁵ the Clean Water Act,⁶ or the Endangered Species Act,⁷ do not get us all the way

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1. 42 U.S.C. §§4321-4370h, ELR STAT. NEPA §§2-209.

2. 42 U.S.C. §4331(b)(2).

3. *Id.* §4331(b)(1).

4. *Id.* §4331(a).

5. 42 U.S.C. §§7401-7671q, ELR STAT. CAA §§101-618.

6. 33 U.S.C. §§1251-1387, ELR STAT. FWPCA §§101-607.

7. 16 U.S.C. §§1531-1544, ELR STAT. ESA §§2-18.

home. These acts fail to address the interconnectedness of the various elements of the world around us.

NEPA recognizes the interrelatedness of air, water, land, wildlife, and humans. The Act requires federal agencies to “utilize a systematic, interdisciplinary approach which will insure the integrated use of natural and social sciences and the environmental design arts in planning and in decisionmaking.”⁸ By requiring agencies to work together across jurisdictions and specialties, NEPA brings various sources of expertise together to shape wise government decisions.⁹

B. Information

NEPA commands that federal agencies gather information necessary for good decisionmaking. The statute requires agencies to provide “a detailed statement of . . . the environmental impacts of the proposed action” and analysis of “alternatives to the proposed action.”¹⁰ Agencies are responsible for ensuring the scientific integrity of their analyses.¹¹

This obligation includes justifying incomplete or unavailable information. NEPA does not allow agencies to hide behind the unavailability of data. Unless the cost is “exorbitant,” agencies must obtain information relevant to environmental impacts and to making a reasoned choice among alternative courses of action.¹² Recognizing the increasing pressures humans were placing on the natural world, NEPA’s authors mandated that federal agencies shall “initiate and utilize ecological information in the planning and development of natural resources.”¹³ Moreover, NEPA imposes an affirmative duty on federal agencies to provide information to the public about the decisions the government makes and how it makes them. Federal agencies shall “share environmental information and advice with States, counties, cities, institutions and individuals.”¹⁴

C. Inclusion

More than just an environmental statute, NEPA provides a foundation for democracy. It holds government decisionmakers accountable to the public they serve. Including the public is not optional under NEPA—it is mandatory. NEPA requires federal agencies to cooperate “with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance.”¹⁵

8. 42 U.S.C. §4332(A).

9. *See, e.g.*, 40 C.F.R. §1501.6 (2019); Memorandum from James Connaughton, Chair, Council on Environmental Quality, to Heads of Federal Agencies (Jan. 30, 2002), Re: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act; Michael Blum & Andrea Lang, *Shared Sovereignty: The Role of Expert Agencies in Environmental Law*, 42 *ECOLOGY L.Q.* 609 (2015).

10. 42 U.S.C. §4332(C) & (E).

11. 40 C.F.R. §1502.24 (2019).

12. *Id.* §1502.22.

13. 42 U.S.C. §4332(H).

14. *Id.* §4332(G).

15. *Id.* §4331(a).

NEPA recognizes that incorporating diverse perspectives produces better decisions. Democracy survives by promoting free and open speech rather than suppressing it.¹⁶ Rather than an instrument of “big” government, NEPA helps protect states and individuals from mandates dictated by unresponsive, distant decisionmakers.

For example, NEPA allowed the state of Alabama to influence the U.S. Army Corps of Engineers’ design of a new port facility in Mobile.¹⁷ NEPA helped state and federal agencies work together to replace New York’s Tappan Zee Bridge. The permitting was completed in 18 months, saving up to three years on the time line for the multibillion dollar project and creating an estimated 45,000 jobs.¹⁸ Under the Council on Environmental Quality’s (CEQ’s) regulations, federal agencies “shall invite the participation” of state and local agencies, as well as any affected Indian tribe, in scoping to design the NEPA review for their decisions.¹⁹

II. Criteria for Effective and Efficient Public Engagement

Everyone can agree on the importance of integration, information, and inclusion. NEPA is not about my agenda or your agenda. It is about having a say in decisions that affect the things we care about deeply—our health, our families, our communities, our surroundings. NEPA provides a vision of a future in which we all thrive. By burying ourselves in paper and arguing about process, we have lost sight of this future. This part provides some guideposts to move us back on track.

The part identifies five criteria for delivering effective and efficient public engagement. By first investing upfront in outreach and engagement, an agency can then focus its time and resources on the issues that matter. By limiting the use of CEs to those actions that truly have minimal impacts, an agency can quickly complete the many actions in which the public has little interest engaging. By using environmental assessments to engage the public in potentially controversial actions, an agency can understand the potential conflict and diffuse it. By embracing effective cumulative analysis, an agency can make decisions that make sense over time and not simply today.

A. Invest in Outreach and Engagement

Public participation and environmental review work well when an agency invests upfront in outreach and engagement. This takes hard work and time. But it is an investment that pays large dividends later. By identifying and connecting with those who may be affected by a pro-

16. JOHN STUART MILL, *ON LIBERTY* (F.S. Crofts & Co. 1947) (1859).

17. Elly Pepper, *Never Eliminate Public Advice: NEPA Success Stories*, NRDC, Feb. 1, 2015, <https://www.nrdc.org/resources/never-eliminate-public-advice-nepa-success-stories>.

18. *Id.*

19. 40 C.F.R. §1501.7(a)(1) (2019). NEPA created CEQ. CEQ’s regulations provide the basic requirements for NEPA compliance. Each federal agency supplements CEQ’s regulations with its own regulations and handbooks.

posed decision early, an agency can limit controversy and delay later.

The U.S. Forest Service's 2012 planning rule offers a good example of how outreach and engagement pay off. The rules governing how the Forest Service develops its plans for managing each national forest were the subject of criticism and repeated litigation for more than 25 years.²⁰ The time had come to do things differently. As Secretary of Agriculture Tom Vilsack recognized in 2009, changing times demanded a changed approach to how we manage national forests. According to Secretary Vilsack, sustaining our forests into the future "will require a new approach that engages the American people and stakeholders in conserving and restoring both our National Forests and our privately-owned forests."²¹

The new rule put public engagement at its core. The rule's content emphasizes the importance of outreach. The rule provides that the official responsible for a forest plan "should be proactive and use contemporary tools, such as the Internet, to engage the public, and should share information in an open way with interested parties."²² The rule explicitly acknowledges the value of different types of knowledge, including Native knowledge, indigenous ecological knowledge, and land ethics.²³ Moreover, the rule mandates outreach to those who have not traditionally engaged in decisionmaking about the nation's public lands, including "[y]outh, low-income and minority populations."²⁴

Following issuance of the final rule, the Forest Service developed further guidance and resources to encourage effective public engagement. In 2015, the agency issued a public participation directive. This directive, along with other specific instruction for implementing the 2012 planning rule, is collected in *Forest Service Handbook 1909.12 (Land Management Planning)*. Chapter 40 addresses public participation. The agency directs its staff to "[r]each out to youth, minority, and low-income populations for ideas on how to best engage them in different phases of planning."²⁵

The directive encourages attendance by agency staff at non-traditional meetings and the use of radio and television spots in multiple languages to engage diverse constituents.²⁶

Even more importantly, the Forest Service invested significantly in outreach and engagement as it developed the rule. Working with the U.S. Institute for Environmental Conflict Resolution, the Forest Service gathered input from various stakeholders to shape a comprehensive collaborative strategy to engage the public in the rulemaking process. To inform development of a proposed rule, the Forest Service held more than 20 regional round tables.

20. See USDA, Forest Service, National Forest System Land Management Planning, 71 Fed. Reg. 21162, 21163 (Apr. 9, 2012).

21. *Id.*

22. 36 C.F.R. §219.4 (2019).

23. *Id.* §219.4(a)(3).

24. *Id.* §219.4(a)(1)(ii).

25. U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE HANDBOOK 1909.12—LAND MANAGEMENT PLANNING HANDBOOK ch. 40, at 20-21 (2015), available at <https://www.fs.usda.gov/detail/planningrule/home/?cid=stelpdr3828310>.

26. *Id.*

These provided information to the public while also creating a place for constructive dialogue for stakeholders to explore issues relevant to each forest region.²⁷

Following publication of the proposed planning rule, the Forest Service held national and regional forums to solicit comments. Significantly, these forums were structured to allow for conversation among Forest Service staff and stakeholders.²⁸ This provided for greater understanding of the interests and perspectives of forest users by agency decisionmakers. The Forest Service also held a two-day science forum to ensure its actions were based on the best available science and to create an opportunity to discuss the science.²⁹ Finally, the Forest Service organized an advisory committee under the Federal Advisory Committee Act to help guide implementation of the new planning rules.³⁰

While a significant investment in time and resources, the outreach and public engagement conducted by the Forest Service in developing its new forest planning rules produced a rule likely to last. It is supported by individuals and groups who use the forests for a variety of purposes.³¹ In contrast, the planning rule developed by the Bureau of Land Management (BLM) was rescinded pursuant to the Congressional Review Act.³² BLM had not taken the time to invest in the same level of public engagement in developing its new rule. As a result, BLM's rule lacked widespread support and failed to last more than four months after it was issued.

While not an action required by NEPA, the Forest Service's development of its new planning rule provides a powerful example of the benefits of agency investment in outreach and public engagement. In the NEPA context, such investment enables an agency to focus its limited resources and staff on the issues that matter most to the public it serves.

B. Focus Resources and Time on Issues That Matter

One of the returns an agency gets from investing in effective public engagement upfront is an accurate understanding of the issues that matter most to those affected by the proposed agency action. For this reason, scoping can be the most important part of the NEPA process. If agency staff truly understand the public's concerns at the begin-

27. For details on each of the regional round tables, see U.S. Forest Service, *2010 Regional Roundtables*, <https://www.fs.usda.gov/detail/planningrule/collaboration/?cid=stelpdrb5136336> (last visited Jan. 10, 2020).

28. See U.S. Forest Service, *2011 National and Regional Forums*, <https://www.fs.usda.gov/detail/planningrule/collaboration/?cid=stelpdrb5270328> (last visited Jan. 10, 2020).

29. See U.S. Forest Service, *2010 Science Forum*, <https://www.fs.usda.gov/detail/planningrule/collaboration/?cid=stelpdrb5136340> (last visited Jan. 10, 2020).

30. See U.S. Forest Service, *Planning Rule FACA Committee*, <https://www.fs.usda.gov/main/planningrule/committee> (last visited Jan. 10, 2020).

31. See, e.g., Martin Nie, *The Forest Service's 2012 Planning Rule and Its Implementation: Federal Advisory Committee Member Perspectives*, 117 J. FORESTRY 65-71 (2019).

32. BLM, *Effectuating Congressional Nullification of the Resource Management Planning Rule Under the Congressional Review Act*, 82 Fed. Reg. 60554 (Dec. 21, 2017).

ning, they can avoid spending time and money on issues in which the public has no interest.

Investing in relationships with the public that an agency serves can also lead to solutions that the agency had not thought of previously. For example, the Forest Service was spraying herbicides to control “unwanted vegetation” in areas that had been clearcut. Even though the U.S. Army had ended the use of Agent Orange in Vietnam, the Forest Service was still spraying it. A coalition of tree planters, rural residents, scientists, and herbicide reform activists volunteered to work with the agency. They came up with some simple, effective alternatives. In the end, the forest supervisor adopted the “least herbicide” option.³³

Effective scoping allows an agency to design an efficient NEPA process. As part of scoping, an agency may set page limits for environmental documents as well as time limits.³⁴ During scoping, the lead federal agency shall identify and eliminate from detailed review those issues that will not be significant or those that have been adequately covered in prior environmental review.³⁵ Scoping is also used to specify the roles and responsibilities of the lead federal agency, as well as those of various cooperating agencies.³⁶ In addition, scoping provides the opportunity to identify other environmental review and consultation requirements so that they can be integrated into a single, coordinated process.³⁷

C. Use CEs Where Impacts Are Limited

CEs provide a useful mechanism to focus limited agency resources on actions that matter most to the public. No one wants paper for paper’s sake. No one wants to waste time on agency actions that cause little harm. The challenge is to distinguish between those actions that cause harm and those that do not in an efficient way.

Many actions, like painting a ranger station or fencing to protect a cultural resource, are not going to generate public controversy. Agency regulations include CEs for many of these types of activities. For example, the U.S. Department of Energy’s NEPA regulations provide a CE for routine maintenance such as window washing and trash collecting.³⁸ The Forest Service also categorically excludes maintenance activities such as resurfacing a road to its original condition.³⁹ Moreover, the Forest Service includes a CE for short-term resource protection like closing a road

to protect bighorn sheep during lambing season.⁴⁰ It also categorically excludes resource inventories and educational programs.⁴¹ The Federal Highway Administration categorically excludes actions that do not involve construction, such as training grants.⁴²

For other actions—like logging or drilling for oil and gas—the public is going to want a say. Agencies have run into trouble when they try to use CEs for projects that have impacts that concern the public. For example, the Forest Service adopted a CE that covered amendments and revisions to forest management plans.⁴³ Such documents affect how much area of our national forests will be used for what purposes. How many acres will be open to logging? Where will off-road vehicles be allowed? What areas will be closed to public use? The public wants a say in these decisions about public lands they care passionately about and may visit frequently. The public wants analysis of the potential environmental impacts of the different decisions and alternatives that the Forest Service is considering in a plan amendment or revision.

Use of CEs by the Forest Service to allow significant logging in specific forests has also sparked heated controversy. The 2014 Farm Bill included a CE that allows logging projects up to 3,000 acres in the name of “forest health.” The problem is there is no clear evidence documenting that logging promotes forest health. At the very least, environmental analysis should be completed to evaluate the impact of such a large amount of logging on the health of a specific forest.

More logging has been allowed under CEs in the name of reducing wildfires. The Consolidated Appropriations Act of 2018 included a CE for hazardous fuel reduction projects.⁴⁴ This logging is not just taking out dry underbrush. It is clearcutting entire swaths of forests, and doing so without meaningful review of whether such logging actually reduces the frequency or intensity of fires. In fact, increasing evidence shows that in many places the logging, including clearcutting, being justified under CEs increases fire risk.⁴⁵

Rather than limiting its use of CEs to noncontroversial actions, the Forest Service has proposed to further expand logging without meaningful environmental review or public participation. A new CE would allow commercial

33. Mary O’Brien, *Standing Up for This World*, ORION, Sept./Oct. 2004. See also CEQ, A CITIZEN’S GUIDE TO THE NEPA: HAVING YOUR VOICE HEARD 14 (2007), available at https://ceq.doe.gov/docs/get-involved/Citizens_Guide_Dec07.pdf (“Some of the most constructive and beneficial interaction between the public and an agency occurs when citizens identify or develop reasonable alternatives that the agency can evaluate. . . .”).

34. 40 C.F.R. §1501.7(b) (2019).

35. *Id.* §1501.7(a)(3).

36. *Id.* §1501.7(a)(4).

37. *Id.* §1501.7(a)(6). See also U.S. Department of the Interior NEPA Regulations, 43 C.F.R. §46.235 (2019) (“Scoping . . . provides an opportunity to bring agencies and applicants together to lay the groundwork for setting time limits, expediting reviews where possible, integrating other environmental reviews, and identifying any major obstacles that could delay the process.”).

38. 10 C.F.R. pt. 1021, app. B, B1.3 (2019).

39. 36 C.F.R. §220.6(d)(1) (2019).

40. *Id.*

41. 7 C.F.R. §1b.3(a)(3) & (4) (2019).

42. 23 C.F.R. §771.117(c) (2019).

43. See 71 Fed. Reg. 75481 (Dec. 15, 2006); 36 C.F.R. §220.6(e)(16) (2019).

44. See 16 U.S.C. §6591(d).

45. See, e.g., Harold S. J. Zald & Christopher Dunn, *Severe Fire Weather and Intensive Forest Management Increase Fire Severity in a Multi-Ownership Landscape*, 28 ECOLOGICAL APPLICATIONS 1068 (2018); Curtis M. Bradley et al., *Does Increased Forest Protection Correspond to Higher Fire Severity in Frequent-Fire Forests of the Western United States?*, 7 ECOSPHERE e01492 (2016). Better options are available for reducing fire risk than indiscriminate logging. Max A. Moritz & Scott Gabriel Knowles, *Coexisting With Wildfire*, 104 AM. SCIENTIST 220 (2016) (prioritizing fuel treatments to flammable vegetation adjacent to homes along with specific measures that reduce fire risks to home structures are precautionary steps for allowing more fires to proceed safely in the backcountry).

logging of up to 4,200 acres when associated with a restoration project.⁴⁶

Similar controversy has surrounded the use of CEs for oil and gas drilling. Given the devastating impacts of our changing climate, growing numbers of Americans want a path to a clean energy future no longer tied to fossil fuels. They want our public lands and waters to help solve the climate chaos we are facing, rather than to fuel it.

Yet, the U.S. Department of the Interior has CEs for oil and gas drilling. New wells can be approved for up to five years based on environmental analysis accompanying a land use plan.⁴⁷ The Department issued guidance that allows the use of a CE in such circumstances even without review of whether any extraordinary circumstances—such as endangered species or cultural resources—may be present.⁴⁸

By limiting CEs to actions with limited impacts, agencies can reduce controversy over their use. The public will be more willing to allow application of CEs without being involved as long as the circumstances in which they are applied are not controversial actions like logging or drilling. Using CEs where impacts are limited can preserve an agency's limited resources for the circumstances where environmental analysis would be most useful. In the words of CEQ, "The use of categorical exclusions can reduce paperwork and delay, so that [environmental assessments] or [environmental impact statements] are targeted toward proposed actions that truly have the potential to cause significant environmental effects."⁴⁹

D. Welcome the Public—Use Environmental Assessments to Include, Not Exclude

NEPA is as much a statute about our democracy as it is about the environment. It directs federal agencies to cooperate with the public.⁵⁰ As any manager knows, employees will often accept a decision they do not agree with as long as they have had a meaningful opportunity to provide input. Public satisfaction with a decision is strongly linked to belief in the fairness of the participation process.⁵¹

Avoiding conflict does nothing to diffuse it. Dodging public input for environmental assessments (EAs) alienates the public an agency serves rather than engages it. For example, BLM traditionally issued oil and gas leases based on EAs that had not been shared for input with the public.

46. USDA, Forest Service, National Environmental Policy Act (NEPA) Compliance, 84 Fed. Reg. 27544, 27549 (June 13, 2019).

47. BLM, NATIONAL ENVIRONMENTAL POLICY ACT HANDBOOK H-1709-1, app. 2 (2008).

48. BLM, Information Bulletin No. 2018-061, NEPA Efficiencies for Oil and Gas Development (June 6, 2018), <https://www.blm.gov/policy/ib-2018-061>.

49. CEQ, Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act, 75 Fed. Reg. 75628, 75631 (Dec. 6, 2010); see also 40 C.F.R. §§1500.4(p) (2019) (recommending use of CEs as a tool to reduce paperwork), 1500.5(k) (recommending CEs as a tool to reduce delay).

50. 42 U.S.C. §4331(a).

51. Marion Hourdequin et al., *Ethical Implications of Democratic Theory for U.S. Public Participation in Environmental Impact Assessment*, 35 ENVTL. IMPACT ASSESSMENT REV. 37 (2012).

In excluding the public from developing EAs, BLM relied on the absence of a mandatory comment period length in CEQ's NEPA regulations. CEQ regulations require a minimum of 45 days for public comment on draft environmental impact statements, but contain no minimum for comment on EAs.⁵² Lacking the ability to engage in environmental analysis of proposed leases, citizens protested almost every lease proposed for sale. Such protests precluded issuing the leases until they were resolved.⁵³

Recognizing the cost and delay that such protests caused, BLM issued oil and gas leasing reforms in 2010. These reforms committed BLM to provide 30-day public comment on EAs for oil and gas leases.⁵⁴ Other agencies also provide public comment on EAs.⁵⁵ The number of protested oil and gas leases fell.

Unfortunately, BLM rescinded the leasing reforms.⁵⁶ The agency once again issues most oil and gas leases without providing the public the opportunity to comment on draft EAs. Protests have dramatically increased.⁵⁷

Rather than viewing their role as project builders or approvers, NEPA encourages federal agencies to invite public values into decisionmaking. Doing so builds trust and improves decisions. Agency staff and leaders need to be open to perspectives other than their own. Various stakeholders also need to bring open minds to discussions about government decisions. The public is not an obstacle to get past, but rather an asset to include to achieve solutions that last.

E. Embrace Tools for Cumulative Analysis

As discussed above, one of NEPA's greatest gifts is the integration it brought to decisionmaking. Recognizing the complexity of the environmental problems the nation faced, NEPA's creators provided a mechanism to integrate various expertise across both space and time. NEPA requires agencies to evaluate a project's impact in the context of other projects rather than in isolation. By requiring analysis of cumulative impacts, NEPA encourages agencies to make decisions that are good for tomorrow as well as today.

Too often, an agency seeks to avoid cumulative analysis based on the limited role the agency plays in the project at issue. This was the case in the Army Corps of Engineers' approval of the Dakota Access Pipeline. While a 1,168-mile pipeline would have significant impacts, the Corps issued a finding of no significant impact supported by an

52. 40 C.F.R. §1506.10(c) (2019). While CEQ's regulations require agencies to provide for "meaningful public involvement," courts have generally deferred to agency discretion in evaluating the amount of public input provided on EAs.

53. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-670, ONSHORE OIL AND GAS: BLM'S MANAGEMENT OF ITS PUBLIC PROTESTS TO ITS LEASE SALES NEEDS IMPROVEMENT 6 (2010).

54. BLM, Instruction Memorandum No. 2010-117, Oil and Gas Leasing Reform—Land Use Planning and Lease Parcel Reviews III.E (May 17, 2010).

55. See CEQ, *supra* note 33, at 21.

56. BLM, Instruction Memorandum No. 2018-034, Updating Oil and Gas Leasing Reform—Land Use Planning and Lease Parcel Reviews (Jan. 31, 2018).

57. See, e.g., Adrian C. Hedden, *Protesters Call for Drilling Ban Following Federal Land Sales to Oil and Gas Industry*, CARLSBAD CURRANT-ARGUS, Sept. 7, 2019, <https://www.currentargus.com/story/news/local/2019/09/06/activists-protest-lease-sale-federal-land-oil-and-gas-industry/2231331001/>.

EA.⁵⁸ The Corps based this decision on the limited impacts of the pieces of the pipeline over which the Corps was responsible—the crossing of wetlands and Lake Oahe.⁵⁹

If every federal handle is small, real issues and concerns go unaddressed.⁶⁰ This is exactly what NEPA's cumulative impact analysis requirement was designed to avoid. As CEQ has said, "Evidence 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."⁶¹ In an abrupt about-face, CEQ recently proposed changes to its NEPA regulations aimed at eliminating the requirement to consider cumulative impacts. The regulations change the definition of "effects" to exclude "indirect" and "cumulative."⁶²

Agencies cannot satisfy NEPA's mandate without addressing cumulative impacts. NEPA commits the federal government to "fulfill the social, economic, and other requirements of present and future generations of Americans."⁶³ By ignoring cumulative impacts, we fail future generations. The consequences of climate change expose our failure every day. One member of the Federal Energy Regulatory Commission (FERC), Richard Glick, has recognized the critical need to address cumulative impacts. Commissioner Glick has consistently dissented

from FERC approval of new pipelines and expansion of gas supplies that fail to analyze the cumulative impacts of the proposed projects on climate change.⁶⁴

As communities across the nation face devastating impacts of climate change, federal agency leaders and their staff can help. Rather than run away from the problem, agencies can turn to available tools for effective cumulative impact analysis. As Winston Churchill said in 1936, "The era of procrastination . . . is coming to its close. In its place we are entering a period of consequences."⁶⁵

III. Conclusion

While I landed in Atlanta weary, I left upbeat and energized. The people I met came from different walks of life—a former government employee, a teacher, a mother, several young, committed students. They wanted to understand the needs of their communities and find ways to address them. NEPA helped them do that.

Through information and collaboration, NEPA helps us provide for nature so that nature can provide for us. It helps us provide for each other. NEPA provides a mechanism for understanding each other's interests and finding solutions that balance those interests. NEPA gives us a way to create community out of chaos, but it is up to us to find it.

58. U.S. ARMY CORPS OF ENGINEERS, MITIGATED FINDING OF NO SIGNIFICANT IMPACT/ENVIRONMENTAL ASSESSMENT: DAKOTA ACCESS PIPELINE PROJECT (2016), <https://cdm16021.contentdm.oclc.org/digital/collection/p16021coll7/id/2801>.

59. U.S. Army Corps of Engineers, *Dakota Access Pipeline*, <https://www.usace.army.mil/Dakota-Access-Pipeline/> (last visited Dec. 26, 2019) ("In total, USACE has jurisdiction over a very small portion of the total pipeline project—approximately 37 miles of the pipeline's 1,168 total miles.")

60. See, e.g., Mike Faith, *Our Fight Against Dakota Access Pipeline Is Far From Over*, *GUARDIAN*, Nov. 15, 2019, <https://www.theguardian.com/comment-is-free/2019/nov/15/dakota-access-pipeline-standing-rock>; Gillian Giannetti, *Reform Is Long Overdue for FERC's Gas Pipeline Reviews*, *NRDC*, Nov. 19, 2019, <https://www.nrdc.org/experts/gillian-giannetti/reform-long-overdue-how-ferc-approves-pipelines>; Mary K. Fitzgerald, *Small Handles, Big Impacts: When Should the National Environmental Policy Act Require an Environmental Impact Statement?*, 23 B.C. ENVTL. AFF. L. REV. 437 (1996).

61. CEQ, *CONSIDERING CUMULATIVE EFFECTS UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT I* (1997).

62. CEQ, *Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act*, 85 Fed. Reg. 1684, 1749 (Jan. 10, 2020) ("Analysis of cumulative effects is not required.")

63. 42 U.S.C. §4331(a).

64. See, e.g., Commissioner Richard Glick, *Dissent Regarding Transcontinental Gas Pipe Line Company, LLC* (Docket No. CP17-101-000) (May 3, 2019), <https://www.ferc.gov/media/statements-speeches/glick/2019/05-03-19-glick.pdf>; see also Rich Glick & Matthew Christiansen, *FERC and Climate Change*, 40 *ENERGY L.J.* 1 (2019).

65. William Kristol, *Yes, a Period of Consequences*, *WASH. EXAMINER*, July 26, 2010, <https://www.washingtonexaminer.com/weekly-standard/yes-a-period-of-consequences>.