

**Testimony of the Honorable James H. Willox
Converse County Board of County Commissioners on behalf of the
Wyoming County Commissioners Association**

**United States House of Representatives Committee on Natural Resources Hearing on:
“Modernizing NEPA for the 21st Century”
November 29, 2017**

Chairman Bishop, Ranking Member Grijalva, Representative Cheney, and members of the House Natural Resource Committee, thank you for the opportunity to testify today on modernizing NEPA for the 21st Century.

My name is Jim Willox. I have served on the Board of County Commissioners in Converse County, Wyoming since 2007. I also serve on the Board for the Wyoming County Commissioners Association (WCCA). The WCCA is a voluntary association of all 23 Wyoming counties that strives to advance county level needs through unified action. I am representing the WCCA today.

County Commissioners across Wyoming are actively engaged in federal resource management plan revisions or amendments in various stages, and NEPA analysis of all types. I personally am the main point of contact for Converse County in the current EIS underway in my county for a proposed oil and gas project. Collectively, Wyoming’s Commissioners have extensive on-the-ground experience with the nitty gritty implementation of NEPA, as opposed to the high-level, philosophical arguments in Congress, which I hope helps us identify changes to NEPA that will help make a difference on the ground.

The fact is, County Commissioners are often the only people in the room with broad policy objectives when it comes to federal planning and environmental analysis. Federal agencies, even state agencies apart from the Governor, have specific, narrow objectives to advance. While that isn’t necessarily wrong, Commissioners are elected Administrators with a broad mandate to advance the well-being of our entire county, not just one slice of it. With that in mind, I would like to offer the committee some suggestions on modernizing NEPA in a way that maintains the original objective of the law, but provides the necessary flexibility to undertake projects in a timely manner.

NEPA Delays are Costly and Sometimes Dangerous

It is important to remember Congress’ original intent in drafting NEPA:

Sec. 2 [42 USC § 4321]. The purposes of this Act are: 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 Nation; and to establish a Council on Environmental Quality.

The Act was designed to be a planning tool that helped to inform decision makers about the costs and benefits of proposed actions – for both the environment and to “stimulate the health and welfare of man.” For many years this analysis was effective, timely, and not cost prohibitive. Unfortunately, in recent years NEPA has mushroomed into an exhaustive analytical effort on every possible negative outcome, including on a global scale. What was once a helpful look at proposed actions has metastasized into a grotesque perversion of Congressional intent whereby agency officials are forced into years of analysis and reams of paper designed to fend off litigation instead of making sound, informed policy decisions.

This has real consequences for my county, for Wyoming, and for all of the West. The length of time it takes for the federal government to issue Records of Decision on major oil and gas projects is well-plowed ground in this committee. The Normally Pressured Lance oil and gas project in western Wyoming is approaching 8 years of study and drafting. The Converse County EIS in my home county is now well into its 4th year after the initial Plan of Development was outlined. A proposed pipeline to carry carbon from western Wyoming for beneficial utilization elsewhere is languishing in its 5th year. These are just a few. The delays are costly to the project proponent, but also are a burden on local economies and government services.

In addition to these large projects, there are countless examples of smaller projects that are made costlier and result in greater negative impacts to the land and wildlife as a result of NEPA's mushrooming, for example:

- A small power provider in my county faced lengthy NEPA delays to install additional electricity to a local wastewater treatment plant because the line crossed Forest Service managed grasslands. The proposed route was directly adjacent to a transmission line already present, and the area has railways, a state highway, and other infrastructure nearby.
- A Wyoming-based wireless provider is forced to undergo, and pay for, NEPA related analysis when they seek to replace copper lines with fiber to upgrade their network, even though analysis may have already occurred, or previous analysis doesn't meet the ever moving goal posts of what is required. This is a delay that seems in direct contradiction to national goals of improving broadband and wireless coverage in rural areas.

These types of problems incent industry to figure out how to route their projects around federal lands even if the route is significantly longer. The result is greater impact on the land and wildlife, increased burden on county infrastructure, and less efficient projects. Not at all what NEPA was intended to do.

Beyond economic development projects, NEPA delays can be downright dangerous. Wyoming is home to over 7 million acres of forested land owned by the federal government. Over 4.6 million acres of that forest has been decimated by insect and disease over the last 20 years. These areas are prone to wildfires, and the Forest Service estimates that over 100,000 dead and dying trees fall every single day in the forests of the West, impacting recreational opportunities and the health and welfare of our wildlife and residents. Yet accessing these lands to remove fuel loads and improve the health and resiliency of the forest is hindered by NEPA, a complete contradiction to NEPA's intent.

Even though Congress has given the Forest Service some tools – like the use of NEPA’s categorical exclusions for management in designated insect and disease areas – the Forest Service is reluctant to use the designation. For example, Wyoming’s Governor, Matt Mead, has requested over 1.5 million acres be declared Insect and Disease Areas, but to date this tool has not been utilized in Wyoming.

Modernizing NEPA Before it Even Begins

All of the challenges mentioned above are preventable with a few relatively minor changes either in statute or in sustained agency action. I will mention those below, but first there are two actions that Congress and the agencies can take that would dramatically improve NEPA for all involved before the NEPA process even begins.

First, we believe that this committee and Congress should take a hard look at narrowing when a federal nexus triggering NEPA reviews is warranted. When NEPA was passed in 1969 there was no way to anticipate changes in technology like horizontal drilling, or the necessity of deploying fiber in rural areas as our country shifted almost overnight from voice telephone service to a broadband economy. As a procedural law only, NEPA should be flexible enough to account for these changes while adhering to its original goals.

For example, the Converse County EIS I’ve already alluded to is in an area of Wyoming that does not have significant federal land ownership. In fact, only 10% of the surface in the project area is federally owned, 83% is privately owned. Yet, here we are 4 years into an extensive NEPA review with even more years to go. A well pad that sits on private land, and drills vertically into privately owned subsurface before turning horizontally, and then either crosses federally owned subsurface or accesses federally owned minerals up to two miles away from the well pad is considered a federal nexus. In other words, no federal land is disturbed in any way, yet NEPA reviews for the entire project, even on private lands, are triggered.

The same is true for the wireless company mentioned before and other telecommunications providers attempting to improve their networks over and through federal lands. In Wyoming’s checkerboard, it is possible to replace miles of fiber line predominately on private land, but still cross some small segment of federal land, triggering a NEPA review for the entire project.

Congress should write new rules on what constitutes a federal nexus in the first place so that agency personnel and county governments can focus their time, resources, and attention on projects that actually do have an impact on federal lands themselves.

Second, counties, as units of local government, are – or should be – afforded great deference by federal land management agencies as outlined in the Federal Land Management and Policy Act (FLPMA) and the National Forest Management Act (NFMA). Both of these organic Acts establish the principle of coordination with local government. In separate, but similar ways, Congress made clear – and the courts have affirmed – that federal agencies have an obligation to engage local governments in a meaningful way that goes beyond just notice and comment.

In Wyoming we have learned that the most lasting and successful federal projects are ones that begin with significant and meaningful engagement with local government. We agree with the Western Governors Association that states and local governments are not “stakeholders,” but rather co-regulators as established by Congress. This elevated status requires that local governments come to the table prepared and able to meaningfully contribute to planning and project decisions, but it also requires a willing partner on the federal side that is genuinely interested in the expertise local governments have to offer. This is an ongoing project for both local government and the federal agencies, but one that too often federal agencies ignore.

The WCCA, the WGA, the National Association of Counties, the Council of State Governments and several others have argued that agencies should spend more time and resources in the early stages of environmental reviews understanding the needs of state and local governments. That effort will pay off with more robust and defensible actions. We agree wholeheartedly with that call. But before NEPA analysis begins Congress has already directed agencies to engage in ongoing, meaningful dialogue with local governments even in the absence of a particular project.

We have been heartened by the recent change in attitude at the Department of Interior to engage with local governments, but the mandate of coordination is one that requires constant intentionality on our part, and continued oversight on yours, no matter the Presidential Administration. We hope that this committee will continue to demand that agencies fulfill their coordination responsibilities.

NEPA Improvements Once Triggered

We have been pleased with the attention Secretary Zinke has paid to improving the NEPA process. For the first time in a long time it appears that the Department of Interior is genuinely interested in modernizing NEPA in a way that recognizes the expertise that exists at the state and local level. In response to the Secretary’s memos on this topic, the WCCA wrote a series of letters with suggestions on how the agency could improve the process administratively, but would like to outline a couple of them here.

First, with respect to actions Congress can take, we believe the committee should consider creating a category of actions or locations that would automatically trigger a categorical exclusion where significant impact has already taken place. For example, President Obama instituted a “dig once” rule as it relates to installation of public utilities along roadways in an effort to minimize disturbance when roads are built and then overbuilt with utilities, including broadband infrastructure. While this is laudable, many major roadways like Interstate Highways predate these rules and have caused significant impact to the landscape from which there is no turning back. Rather than cause delays and added costs in analyzing new projects in heavily impacted areas, Congress should explicitly require the agency to grant categorical exclusions in areas like this.

Second, the size and scope of federal EIS’s are a significant administrative burden on county personnel and budgets. The Department of Interior’s recent order to reduce the amount of pages in EISs is certainly helpful, but only if accompanied by a trimming of the exhaustive analysis forced upon the agency by litigation and a greater reliance on states and counties to complete

analysis. Counties can assist in setting appropriate timelines and scoping by early involvement – both in coordination as mentioned before – but also as cooperating agencies. Counties should be involved in internal “ID teams” that can set parameters at the front end to limit expansive and wasteful analysis.

Further, even though it is costly, we in Wyoming have taken the lead at providing to federal agencies robust and defensible socio-economic data that should play a greater role in federal decision making. While Interior is required to analyze the economy, culture and custom of the counties, we discovered years ago that the agency was woefully unprepared to produce and analyze this data. We have worked to establish fact-based, scalable socio-economic profiles the agencies can use to bolster decisions.

Finally, the agencies should make better use of tools already at their disposal. The agencies underutilize the tiering of NEPA documents to reduce redundancies. Also, agencies should grant local governments administrative review authority at the end of the process but prior to the release of the Final EIS in order to correct any remaining issues, streamline the Governor’s consistency review, and reduce adverse comments during the protest period.

Conclusion

Counties in Wyoming and across the West are ready and willing to assist in the goal of modernizing NEPA to ensure that it continues to work for the benefit of decision-makers. We believe that the changes suggested above, either legislatively or administratively, would go a long way toward shortening the timelines, administrative burden, and financial obligations of everyone involved in advancing these projects.

Thank you again for the opportunity to testify today.