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March 10, 2020

Comments regarding the January 10, 2020 Notice of Proposed Rule: Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act

Submitted by:

Energy and Wildlife Action Coalition

Filed electronically to the attention of:

Attn: Docket No. CEQ-2019-0003-0001
Council on Environmental Quality
730 Jackson Place NW
Washington, D.C. 20503

The Energy and Wildlife Action Coalition ("EWAC")[1] submits these comments in response to the Council on Environmental Quality's ("CEQ") January 10, 2020 Proposed Rule: Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act ("Proposed Regulations").[2]

At the outset, EWAC recognizes and appreciates CEQ's consideration of comments submitted by EWAC during the public comment period associated with CEQ's Advanced Notice of Proposed Rulemaking, Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act ("ANPR").[3] EWAC recognizes the tremendous effort undertaken by CEQ in reviewing the thousands of public comments received in connection with the ANPR, as well as the effort the agency has expended in developing the Proposed Regulations.

EWAC has reviewed the Proposed Regulations and generally supports the clarifications to the NEPA process proposed by CEQ. Many of the changes reflected in the Proposed Regulations update provisions that date back to the beginning of NEPA practice and codify long-standing agency practices that are supported by caselaw. Additionally, the new and reordered sections of the Proposed Regulations, particularly with respect to topics such as categorical exclusions ("CE"), environmental assessments ("EA"), and Findings of No Significant Impact ("FONSI") will provide needed direction to federal agencies who must determine the appropriate level of review for a given federal action. Nevertheless, there are certain areas for which CEQ could provide additional clarity and direction to further enhance the efficacy of the regulations. EWAC provides the following comments on the Proposed Regulations, which are drawn from EWAC members' experience with the NEPA process, and are intended to identify ways in which the NEPA process could gain greater efficiency.

I. Purpose and Need

EWAC supports the proposed revision to 40 C.F.R. § 1502.13 clarifying that when an agency is responding to an application, the agency must base the statement of purpose and need on the goals of the applicant and on the agency's authority.[4] Courts have recognized that, when an agency is responding to an application, it is appropriate for the purpose and need statement to define objectives in light of both the applicant's objectives and the agency's statutory authority.[5] Agency practice has been inconsistent on this point, with some agencies regularly failing to identify or acknowledge the applicant's reasons for seeking authorization or funding from the federal agency. The purpose and need statement establishes the goals of the agency action (which often is limited

[1] EWAC is a national coalition formed in 2014 whose members consist of electric utilities, electric transmission providers, and renewable energy entities operating throughout the United States, and related trade associations. The fundamental goals of EWAC are to evaluate, develop, and promote sound environmental policies for federally protected wildlife and closely related natural resources while ensuring the continued generation and transmission of reliable and affordable electricity. EWAC supports public policies, based on sound science, that protect wildlife and natural resources in a reasonable, consistent, and cost-effective manner. EWAC is a majority-rules organization; therefore, specific decisions made by the EWAC Policy Committee may not always reflect the positions of every member.

[2] 85 Fed. Reg. 1684 (Jan. 10, 2020).

[3] 84 Fed. Reg. 28,591 (June 20, 2018).

[4] 85 Fed. Reg. at 1720.

[5] *Alaska Survival v. Surface Transportation Board*, 705 F.3d 1073, 1086 (9th Cir. 2013).

to responding to an application by a non-federal project proponent for a permit or other authorization), and the alternatives analysis then provides the range of means for achieving those goals. If the purpose and need statement does not clearly recognize the applicant's objectives, the agency is more likely to identify and analyze alternatives that are not viable because they would not meet the applicant's needs or simply are not available to the applicant.

II. Reasonable Alternatives

EWAC supports CEQ's proposed revisions to the definition of "reasonable alternatives," which would establish that a reasonable alternative is one that is technically and economically feasible, meets the purpose and need of the proposed federal action, and meets the goals of the applicant, where applicable.[6] EWAC also supports CEQ's proposal to exclude from the alternatives analysis any alternative that is outside the lead agency's jurisdiction to implement, and agrees with the rationale provided by CEQ, that such alternative "would not be technically feasible due to the agency's lack of statutory authority to implement the alternative."[7] We would suggest, however, that CEQ go further by including in any final regulations clarification as to the meaning of the phrase "technically and economically feasible." The CEQ's *Citizen Guide to the National Environmental Policy Act* ("Citizens' Guide") provides helpful guidance that reasonable alternatives are those that are practical or feasible from the technical and economic standpoint and *using common sense*.[8] Similarly, CEQ's Memorandum titled *Guidance Regarding NEPA Regulations* indicates that an agency's responsibility to analyze reasonable alternatives is bounded by "some notion of feasibility" and that agencies need not discuss "purely conjectural possibilities."[9] EWAC believes these concepts could easily be adopted in any final regulations to assist agencies in carrying out their NEPA duties.

While EWAC supports the proposed revisions to the definition of "reasonable alternatives," and generally is of the view that including a large number of alternatives does not always aid in analyses carried out under NEPA, we do not support adoption of a regulation that would prescribe a maximum number of alternatives that must be considered by a federal agency.[10] In EWAC's view, the appropriate number of alternatives to the proposed action should be determined on a case-by-case basis, taking into account the unique aspects of an action or the environmental effects thereof. EWAC notes in particular that while it would be reasonable in some cases for an agency to evaluate a large number of alternatives, there are other circumstances, such as where a project proponent seeks a permit related solely to the operational impacts of a project and the agency therefore does not have discretion to require alternative project locations or configurations, that the number and range of alternatives is quite narrow. EWAC also notes that, in most cases, the number of alternatives analyzed under an EA will be smaller than the number of alternatives analyzed under an environmental impact statement ("EIS").

EWAC finds the Bureau of Reclamation's NEPA Handbook ("Reclamation Handbook") helpful in the way it describes how to properly identify and analyze alternatives in a NEPA analysis.

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[6] 85 Fed. Reg. at 1730.
[7] *Id*. at 1702.
[8] Citizens' Guide at 16 (emphasis added).
[9] 48 Fed. Reg. 34,263 (July 28, 1983).
[10] 85 Fed. Reg. at 1702.

Specifically, the Reclamation Handbook recommends that federal agencies focus on identifying action alternatives that differ significantly from others and treat minor variations in alternatives as sub-alternatives not warranting full analysis. In identifying action alternatives, the Reclamation Handbook suggests federal agencies consider the ability of the federal agency to meet the purpose and need in a timely fashion, social and economic factors, and any legal constraints, and that federal agencies should pay particular attention to comments received during the scoping process, as such comments often provide insight into whether a particular alternative may be unreasonable due to social, cultural, or political realities.

Taking the above into consideration, EWAC suggests that CEQ include language in any final regulations clarifying that the appropriate number of alternatives should always be based on the particulars of the agency action under review and should ultimately be tied to the purpose and need identified by the agency. Further, with respect to certain types of federal actions, including specifically issuance of voluntary permits under federal wildlife laws such as the Endangered Species Act ("ESA") and the Bald and Golden Eagle Protection Act, any final regulations should be clear that the agency's "no action alternative" is the federal agency not issuing the requested permit rather than the project not moving forward. In such cases, the project proponent is not legally precluded from constructing or operating the underlying project, and may elect to assume any risk and move forward since these permits are voluntary.

III. Definition of Significance

EWAC supports the framework provided by CEQ in proposed 40 C.F.R. § 1501.3 for determining the appropriate level of NEPA review for a given federal activity, as it will provide useful guidance to federal agencies on when to use a CE, EA, or EIS in a given instance. The new sections added as part of the proposed reorganization of 40 C.F.R. Part 1501 likewise provide a more linear description of the process agencies should follow and the factors they should consider in determining the appropriate level of NEPA review. EWAC also supports replacing the vague terms "context" and "intensity" to define significance with the more descriptive phrases "potentially affected environment" and "degree of the effects of the action."[11] Nevertheless, it is EWAC's view that CEQ could provide greater clarity to agencies on how to evaluate the "significance" of the effects of a proposed action and provide examples of when an effect's significance would be such that an EIS rather than an EA would be required. Providing clarity on this topic would result in greater predictability for project proponents and standardization of the NEPA process across and within agencies at both national and field office levels.

EWAC also suggests that in any final regulations, CEQ explicitly provide applicants the ability to request an agency take a harder look at particular issues and effects identified by the applicant as potentially significant in order to minimize litigation risk for the action agency and applicant.

IV. Clarifications to Treatment of Mitigation

EWAC agrees with CEQ's proposed addition of subparagraph (c) to 40 C.F.R. § 1501.6, which would explicitly authorize the use of mitigated FONSIs consistent with CEQ's *Final Guidance for Federal Departments and Agencies on the Appropriate Use of Mitigation and Monitoring and*

[11] *Id*. at 1714.

Clarifying Appropriate Use of Mitigated Findings of No Significant Impact ("Mitigation Guidance")[12] and CEQ's revision of the term "mitigation" in accordance with the Supreme Court decision in *Robertson v. Methow Valley Citizens Council.*[13] EWAC suggests, however, that where an agency believes the proposed action will result in "net environmental benefits through use of compensatory mitigation,"[14] the appropriate level of NEPA review should be a CE rather than a mitigated FONSI. EWAC notes that this approach has worked successfully in the context of low-effect habitat conservation plans ("HCP") under section 10 of the ESA. By definition, those plans have minor or negligible effects on federally-listed species and their habitats and applicants often provide compensatory mitigation that fully offsets or provides a net conservation benefit to the affected species.

V. Further Clarification Regarding NEPA's Threshold Applicability and the Issue of "Small Handle" Federal Action

EWAC is supportive of CEQ's revisions to 40 C.F.R. Part 1501, and particularly CEQ's proposed wholesale replacement of 40 C.F.R. § 1501.1, Purpose, with new 40 C.F.R. § 1501.1, NEPA Threshold Applicability Analysis. EWAC is supportive of the threshold applicability framework set forth in proposed § 1501.1, and particularly the first question in the framework, which is "[w]hether the proposed action is a major [f]ederal action."[15]

CEQ has provided additional clarification to the framework by proposing a detailed definition for the term "major federal action" which specifies that the term "does not include non-[f]ederal projects with minimal [f]ederal funding or minimal [f]ederal involvement where the agency cannot control the outcome of the project."[16]

In the preamble to the Proposed Regulations, CEQ specifically invited comment on whether the definition of "major federal action" should be revised further to exclude categories of activities or to address what some have deemed the "small handle problem."[17] Commenters were asked to provide relevant data to assist in identifying categories of activities that should be excluded from NEPA review.

In response to this request for comment, EWAC notes that its members support further refinement and clarification of CEQ's regulations to address small handle circumstances. It is EWAC's view that where federal involvement in a non-federal project is limited to the issuance of a permit or other authorization that is not, in fact, necessary for completion of a project (e.g., where a project could be built, operated, and/or maintained with no federal involvement), then NEPA should explicitly not apply to the underlying non-federal project or activity. As CEQ is aware, courts have held that limited federal involvement in otherwise non-federal activities is not sufficient to federalize an entire project and trigger the requirement to conduct a NEPA analysis.[18] Because of

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[12] 76 Fed. Reg. 3842 (Jan. 21, 2011).
[13] 490 U.S. 332 (1989).
[14] 85 Fed. Reg. at 1709-10.
[15] *Id*. at 1714.
[16] *Id*. at 1729.
[17] *Id*. at 1709.
[18] *See, e.g., Winnebago Tribe of Nebraska v. Ray*, 621 F.2d 269 (8th Cir. 1980) (holding Clean Water Act § 404 permit required for transmission line crossing of a navigable waterway was insufficient to convert construction of entire

the somewhat vague treatment of the "small handle federal" issue in current NEPA regulations, non-federal projects often are subjected to large-scale review under NEPA, or are challenged by third parties who claim that such large-scale review should have, but was not, conducted.

One example of a federal authorization that should not trigger broad NEPA review is the U.S. Fish and Wildlife Service's ("USFWS") issuance of incidental take permits ("ITP") under section 10 of the ESA.[19] As CEQ is aware, ITPs are available only to non-federal project proponents and, when issued by the USFWS, authorize "take" of species listed as threatened or endangered under the ESA that is incidental to otherwise lawful (non-federal) activities.[20] There is no requirement under the ESA that a project proponent apply for or obtain an ITP, only that a project proponent not "take" listed species without authorization.[21] The long-standing position of USFWS is that ITPs are voluntary.[22] Moreover, ESA section 10 and its implementing regulations set forth a number of ITP issuance criteria that, if met, oblige the USFWS to issue the ITP to the applicant.[23] Given the fact that section 10 of the ESA requires a public notice and comment period on the USFWS's proposed issuance of an ITP, and the fact that ITP applications are purely applicant driven, additional review under NEPA often is unnecessarily duplicative. In most circumstances, an underlying project can be constructed or operated in a manner that avoids "take" of listed species. In such cases, an ITP is often sought due to economic or other practical considerations. Nevertheless, NEPA documents associated with the USFWS's issuance of ITPs frequently examine the impacts of the broader, underlying non-federal activity, even where issuance of an ITP is not critical for the project to proceed.

In light of the forgoing, EWAC recommends that CEQ revise the Proposed Regulations to clarify that where a non-federal project or activity would be able to proceed absent the federal authorization, funding, or permit at issue (for example, by shifting the project footprint or making modifications to operations), NEPA analysis should be limited to the narrow and precise federal action at hand. In the above example, the NEPA analysis should be limited to USFWS's authorization of incidental take through issuance of the ITP. USFWS, which is the federal agency responsible for the proposed action (issuance of an ITP), would apply the factors set forth in the Proposed Regulations to determine the appropriate scope of NEPA review for its issuance of an ITP. For example, Proposed Regulations at 40 C.F.R. § 1501.3 provide a number of factors to assist the federal agency in determining whether a CE, EA, or EIS is appropriate for a given circumstance. In EWAC's view, the factors set forth in CEQ's Proposed Regulations favor

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transmission line into federal action subject to NEPA review); *Save the Bay, Inc. v. U.S. Army Corps of Engineers*, 610 F.2d 322 (5th Cir. 1980) (holding a pollution discharge permit for a sewer outfall did not convert the large private manufacturing facility into a federal project requiring NEPA analysis, as federal involvement in the project was incidental and the outfall structure was not necessary to the facility); *Friends of the Columbia Gorge v. Bonneville Power Administration*, 716 Fed. Appx. 681 (9th Cir. 2018) (holding Bonneville Power Administration's ["BPA"] did not act arbitrarily and capriciously in determining that its approval of a wind energy project's interconnection with BPA's transmission system did not require conducting NEPA analysis of the underlying wind energy project).

[19] 16 U.S.C. § 1539.

[20] *Id.*; *see also* 50 C.F.R. § 17.22.

[21] 16 U.S.C. § 1538.

[22] *See, e.*g., U.S. Fish and Wildlife Service and National Marine Fisheries Service *Habitat Conservation Planning and Incidental Take Permitting Handbook* ("HCP Handbook") at 3-2.

[23] *See* 16 U.S.C. § 1539(a)(2)(B), 50 C.F.R. § 17.22(b)(2)(i).

categorically excluding most ITPs from NEPA review, particularly since the ESA's substantive criteria for ITP issuance assure minimal environmental impact.

VI. Timelines for NEPA Review

EWAC is supportive of the timelines and page limitations for EAs and EISs set forth in the Proposed Regulations. Prior to the issuance of Executive Order 13807 ("Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects") and Secretarial Order 3355 ("Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807") (collectively, "NEPA Orders"), EWAC members experienced lengthy and significant delays in federal permitting as a result of the NEPA process. Since the issuance of the NEPA Orders, however, EWAC members have reported a general decrease in the time associated with NEPA review of non-federal projects seeking federal permitting or authorization, with no material change in the quality of the environmental analysis and resulting NEPA documents.

However, despite the increased efficiency EWAC members have experienced since the issuance of the NEPA Orders, at times they have found federal agencies delay triggering the established timelines by front-loading review tasks and refusing to officially "start the clock" until such time as most details are resolved and all related documents are complete and signed off on by the agency. For example, the USFWS has on several occasions declined to publish a notice of intent ("NOI") relating to an ITP application or prepare and publish an EA until the agency was completely satisfied with every aspect of the applicant's proposed HCP. Where an applicant and the USFWS disagree on certain components of an HCP, this delay can, and often has, taken years to resolve, meaning that under the current time limits an additional number of year(s) of NEPA review are layered on the end of the process, rather than occurring concurrently, to avoid running out of time.

EWAC believes the above problem could be compounded by the Proposed Regulations, as written. While there is a presumptive one-year timeline for completing and publishing a final EA, the Proposed Regulations provide a relatively vague trigger for starting the one-year timeframe after an agency's "decision to prepare an EA".[24] Similarly, while the trigger for completion of the NEPA process in connection with an EIS is more concrete (publication of a NOI), the problem of front-loading environmental review (i.e., completing substantive analysis before the NOI is published) remains a real concern.

EWAC recommends CEQ consider revising the trigger for starting the EIS and EA timelines as follows. Where a non-federal project proponent has applied to a federal agency for permitting, funding, or authorization, the clock for completion of an EA or EIS should begin when a complete application has been submitted to the relevant federal agency or agencies. An application should be deemed "complete" not when the federal reviewing agency believes it could meet the permit issuance criteria; rather, an application should be deemed complete when the agency has received all information required by the relevant statute or regulation to be provided in connection with an application, regardless of whether the federal agency views the application as likely to meet the

[24] 85. Fed. Reg. at 1717.

statutory issuance criteria or whether the federal agency would like to seek additional information on the submitted materials.

EWAC also recommends revising the timeline for completion of EAs to end upon publication of a FONSI, rather than the publication of a final EA, especially since the Proposed Regulations do not indicate specifically that CEQ will allow combining EAs and FONSIs into a single document. As noted in section XI below, EWAC suggests the CEQ allow EAs and FONSIs to be combined into a single document in order to reduce inefficiencies in the NEPA process.

The Proposed Regulations provide that senior agency management may extend the timeframe for completing the NEPA process in response to a request from agency staff. EWAC recommends CEQ revise the Proposed Regulations to include a provision explicitly allowing non-federal applicants to request a longer time period for completion of NEPA documents if, in the applicant's judgment, more time is advisable to address environmental or stakeholder concerns prior to release of a NEPA document for public review, or where the action agency has granted one or more requests for extensions of relevant public review and comment periods. This change would recognize that the applicant, having requested the federal action that is the subject of the NEPA review, has interests in the timely completion of the process, as well as the adequacy of the NEPA analysis, that may differ from the interests of the agency and of the general public. The public has a corresponding right to seek additional time for public comment, or through their comments to seek additional environmental review.

Finally, EWAC suggests the Proposed Regulations be revised to acknowledge that where an agency has determined timeframes shorter than those set forth in the Proposed Regulations are workable or required under relevant Executive Orders, regulations, or agency guidance, such shorter timeframe is preferable. EWAC also recommends that CEQ consider delaying the revocation of its previous NEPA implementation guidance[25] and undertaking a thorough review of each guidance document to ensure that helpful guidance that does not contradict new regulations remains in place and to ensure that projects undergoing NEPA review at the time any final regulations go into effect may continue without delay. Any final regulations should explicitly note that for projects undergoing review prior to the effective date of final regulations, where such review timeline was to be shorter under the former regulations, CEQ guidance, or other agency guidance, the former regulations should apply.

VII. Page Limits

While EWAC generally is supportive of the time and page limitations set forth in the Proposed Regulations, we do note that there may be circumstances where exceeding the prescribed page limits is necessary and advisable for a full analysis of the potential effects of the proposed and reasonable alternatives. This is especially true for actions that are likely to be challenged under the Administrative Procedure Act,[26] where courts are limited to the administrative record—including the NEPA document—in determining whether an agency acted arbitrarily, capriciously, or contrary to law. To that end, and similar to the request EWAC made above in connection with CEQ's proposed time limits for NEPA review, we recommend CEQ include in any final

[25] *Id*. at 1710.
[26] 5 U.S.C. § 500, *et seq.*

regulations language that would ensure that requests by applicants or federal agencies to exceed the page limitations are processed expeditiously by the responsible agency official.

VIII. Categorical Exclusions

A. Support for new 40 C.F.R. § 1501.4

EWAC supports CEQ's addition of new 40 C.F.R. § 1501.4, which provides detail on how federal agencies should address and utilize CEs. EWAC is particularly appreciative of CEQ's indication that federal agencies should consider whether "mitigating circumstances or other conditions are sufficient to avoid significant effects and therefore categorically exclude the proposed action." It has long been EWAC's public position that federal agencies should make more frequent use of CEs for federal permits. Some examples relevant to EWAC include ITPs under section 10(a)(1)(B) of the ESA, which require applicants to undertake significant mitigation measures, and Candidate Conservation Agreements with Assurances ("CCAA") under section 10(a)(1)(A) of the ESA, which require an applicant to demonstrate that the measures proposed will result in a "net conservation benefit" to the relevant species.

EWAC also supports CEQ's proposed requirement that agencies identify categories of actions that normally would be appropriate for a CE, as well as CEQ's proposal to allow federal agencies to adopt another agency's determination that a CE applies to a proposed action where an adopting agency's proposed action is substantially similar.[27] EWAC recommends CEQ include in any final regulations a requirement that federal agencies post the agencies' CEs on a CEQ-hosted website in standardized format that would encourage interagency review and adoption, allow project proponents to view and recommend adoption, and provide the public an opportunity to review and stay informed on the use of CEs.

B. Recommend inclusion of examples of permissible CEs

EWAC recommends any final regulations include examples of the types of projects that likely would qualify for a CE. In EWAC members' experience, agencies sometimes view CEs with unnecessary trepidation and, instead, opt to prepare an EA even where a CE would have been wholly appropriate.

C. Recommended timelines for CE determinations

Just as CEQ has set forth timelines for completion of the processes associated with EAs and EISs, EWAC recommends CEQ adopt regulations prescribing a timeline by which federal agencies must make a determination as to whether a CE will apply to a given federal action. It has been EWAC members' experience that even where a federal permit or authorization clearly meets the requirement for a CE under the existing NEPA implementation regulations, it often takes several months or more for the relevant federal agency to confirm that a CE does, in fact, apply. Therefore, EWAC recommends that the Proposed Regulations be revised to require federal agencies to limit determinations on whether a CE applies to no more than 60 days, particularly given the Proposed Regulations' explanation that CEs are those categories of activities that do not normally have

[27] 85 Fed. Reg. at 1725.

significant effects.[28] Specifically, EWAC suggests that where an applicant provides a CE checklist with the appropriate analyses, the reviewing agency should complete its Decision Memorandum or any other required process no later than the 60th day following receipt of applicant's CE checklist. In rare circumstances where issues or concerns are raised by the reviewing agency that may not be able to be resolved within the 60-day timeframe, the 60-day timeframe for completion of the CE process should be extended to a date on which the applicant and reviewing agency mutually agree.

IX. Additional Guidance for Irreversible and Irretrievable Commitment of Resources

In the Proposed Regulations, CEQ invited comment on whether there are circumstances under which an agency may authorize irreversible and irretrievable commitment of resources.[29] While EWAC does not provide comment specifically on that topic, EWAC suggests CEQ provide guidance to federal agencies on the types of activities that may or may not constitute such irreversible and irretrievable commitments of resources in order to provide clarity on the issue and in turn reduce unnecessary project delays. In particular, clarification of the relationship of this requirement to the "small federal handle" fact pattern would be helpful to applicants and federal agencies.

X. Changes to Treatment of "Effects"

EWAC is appreciative of CEQ's efforts to both simplify and clarify how federal agencies should undertake effects analyses in NEPA documents, and understands the proposed changes are intended to result in analyses focusing on effects that are both foreseeable and proximately caused by the action under review. EWAC supports CEQ moving the NEPA analysis in this direction.

XI. Combining FONSIs with EAs

As EWAC noted in its response to the ANPR, EWAC believes the efficiency of EAs would be much improved if FONSIs could be built into EAs themselves rather than requiring separate documentation. As such, EWAC suggest the definition of FONSI in Proposed Regulations 40 C.F.R. § 1508.1(l) be revised to state that the term FONSI means "a statement, and analysis relating thereto, as to why a given resource examined in an environmental assessment is not likely to experience a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared…"

XII. Abbreviated Responses to Comments that Have Already Been Addressed in Prior Reviews

Though already included in current NEPA regulations under the concept of "incorporation by reference" at 40 C.F.R. § 1502.21, EWAC supports further improving NEPA processes by finding greater efficiencies where environmental studies and analyses have already been conducted, and decisions made, during earlier federal, state, tribal, and local public review processes. EWAC is supportive of the changes provided in the Proposed Regulations that would further this purpose,

[28] *Id*. at 1696.
[29] *Id*. at 1704.

and suggests that the NEPA process could be made more efficient in such circumstances by allowing agencies to provide an abbreviated response to public comments where such comments are substantially similar to those raised, and to those which prior agencies responded or addressed, in prior reviews. Such abbreviated response could include simply referencing responses provided by agencies in the prior reviews. Where the lead agency elects to provide such abbreviated response, the lead agency should indicate in the final NEPA document where the public may find the responses associated with the prior review.

XIII. Conclusion

EWAC would like to thank CEQ for the monumental effort undertaken to update the NEPA implementing regulations, and appreciates the agency's consideration of the comments set forth herein. The bulk of the existing NEPA regulations are more than 40 years old and out of step with modern NEPA practice. The ambiguities and gaps in those rules have become obvious over the last four decades. There is a very real need to update the rules to address a host of confusing concepts and awkward and inefficient steps, thereby improving the ability of the NEPA process to serve its intended function as a tool to inform decision-makers and the public. EWAC supports regulations that make the NEPA process more efficient and workable for federal agencies and the regulated community, and believes that the Proposed Regulations, with some revisions, will make significant headway in that regard.

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