

THE ROLE OF NEPA IN THE SOUTHERN STATES

OVERSIGHT FIELD HEARING

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

Saturday, July 23, 2005, in Nacogdoches, Texas

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OVERSIGHT FIELD HEARING ON THE ROLE OF NEPA IN THE SOUTHERN STATES

**Saturday, July 23, 2005
U.S. House of Representatives
NEPA Task Force
Committee on Resources
Nacogdoches, Texas**

The Task Force met, pursuant to call, at 10 a.m., at the Cole Concert Hall, Stephen F. Austin State University, Nacogdoches, Texas, Hon. Cathy McMorris presiding.

Present: Representatives McMorris and Gohmert.

Miss MCMORRIS. The hearing will come to order. Good morning, everyone. I would like to begin by welcoming County Judge Sue Kennedy who will sing The National Anthem.

[National Anthem].

Miss MCMORRIS. Thank you very much, Judge Kennedy.

Please remain standing as District Judge Ed Klein leads us in the Pledge of Allegiance.

[Pledge of Allegiance].

Miss MCMORRIS. Thank you, Judge Klein.

Now Dr. Rick Scarborough will present today's invocation.

[Invocation].

Miss MCMORRIS. Thank you, Dr. Scarborough.

If everyone would take their seats, I will now recognize Scott Beasley, Dean of the Forestry School, for his remarks.

Mr. BEASLEY. Good morning. I'm Scott Beasley, Dean of the College of Forestry and Agriculture. This morning I'm here on behalf of President Guerrero to welcome all of you and to welcome the Task Force on Improving the National Environmental Policy Act, or NEPA, as we like to call it.

Dr. Guerrero is out of the country, but he asked me to express his regrets to the group for not being here to welcome everyone personally. We're honored and fortunate to be one of the three locations in the United States to host a hearing on this important topic. I think we all realize that our public lands are threatened as never before by such things as insects, diseases, and fires, invasive species; and we need policies and regulations and laws that will promote protection and management of our natural resources.

I want to welcome all of you to this hearing, on behalf of President Guerrero, to Stephen F. Austin State University; and give a

special welcome and thanks to the Task Force Members, Representative Cathy McMorris from Washington State and our own Representative, Louie Gohmert from Texas.

STATEMENT OF THE HON. CATHY McMORRIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Miss MCMORRIS. Thank you.

We're going to start out just with some opening remarks, and I want to start out by thanking my good friend, Congressman Louie Gohmert, for inviting the Task Force to East Texas. It is great to be here. He was with me when we kicked off the Task Force in Spokane, which is my home base. I'm a Representative from Eastern Washington State.

I've been asked by Chairman Richard Pombo of the Resources Committee to chair the NEPA Task Force. This is our third of six hearings and already we have learned a lot about NEPA and the NEPA process and some ways that we can hopefully improve that process.

We all share the same goal of clean air, clean water, and a healthy environment. We want to focus NEPA to ensure sound environmental decisions, instead of endless analysis and litigation. We must protect and enhance our wildlife, watersheds, and communities; and put common sense back into environmental decision-making.

NEPA shouldn't simply become bureaucracy in action.

Texas and the other states represented by our witnesses provide us unique examples of how NEPA works and how it can be improved. The goal of the Task Force is to get out of Washington, D.C., to listen firsthand to the people on the ground so that we can better understand if NEPA is living up to its intent.

It's no secret that NEPA, as well as other environmental laws, have spurred vast amounts of litigation, have stalled important economic development projects, and at times have cost the taxpayers millions. Nearly every word in the NEPA law has been litigated. That doesn't help our economy, and it certainly doesn't help our environment.

The question before the Task Force is "How can we do better for our economy and our environment."

Miss MCMORRIS. I would like now to recognize Congressman Gohmert for his opening statement.

STATEMENT OF THE HON. LOUIE GOHMERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. GOHMERT. Well, thank you. Cathy McMorris is a good friend. It's been wonderful to get to know you since we've been in Congress together and I'm grateful for the leadership that you've had.

We started off—we did have a hearing in Spokane and one in Arizona. This is the third hearing. There will be three more hearings, but this is one out of six in the entire nation.

And when I lobbied to have a hearing in this district and carved a place within the district, this just seemed to be a perfect place. Stephen F. Austin has perhaps the greatest forestry school department anywhere in the country. And with all the natural resources with which we've been blessed in East Texas, what a place to come

and learn more about the effects of NEPA and environmental policies on our environment.

And as Chairwoman McMorris has mentioned, we all desire clean air, clean water, a good environment. That's something we all need and something we all desire ourselves. But what we've been hearing are there are some policies that have actually been detrimental to the environment. Although the intent is good, sometimes the environment has been hurt when common sense goes out the window.

So just as the—(inaudible). I can assure everybody that if somebody is going to try to do away with one of our historical sites here in East Texas, they've got a fight on their hands because a lot of us don't want to see our history go away. It's too rich here.

I would like to thank my district staff, my Washington staff; and I would just like to ask that—they've helped get this together. If you would all stand so people know who and where you are. And if you have some additional information to give me, as your Congressman—if you-all would all stand, those that are on our staff.

And there's a young man that picked me up in Houston and raced me up here last night, taking his time—Justin Roberts, where you are? Is Justin here?

Voice. He's out back.

Mr. GOHMERT. He's out back. Well, I wanted to give him recognition.

I would also like to thank Stephen F. Austin for their great hospitality. I knew when I proposed doing it here at Stephen F. Austin we would get hospitality and helpful friendliness; and just as I expected, it has really come through. So thank you and the City of Nacogdoches, the County of Nacogdoches, and all those that participated.

And when I called and talked with my good friend who's the Chairman of the Railroad Commission—for those of you who are not from around Texas, the Railroad Commission, they are the ones that have such tremendous impact on resources and control over our resources in Texas.

And so I want to especially thank Chairman Victor Carrillo for taking the time to come to East Texas. He had some family that was coming in; and yet he felt that this was so important that he would take his time, come from Austin, and share with us his insight.

So, Chairman Carrillo, thank you so much for coming to be here with us and giving your perspective for the entire state.

And also, there are two of us here physically. There is the Resources staff that have been here; and, folks, these guys are unbelievable. I just appreciate them so much. They make these hearings flow smoothly.

Everything is being recorded. Everything will be taken down. Everything will be transcribed. Also, these witnesses—we only give them five minutes for a statement. That's what we do in Washington. That's what we do in these hearings. But they can make as long a statement as they want. It will be submitted with the record. It will be part of the record, and the record is what everybody reviews.

There are nine Democrats on this Task Force, and none of those individuals are here today; but I know they care deeply about the environment. So you can rest assured they will be reviewing the testimony carefully and all the information that was derived, both the written and the recorded testimony.

This gives us a chance to see faces, to analyze the information; and we appreciate you-all being here. We appreciate you-all's respect. Somebody may say something with which you disagree, but everybody—I don't care who it is—that will testify deserves to be heard respectfully.

You can agree or disagree. Like Voltaire says, I may disagree with what you say; but I will defend to the death your right to say it. So if you would, be respectful, no matter what is said.

Thank you so much. Chairman, thank you for giving your time today.

Miss MCMORRIS. Thank you, Louie.

Miss MCMORRIS. And I want to take a few minutes to mention this is a bipartisan Task Force. We have bipartisan participation. We are seeking broad input from everyone that is interested in the NEPA process, and NEPA is the process by which we look at environmental impacts and make decisions, and it was the first of many environmental laws that have been passed in this country. We're not—the Clean Air Act, the Clean Water Act, the National Historic Preservation Act.

(Inaudible). NEPA lays out the process by which we look at those environmental impacts and decisions. NEPA is also the law that encourages and requires public participation, and I think that's one of the cornerstones of NEPA.

In keeping with that practice, even though we have only invited nine witnesses here today, we want to hear from everyone; and I encourage you to submit your comments to the Resources Committee so that we take all comments and recommendations into consideration.

There's a website that has been developed. It's under the Resources Committee website, and we encourage any comments you might have.

At this time, I would like to introduce our panel:

To give us a NEPA success story from the national forests in East Texas is Daniel Dructor, Executive Director of the American Loggers Council.

To talk about NEPA, its impact on natural gas prices, and what that meant for a local timber mill is Debbie Johnston, Public Affairs Director of Abitibi-Consolidated.

Next is Chairman Victor Carrillo, Chairman of the Railroad Commission of Texas, who will tell us how states are able to efficiently permit oil and gas operations.

Also here is Steve Dean, President of Texas Forest Products, Incorporated. Mr. Dean will talk to us about the impact of government regulations like NEPA on small businesses.

Steve Smith, Executive Director of the Texas Mining & Reclamation Association, will discuss NEPA and its role in mining.

Next will be W.I. Davis, representing the Texas Farm Bureau, to talk to us about the different ways private and public lands were impacted by the 1998 blow-down.

Stephen M. England, Manager of Mining Land from TXI Geologic & Mine Services, will tell us about NEPA and construction.

Larry Shelton, a Trustee of the Texas Committee on Natural Resources, will talk about NEPA's public participation requirements.

And Sandra Nichols, a staff attorney with WildLaw, will share her experiences with NEPA and timber projects. Sandra has joined us from Montgomery, Alabama.

Now, it's the policy of the Resources Committee to swear in witnesses; so if you-all will stand and raise your right hand.

[Witnesses sworn.]

Miss MCMORRIS. Let the record reflect that the witnesses answered in the affirmative.

Before we get started, I want to point out that there are lights at the front of the table to control the time. They will light up. Each witness has five minutes, and I would encourage you to stay as close to five minutes as possible; and I'll try to keep it on time, too.

So when the green light is going, you're free to talk. When the light turns yellow, you have one minute; and when it turns red, I would ask you to wrap up. Your full testimony will appear in the record. Keeping statements to five minutes will allow us time for questions.

Mr. Dructor, you will begin.

**STATEMENT OF DANIEL J. DRUCTOR, EXECUTIVE VICE
PRESIDENT, AMERICAN LOGGERS COUNCIL**

Mr. DRUCTOR. Good morning, Task Force Chairwoman McMorris and Congressman Gohmert. My name is Danny Dructor; and I'm here today representing the Texas Forestry Association, as well as the American Loggers Council.

The Texas Forestry Association is a non-profit organization representing family forest landowners, industrial forestry concerns, and professional timber harvesters in the State of Texas.

The American Loggers Council represents over 10,000 timber harvesting professionals in 27 states throughout the U.S., including Texas, Louisiana, Arkansas, Mississippi, Alabama, and most other states all over the country.

Our offices are located in Sabine County, Texas, near Toledo Bend Reservoir. I appreciate the opportunity to testify before you on this most important subject.

What I would like to present to you today is a success story, a story of an incident occurring in the national forests of Texas in February of 1998 where alternative arrangements were made to streamline the NEPA process, resulting in the removal and restoration of approximately 103,000 acres of the timberland within the national forest lands of East Texas.

On February 10, 1998, hurricane-force winds slashed across East Texas. The storm damaged approximately 103,000 acres of national forest across the Sam Houston, Angelina, and Sabine National Forests. In one afternoon, nature did more clearcutting on the national forests in Texas than the Forest Service had performed in the previous decade.

Because of the high humidity and high temperatures associated with our region, there was not time to prepare an EIS to analyze the effects of removing the damaged timber before blue stain, insect damage, and rot would cause the downed timber to deteriorate, losing all of its commercial value.

Ronnie Raum, the Forest Supervisor working for the USDA Forest Service on the national forests in Texas at the time, went to Washington and asked the Council on Environmental Quality for what is known as alternative arrangements to normal NEPA requirements.

The three primary objectives for removing the downed trees were: First, to avoid catastrophic fires that can originate in the heavy fuel loadings resulting from the storm; second, to avoid further damage to Red-cockaded Woodpecker and bald eagle habitat; and third, to avoid further habitat loss from bark beetle attack.

The following remarks are a portion of the presentation that Ronnie made to the Texas Forestry Association Annual Meeting on October 7th, 1998:

"Thanks in part to Congressman Jim Turner, the CEQ granted only the 38th request for alternative arrangements in 20 years; and it was the first time ever that the CEQ allowed timber harvesting under alternative arrangements.

"Throughout the spring and summer over, 1,000 people from all over the country were used to get the material on the market and out of the woods. Over 106 MMBF of timber was offered up for sale with an estimated economic value of \$19 million in revenues.

"In six months' time, trees were removed from the vast majority of the extensively and moderately damaged areas, which included 89 sales and covered over 29,000 acres. Areas avoided included the riparian zones and scenic areas in order to ensure the trees could get harvested and avoid the lawsuits and litigation that could possibly pressure the CEQ to withdraw the alternative arrangements.

"Through it all, we have faithfully fulfilled our commitments made to the CEQ. All that is left is to develop an Environmental Impact Statement that will guide our reforestation efforts. Because we did what we said we would do and did not play any games with the CEQ approvals, other national forests that have similar natural disasters will hopefully get the opportunity to do what we did."

I would like to show you some photographs—and you have copies of them, as well. This is—all three of these—the first picture is the devastation immediately following the blow-down in 1998. And this is a picture that I took on July 13th of this year showing what these areas look like. Again, total devastation.

With proper replanting, we now have longleaf pine trees established. And this is a CD down here to give you some indication of the height of that tree.

Miss MCMORRIS. When was it planted?

Mr. DRUCTOR. I really don't know the date. Given this is a longleaf pine, probably—approximately four to five years ago. They sit in the grass stage for about four or five years before they come up.

Again, another picture where you can see the longleaf pines starting to come up.

Miss MCMORRIS. We were going to fly over it today, but we ran out of time.

Mr. DRUCTOR. Well, it's really hard to see the regeneration from the air. It's pretty dense.

OK. Events like this are not uncommon in our southeastern forests or anywhere in the National Forest System. Naturally occurring events such as wildfires, ice storms, insect and disease infestations can and do occur in a moment's notice; and we need a policy that will allow us to act in a timely and efficient manner in order to help protect and restore the forest and wildlife habitat once one of these national disasters has struck.

Unfortunately, the events that took place in the national forests in Texas between the months of February and August of 1998 are the exception rather than the rule.

Because of the series of events that occurred between the six-month period, the forest and the wildlife living in its natural surroundings were protected and enhanced.

The National Environmental Policy Act, the 35-year-old law that was established to protect our forests, may be the very law that obstructionists and liberal courtrooms use to destroy them. Lawsuits and litigation appear to be the norm rather than the exception; and oftentimes, cases are litigated on technical issues rather than environmental issues. Misinterpretation by the courts continues to hamstring the process and delay projects that are necessary to restore forest health and reduce fuel loads.

Miss MCMORRIS. I need to ask you to wrap it up.

Mr. DRUCTOR. I would just like to say—we would like to offer up to this Committee the need to administratively establish an alternative NEPA compliance procedure similar to that used by the national forests and grasslands in Texas.

We have some ideas on how we might standardize the process working with CEQ to make it work.

We also feel that funds should be appropriated to the Forest Service for the hiring of contractors to carry out these environmental management projects aimed at reducing fuel loadings to protect and improve habitat.

There also should be returns to Ranger Districts of the revenues generated from those projects to help continue the maintenance of those projects. Thank you.

Miss MCMORRIS. Thank you very much.

[The prepared statement of Mr. Ductor follows:]

**Statement of Daniel J. Ductor, Executive Vice President,
American Loggers Council**

Good morning Task Force Chairwoman McMorris, and other members of the Task Force, my name is Danny Ductor, I am here today representing the Texas Forestry Association as well as the American Loggers Council. The Texas Forestry Association is a non-profit organization representing stakeholders, including family forest landowners, industrial forestry concerns and professional timber harvesters in the State of Texas. The American Loggers council represents over 10,000 timber harvesting professionals in 27 states throughout the US, including Texas, Louisiana, Arkansas, Mississippi, Alabama, Georgia, Florida, South Carolina, Kentucky and Virginia. Our offices are located on beautiful Toledo Bend Reservoir near Hemphill, Sabine County, Texas. I appreciate the opportunity to testify before you today and provide our comments on the very important issue of streamlining and improving the National Environmental Policy Act (NEPA).

What I want to present to you this morning is a success story. A story of an incident occurring in the National Forests of Texas in February of 1998 where alternative arrangements were made to streamline the NEPA process, resulting in the removal and restoration of approximately 103,000 acres of timberland within the National Forest lands of East Texas.

On February 10, 1998, hurricane force winds slashed across East Texas. The storm damaged approximately 103,000 acres of National Forests across the Sam Houston, Angelina and Sabine National Forests. In one afternoon, nature did more clearcutting on the National Forests in Texas than the Forest Service had performed in the previous decade.

Because of the high humidity and high temperatures associated with our region, there was not time to prepare an EIS to analyze the effects of removing the damaged timber before blue stain, insect damage and rot would cause the downed timber to deteriorate, losing all commercial value. Ronnie Raum, the Forest Supervisor working for the USDA Forest Service on the National Forests in Texas at the time, went to Washington to ask the Council on Environmental Quality for what is known as "Alternative Arrangements" to normal NEPA requirements. The three primary objectives for removing the downed trees were:

- Avoid catastrophic fires that can originate in the heavy fuel loadings resulting from the storm
- Avoid further damage to Red Cockaded Woodpecker and Bald Eagle habitat
- Avoid further habitat loss from bark beetle attack.

The following remarks are a portion of a presentation that Ronnie made to the Texas Forestry Association Annual Meeting on October 7, 1998:

"Thanks in part to Congressman Jim Turner, the CEQ granted only the 38th request for alternative arrangements in 20 years and it was the first time ever that CEQ allowed timber harvesting under alternative arrangements. Throughout the Spring and Summer, over 1,000 people from all over the country were used to get the material on the market and out of the woods. Over 106 MMBF of timber was offered up for sale with an estimated economic value of over \$19 million in revenues. In six months time, trees were removed from the vast majority of the extensively and moderately damaged areas which included 89 sales and covered over 29,000 acres. Areas avoided included the riparian zones and scenic areas in order to ensure the trees could get harvested and avoid the lawsuits and litigation that could possibly pressure the CEQ to withdraw the alternative arrangements.

Through it all, we have faithfully fulfilled our commitments made to the CEQ. All that is left is to develop an environmental impact statement that will guide our reforestation efforts. Because we did what we said we would do and did not play any games with the CEQ approvals, other National Forests that have similar natural disasters will hopefully get the opportunity to do what we did."

I would like to show you photographs (see attachments) that depict the state of the forest immediately following this catastrophic event in 1998, and the results of prompt action and proper reforestation efforts that lead to the restoration of these same forest as they are now seen today just 7 years later, a short timeframe in the life of a natural resource whose life cycle can well exceed 100 years.

The incident I have just discussed with you was the result of landowners, forest managers, loggers and public servants working together for the good of their communities, their economies, and most importantly, the health of their forests. Without immediate intervention, fuel loads on the National Forests in Texas across 103,000 acres would have been dramatically increased, leading to the possibility of catastrophic wildfires which could have destroyed forests, wildlife habitat, private property, and most importantly, lives. Watersheds were restored to ensure that soil erosion and siltation into creeks and reservoirs was minimized. The Southern Pine Beetle, which preys on mature, weakened and diseased pine trees, did not become a problem in the National Forest that summer because the material had been removed from the forest, averting a possible epidemic of Southern Pine Beetle infestations. Sales prices for the timber sales remained strong throughout the summer, bringing over \$40.00 per ton (\$320.00 per MBF). The citizens of East Texas turned a potentially environmentally and economically devastating event into an event in which there were no real significant impacts either to forest health or the local economy. What made this is a success was the ability to move fast, expedite the process, and rapidly return our National Forest to being productive, healthy forests as well as enhancing wildlife habitat along the way.

Events like this are not uncommon in our Southeastern Forests or anywhere in our National Forest System. Naturally occurring events such as wildfires, ice storms, insect and disease infestations can and do occur in a moments notice, and

we need a policy that will allow us to act in a timely and efficient manner in order to help protect and restore the forest and wildlife habitat once one of these natural disasters has struck.

Unfortunately, the events that took place on the National Forests in Texas between the months of February and August of 1998 are the exception rather than the rule. Because of the series of events that occurred during the six month period, the forest and the wildlife living in its natural surroundings were protected and enhanced. The National Environmental Policy Act, a thirty five year old law that was established to protect our forests, may be the very law that obstructionists and liberal courtrooms use to destroy them. Lawsuits and litigation appear to be the norm rather than the exception, and oftentimes cases are litigated on technical issues rather than environmental issues. Misinterpretation by the courts continues to hamstring the process and delay projects that are necessary to restore forest health and reduce fuel loads.

In an article recently published in the American Forest Resources Council newsletter, it was reported that in May, Representative Greg Walden, Chairman of the Subcommittee of Forests and Forest Health, wrote the Forest Service requesting information about the timber sale program and any resulting appeals and litigation. The response from Deputy Chief for National Forest System, Joel Holtrop indicated that nearly 1.6 billion board feet are tied up in litigation as of May 31. After reviewing the report Walden commented "the timber sales program is in worse shape than even these disturbing numbers would indicate. Not counted in this figure are the proposed sales currently tied up in the administrative appeals process, nor those held up while waiting for a resolution to litigation facing other sales. As we learned during our work on the Healthy Forest Restoration act, the Forest Service spends an enormous amount of time and money fighting a very organized and well-funded appeals effort. The result is weakened forest health, weakened rural economies and a great deal of taxpayer money going into the appeals and litigation rather than into good stewardship of our forests."

The Forest Service's current timber sale program offers approximately two billion board feet per year. Annual mortality on national forest system land could be as high as 10 billion board feet per year while the total growth is at least 20 billion board feet. The table in Exhibit I shows timber under litigation by Region. (MMBF = million board feet)

We would like to offer up to this committee the need to administratively establish an alternative NEPA compliance procedure similar to that used by the National Forests and Grasslands in Texas. We have some ideas on how we might standardize the process working with CEQ to make it work.

We also feel that funds should be appropriated to the Forest Service for the hiring of contractors to carry out environmental management projects aimed at reducing fuel loadings, protecting and improving habitat and reducing or protecting against insect and disease infestations. There should also be provided for an automatic return of revenue (one-half of net product revenue proceeds) to Ranger Districts for the maintenance of accomplished project benefits.

There is also the need to provide training for forest service personnel in the use of this project capability. Oftentimes the administration gives the agencies the tools to work with, but forgets to explain how to use them. We are fortunate enough to be sitting in an auditorium that is part of Stephen F. Austin State University, who also happens to be my alma mater and who graduates, in my opinion, some of the finest forest managers found in the country. These young men and women are the future of our forests, and I dare say that I will put their expertise and education on proper forest management up against any judge in any courtroom across the US. They are the "doctors" of the forest, and do not need the opinion of a judicial appointee to write a prescription.

While NEPA was a godsend in its early beginnings, its metamorphosis into a battle ground between special interest groups and multiple-use, sustained yield advocates has turned it into a counterproductive piece of legislation. We ask that you carefully consider adopting amendments to NEPA that will once again make it the premier environmental management tool that its creators had envisioned.

Again, thank you on behalf of the Texas Forestry Association and the American Loggers Council for this opportunity to testify before this Task Force. I would be happy to attempt to answer any questions you may have.

Exhibit I

Region	MMBF	Region	MMBF
1	282	6	277
2	12	8	50
3	15	9	200
4	289	10	229
5	202		

Table 1. Timber sale volume under litigation by region
Total: 1.556 BBF

Miss McMORRIS. Ms. Johnston?

**STATEMENT OF DEBBIE JOHNSTON, PUBLIC AFFAIRS
DIRECTOR, ABITIBI-CONSOLIDATED**

Ms. JOHNSTON. Thank you, Chairwoman. My name is Debbie Johnston. I'm a Public Affairs Director for Abitibi-Consolidated, with responsibilities for most of our manufacturing and paper recycling operations in the southern half of the U.S.

Abitibi-Consolidated is a global leader in the production of newsprint and uncoated groundwood papers, as well as a major producer of wood products with operations located in the U.S., Canada, the U.K., South Korea, China, and Thailand.

The company's Lufkin facility has deep-rooted ties to the local community. The mill began operations in 1940, after the discovery of a manufacturing process allowed the removal of pitch and resin from southern pine trees, and financial investors agreed to bankroll the construction of a newsprint mill in deep East Texas to prove that the process worked.

Out of this risky venture, the manufacture of newsprint in the southern U.S. Began; and the newspaper industry was freed from its dependency on paper manufactured in the northeastern region of the U.S. And in Canada.

Southland Paper Mills were the original owners of the mill; however, it was later purchased by St. Regis and then by Champion International.

Over the years, dramatic changes in the newspaper industry, as well as a decline in the demand for newsprint and lack of continued investment in the Lufkin mill by Champion led the company to divest itself of its two Texas mills and paper recycling operations. In 1998, after nearly a year of searching for a buyer for the Texas assets, they were purchased by Donohue, Incorporated, headquartered in Montreal, Quebec.

Donohue executives quickly recognized the value of owning a mill in the south to manufacture a new grade of paper that could provide printers and publishers in the south with paper for sales catalogs, advertising flyers, and coupons.

The company purchased a large paper machine that had been idled and packaged for shipment to New Zealand, and was currently sitting on a site in British Columbia. The machine took approximately one and a half years to assemble on the Lufkin mill site, along with other upgrades to the facility made at the same time to improve environmental performance and enhance paper quality.

However, in 2000, midway through this extensive modernization project, Donohue was acquired by another Canadian newsprint manufacturer, Abitibi-Consolidated. Abitibi-Consolidated completed the project at a cost of over \$350 million, the largest single investment ever made in Angelina County.

In August of 2001, the newspaper machine began—excuse me. I got the wrong page—began production, notably one of the largest paper machines in North America to produce this grade of paper.

The mill modernization project involved not only the addition of the new paper machine, but also included extensive changes to the pulp bleaching area that resulted in significant improvement to the environmental performance of the new mill.

The mill was converted to an oxygen bleaching system, removing the use of elemental chlorine in the process; and the mill's onsite waste treatment facility was upgraded and expanded, making it a state-of-the-art facility in the industry.

Although the demand for supercalendered paper remained moderately strong during the 2001-2002 period, demand for newsprint began to sag dramatically; and in December of 2002, the company announced the idling of its newsprint mill in Sheldon, Texas. New emphasis was placed on the Lufkin mill with a great deal of focus on reducing manufacturing costs as the mill began to feel the pressures of an international marketplace.

It was also during this time that mounting energy costs began to eat away at what had once been a promising investment amongst the company's assets. The mill's energy infrastructure was put in place when natural gas was cheap, plentiful, and preferred as one of the cleanest burning fuels available. The mill self-generated approximately 50 percent of its energy needs and purchased the remainder from a local provider. During this time period, monthly energy bills began to reach the \$3 million mark and continued to climb.

By 2003, for every \$1 increase in the price of natural gas, the mill's annual energy costs increased by \$11 million.

As natural gas prices rose and sustained themselves at the higher levels, the mill could not overcome the bleeding caused by these costs. In an effort to stop the bleeding at the facility, the company announced in December 2003 it would indefinitely idle the Lufkin mill.

For the mill, uncontrollable energy costs also came at a time when demand for supercalendered paper grades and newsprint were not strong enough to command pricing that would cover manufacturing costs. Although a very difficult decision for Abitibi-

Consolidated, the losses that mounted during the most recent years of the mill's operation abated much of the profit generated from the company's other operations in the U.S. And Canada.

With the idling of the mill, nearly 600 local employees were laid off and countless other jobs in the region were impacted from the loss of some of the highest paying positions in the county.

It was reported earlier this year to this Committee by a representative of the American Forest & Paper Association that 92 pulp and paper mills have closed in the U.S. In the past five years, resulting in a loss of 47,000 jobs.

The Lufkin mill, along with our Sheldon facility, are real examples of this statistic. Abundant and affordable energy is needed to support the jobs of those who produce the paper and forest products our nation depends on.

Legislation should minimize restrictions and consolidate the process for approval of drilling permits. Infrastructure to bring natural gas to market should likewise be improved in an expedient manner. Reserves can then be brought to market using existing environmental-friendly technologies without undue delay.

We appreciate the Committee's interest in understanding energy costs as they have affected our operations here locally, and we will be happy to answer any questions.

[The prepared statement of Ms. Johnston follows:]

**Statement of Debbie Johnston, Public Affairs Director,
Abitibi-Consolidated**

Mr. Chairman and Members of the Task Force, my name is Debbie Johnston. I am a Public Affairs Director for Abitibi-Consolidated, with responsibilities for most of the Company's manufacturing and paper recycling operations in the Southern half of the U.S.

Abitibi-Consolidated is a global leader in the production of newsprint and uncoated groundwood papers, as well as a major producer of wood products with operations located in the U.S., Canada, the UK, South Korea, China and Thailand.

The Company's Lufkin facility has deep-rooted ties to the local community. The mill began operations in 1940, after the discovery of a manufacturing process allowed the removal of pitch and resin from Southern pine trees, and financial investors agreed to bankroll the construction of a newsprint mill in Deep East Texas to prove that the process worked. Out of this risky venture, the manufacture of newsprint in the Southern U.S. began, and the newspaper industry was freed from its dependency on paper manufactured in the Northeastern region of the US, and in Canada.

Original owners of the facility—Southland Paper Mills, Inc.—employed over 250 local individuals, as well as some Canadian papermakers who migrated South to help share papermaking skills with the less experienced laborers in Texas. The Company grew quickly, adding additional paper machines, as well as second newsprint mill in Sheldon, Texas in 1967.

In 1977, Southland Paper was purchased by St. Regis Paper Company, expanding the scope of the operations. St. Regis invested heavily in the Lufkin mill, upgrading key pieces of processing equipment and the mill registered gains in production, sales, and profitability.

In September of 1984, Champion International Corporation announced it had agreed to purchase St. Regis. The combined capacity of Champion International Corporation was now three million tons per year, making it the industry's largest manufacturer of "white paper". The two Texas mills also made Champion the second largest domestic producer of newsprint.

However, over the years dramatic changes in the newspaper industry, as well as a decline in demand for newsprint and a lack of continued investment in the Lufkin mill by Champion led the Company to divest itself of its two Texas mills and paper recycling operations. In 1998, after nearly a year of searching for a buyer for the Texas assets, they were purchased by Donohue Inc." headquartered in Montreal, Quebec.

Donohue executives quickly recognized the value of owning a mill in the south to manufacture a new grade of paper—super-calendered—hat could provide printers and publishers in the South with paper for sales catalogs, advertising flyers, and coupons. The Company purchased a large paper machine that had been idled and packaged for shipment to New Zealand, and was currently sitting on a site in British Columbia. The machine was transported by a cargo ship to the Port of Houston, and hundreds of shipping containers were trucked to Lufkin. The machine took approximately 1 1/2 years to assemble on the Lufkin mill-site, along with other upgrades to the facility made at the same time to improve environmental performance and enhance product quality.

However, in 2000, midway through this extensive modernization project, Donohue was acquired by another Canadian newsprint manufacturer—Abitibi-Consolidated. Abitibi-Consolidated was committed to completing the modernization of the mill, and starting up the new paper machine to produce super-calendered paper. The Company completed the project at a cost of over \$350 million—the largest single investment ever made in Angelina County. In August of 2001, the new paper machine began production—notably one of the largest paper machines in North America to produce this grade of paper.

The mill modernization project involved not only the addition of the new paper machine, but also included extensive changes to the pulp bleaching area that resulted in significant improvement in the environmental performance of the mill. The mill was converted to an oxygen bleaching system, removing the use of elemental chlorine in the process, and the mill's on-site waste treatment facility was upgraded and expanded, making it a state-of-the-art facility in the industry. The mill can now meet all of its proposed wastewater permit limits, which are considered to be the most restrictive of all Southern U.S. kraft mills.

Although demand for super-calendered paper remained moderately strong during the 2001-2002 period, demand for newsprint began to sag dramatically, and in December of 2002, the Company announced the idling of its newsprint mill in Sheldon, Texas. New emphasis was placed on the Lufkin mill, with a great deal of focus on reducing manufacturing costs as the mill began to feel the pressures of an international marketplace. The new large machine continued to produce a HiBrite grade of newsprint, along with a super-calendered grade, but the mill's second paper machine—used strictly for manufacturing newsprint and newsprint grades—continued to be idled for weeks at a time to adjust for growing inventory levels and sluggish demand in newsprint.

It was also during this time, 2002-2003, that mounting energy costs began to eat away at what had once been a promising investment amongst the Company's assets. The Lufkin mill's energy infrastructure was put in place when natural gas was cheap, plentiful, and preferred as one of the cleanest burning fuels available. The mill self-generated approximately 50% of its energy needs, and purchased the remainder from a local provider. During this time period, monthly energy bills began to reach the \$3 million mark, and continued to climb. By 2003, for every \$1 increase in the price of natural gas, the mill's annual energy costs increased by \$11 million.

As natural gas prices rose and sustained themselves at these higher levels, the mill could not overcome the "bleeding" caused by these exorbitant costs. In an effort to "stop the bleeding" at the Lufkin facility, the Company announced in December of 2003 to indefinitely idle the Lufkin mill. For the mill, uncontrollable energy costs also came at a time when demand for super-calendered paper grades and newsprint were not strong enough to command pricing that would cover manufacturing costs.

Although a very difficult decision for Abitibi-Consolidated, the losses that mounted during the most recent years of the mill's operation abated much of the profit generated from the Company's other operations in the U.S. and Canada. And adding to an already difficult operating environment, the U.S. dollar remained weak.

With the idling of the Lufkin mill, nearly 600 local employees were laid off, and countless other jobs in the region impacted from the loss of some of the highest paying positions in the County.

It was reported earlier in the year to this Committee by a representative of AF&PA (American Forest & Paper Association), that 92 pulp and paper mills have closed in the U.S. over the past five years, resulting in a loss of 47,000 jobs. The Lufkin mill, along with our Sheldon, Texas facility, are real examples of this statistic. Abundant and affordable energy is needed to support the jobs of those who produce the paper and forest products our nation depends on.

So the Lufkin mill continues to sit quiet, housing a small site team that maintains the facility and continues to work on energy solutions and changes to manufacturing equipment that would allow it to manufacture a higher quality grade of paper. And what was once considered a pioneer facility in East Texas, and then a giant in the paper industry remains idle, but with the hope of some day producing paper again.

The site team is currently investigating opportunities to burn alternative fuels in a new multi-fuel boiler, however this is only possible with additional significant capital investment—likely \$50-70 million. Capital dollars within the corporation compete with proposed projects of other Company facilities—some with much lower manufacturing cost structure and higher payback, making an argument for an additional investment in the Lufkin mill all the more difficult.

Although changes to federal energy policies may not come quickly enough to help the situation the Lufkin mill finds itself in today, energy legislation is required that expands the energy supply—particularly natural gas—promotes energy efficiency, and encourages the development of new technology. Environmental rules and regulations have driven industry toward increased gas consumption without providing for increased access to the supply that is needed to keep natural gas costs competitive.

Legislation should minimize restrictions and consolidate the process for approval of drilling permits. Infrastructure to bring natural gas to market should likewise be improved in an expedient manner. Reserves can then be brought to market using existing environmentally-friendly technologies without undue delay.

We appreciate the Committee's interest in understanding energy costs as they have affected our operations here locally and we would be happy to answer any questions.

Miss McMORRIS. Mr. Carrillo?

**STATEMENT OF VICTOR CARRILLO, CHAIRMAN,
RAILROAD COMMISSION OF TEXAS**

Mr. CARRILLO. Good morning, Madam Chair, and welcome to Texas.

Miss McMORRIS. Thank you.

Mr. CARRILLO. My name is Victor Carrillo. I'm Chairman of the Texas Railroad Commission; and in spite of our name, we oversee the oil and gas industry, the pipeline industry, surface mining, and coal mining here in Texas, and natural gas utilities.

My background is in the energy sector as a geologist and geophysicist and former energy attorney. Before I was elected to my statewide position, I was a county judge for my hometown, though I can't sing as well as Judge Kennedy.

I'm also here on behalf of the Interstate Oil & Gas Compact Commission. The IOGCC is a Congressionally ratified interstate compact that includes 37 states that, together, produce over 99 percent of the oil and gas domestically in the U.S. The Chairman is Governor Murkowski of Alaska, this year.

Responsible oil and gas exploration and development and stewardship of our land and water resources can both be achieved simultaneously. The fact is we see it done here in Texas daily.

In Texas, we are quite proud of our ongoing role as the premier energy-producing state in the nation. We're the number one producer of oil and natural gas among any of the states. We produce about 6 trillion cubic feet of natural gas every year, which represents over 25 percent of the total U.S. Demand for this clean burning fuel.

As of yesterday, here in Texas, we had 615 active oil and gas rigs operating in the state. That represents almost 50 percent of the total activity across the nation. There are 26 refineries in the state, with a total refining capacity of over 4 million barrels per day, equaling over 25 percent of the nation's total refining capacity.

As our nation's voracious appetite for energy continues to grow, Texas has stepped up to the plate and will soon be the nation's liquefied natural gas leader, as well. The FERC has already approved

four new onshore LNG facilities along our Texas Gulf Coast. Texas is, indeed, still the preeminent energy producing and refining state in the nation.

In February, I traveled to Washington and testified before a House committee in support of the Energy Policy Act of 2005, and I believe that the House version is a very good first step to help ensure our nation's future energy security.

Turning to today's topic, there's no country in the world that produces its natural resources, oil, natural gas, coal, to higher environmental standards. Texas and the other energy-producing states are proud of these environmental standards, for we do indeed believe that we have a stewardship responsibility over our land and water resources. But the ever growing and often Draconian legislative environmental laws and regulations sometimes threaten the future development of our domestic energy resources: Oil, gas, and coal.

Recognizing that my time is limited, let me hit a few quick topics; and perhaps we can fill in with some questions.

I encourage opening up areas currently off limits to exploration, whether it's oil, gas, coal, in the Intermontane West, in Alaska, and in our Outer Continental Shelf areas.

And pertinent to this Task Force, we should also seek to streamline the regulatory process for areas that are already open for development but that are frequently tied up in sometimes unnecessarily complicated environmental regulations.

I recently completed an IOGCC survey identifying several factors that inhibit some of this development, including the fact that when state and Federal entities both have permitting responsibilities for oil and gas development, state entities, frankly, can get the job done about 20 to 35—in about 20 to 35 percent of the time that it takes for a Federal permit in the same state.

Wildlife issues often delay the permitting of oil and gas development; and response to this survey encouraged consideration of off-site impact mitigation to address some of these wildlife habitat issues.

We also recommend specific approve or deny timetables for oil and gas permits to avoid a permit languishing in a Federal agency for months and sometimes years.

In summary, the IOGCC supports the concept of revamping NEPA to streamline the process without negatively impacting true environmental concerns.

I have some comments with regard to storm water runoff issues that I won't be able to cover but that impact NEPA, also, and hydraulic fracturing issues, both of which are dealt with, I believe, appropriately in the Energy Policy Act of 2005 in the House version.

Let me just—let me just wrap up by saying that no doubt certain environmental laws and regulations are essential to protect the public health and safety. However, many of these environmental laws far exceed their original intent. To the degree that we can, both at the state level and the Federal level, we must limit government regulations that all too often are over broad, complex, costly, and that stifle innovation, ingenuity, and investment growth.

Finally, let me just emphasize the need for flexibility in the laws and the regulations and the regulatory oversight as opposed to

having rigid, unbendable rules and laws that I think ultimately limit the development of our natural resources.

With that, I'll wrap up. Thank you for the opportunity to be here with you today.

[The prepared statement of Mr. Carrillo follows:]

**Statement of Victor G. Carrillo, Chairman,
Texas Railroad Commission**

Madame Chair McMorris, Congressman Gohmert, members—my name is Victor Carrillo and I appreciate the opportunity to testify before you. I am Chairman of the Texas Railroad Commission. In spite of the name, we oversee the Texas oil & gas, pipeline & surface mining industries, including lignite coal mines. My background is in the energy sector as a former exploration geologist/geophysicist and oil & gas attorney.

I am also here today on behalf of the Interstate Oil and Gas Compact Commission (IOGCC). IOGCC member states produce over 99% of the oil and natural gas produced onshore in the U.S. Formed in 1935, the IOGCC is a congressionally ratified interstate compact that includes 30 member and 7 associate states. Our 2005 Chairman is Governor Murkowski of Alaska. I will be 2nd Vice Chair of the organization for the upcoming year.

The mission of the IOGCC is two-fold: to promote conservation and efficient recovery of domestic oil and natural gas resources while protecting human health and the environment. Though many would have you believe that those dual goals are mutually exclusive—let me assure you they are not. Responsible oil & gas exploration and development and stewardship of our land and water resources can both be accomplished simultaneously. We see it done in Texas day in and day out.

In Texas, we are quite proud of our ongoing role as the premier energy producing state in the nation. Texas is still the #1 producing state for oil and natural gas. We produce about 6 Trillion Cubic Feet of natural gas per year, which represents over 25% of total U.S. demand for the clean burning energy source. We are also the 5th largest producer of coal in the nation.

As of one week ago, Texas had 619 active oil & gas rigs operating in the state—representing almost 50% of all land rigs in the nation. And as a nation as we move to establish more LNG (liquefied natural gas) facilities, I'm proud to say that four new onshore LNG facilities have already been given the green light by FERC along our Texas Gulf Coast.

Texas has the most extensive pipeline infrastructure in the nation with over 250,000 miles of underground petroleum pipelines throughout the state. There are 26 refineries in the state with a total refining capacity of over 4 million barrels per day, equaling over 25% of the nation's total refining capacity. Texas is still the pre-eminent energy producing and refining state in the nation.

In February, I testified in Washington alongside Governor Frank Murkowski of Alaska in support of the Energy Policy Act of 2005. I continue to believe that the House version is a very good first step to help ensure our nation's future energy security by helping to maximize the production of our domestic petroleum resource.

Turning to today's topic, no country in the world produces its oil, gas and coal to higher environmental standards. Texas and the other energy producing states are proud of these environmental standards for we believe that we have a stewardship responsibility for our land and water resources. But the ever growing and often Draconian federal environmental laws and regulations threaten future exploration, production, and refining capacity.

I'd also like to point out that while Texas is the top oil and gas producing state, Texas also ranks first in overall consumption of petroleum, natural gas, coal, and electricity. So we share the national concern for reliable energy supply sources at reasonable and stable prices. A secure source of domestically produced oil, natural gas, and coal is in the best interest of all—producing and consuming states alike.

Recognizing that my time is limited, let me address just a few specific hot topics.

Stormwater Runoff.

I am concerned with EPA rulemaking under the NPDES Stormwater Permit Coverage for Small Oil & Gas Construction Activities which would potentially require a stormwater permit of oil & gas operators for activities affecting one acre or more, particularly with their interpretation of "common plan of development" concept in the Construction General Permit. EPA's rule would improperly seek to treat oil & gas activities activities like residential/commercial construction activities—and they are not the same. In residential/commercial construction projects, there is often a

common plan of development that would impact an aggregated area of disturbance. With oil & gas exploration, there is no guarantee of success of the first well, much less any subsequent wells. In fact, let's say you drill a \$2 million dollar exploratory well and you find nothing or at least nothing that is economic to produce, then any plans for future wells in that immediate area project will likely never come to fruition. For the oil & gas producer, there simply is no common plan of development in the vast majority of cases.

A recent independent economic analysis completed for the U.S. Department of Energy (Estimated Economic Impacts of Proposed Storm Water Discharge Requirement on Oil & Gas Industry Report from Advance Resources International, Inc. to U.S. DOE Office of Fossil Fuels, Dec. 2004) estimated that just this one EPA regulatory change could cost the country from 1.3 to 3.9 billion barrels of domestic oil production and 15 to 45 trillion cubic feet of domestic gas production over the next 20 years. To put that into context, and taking the median of those numbers, that represents over five years of Texas natural gas production and over seven years of Texas oil production that would be lost.

Hydraulic Fracturing.

There is a current effort in the context of the Energy Bill seeking to broadly regulate hydraulic fracturing under the Safe Drinking Water Act for the very first time ever. Hydraulic fracturing is a technique developed in oil & gas exploration to fracture deep underground oil & gas bearing strata, thus releasing more of the oil & gas to be produced. The technique has been safely and successfully used in states like Texas for decades without any known negative impact to drinking water supplies. In the vast majority of wells that have used these techniques in Texas, the fracture zone is thousands of feet deep, well below any possible contact with the drinking quality water, which is generally limited to a few hundred feet from the surface.

Technological advancements allow industry to find & produce more domestic oil & gas, more efficiently, where we already know it to exist. It is technological advancements like hydraulic fracturing, that have allowed the Barnett Shale Gas Play near Dallas/Ft. Worth to develop into the largest producing gas field in Texas and one of the hottest gas plays in the nation. Without the ability to use hydraulic fracture techniques in the Barnett Shale, this huge gas deposit would not be economic to produce.

A one-size fits all, federally mandated, EPA administered regulatory approach in this issue unnecessarily trammels state rights to oversee this activity in our state, by our own more flexible and appropriate means. State programs like ours in Texas have for almost 100 years protected precious ground water resources while allowing domestic oil and gas production to supply our national energy needs.

Refining (Downstream).

There has been no major new refinery built in the U.S. since 1976. Did you know that now, in addition to importing almost 60% of the oil (unrefined) that we need, we are now importing about 10% of the refined gasoline that we need. The fact is that there is limited domestic refining capacity. We had over 300 U.S. refineries in 1980. At the end of 2003, there were about 149—a 50% reduction. Most are running at near capacity.

Why have no U.S. based refineries been built in almost three decades? While NIMBY plays an important role, so do the incredibly stringent environmental controls (NEPA, Clean Air Act, Clean Water Act, RCRA, etc.) that apply to new major construction. Some estimates suggest that it would take several hundred permits and at least \$2 billion to build a new refinery—perhaps half of that cost attributable to the regulations directly.

In the last decade alone, industry has invested almost \$50 billion in environmental improvements to existing facilities. And we wonder why gasoline prices are at their current prices.

Access to Public Lands.

One final issue I will mention is the need to encourage opening up areas currently off limits to oil and gas exploration—areas in the Intermontane West, in Alaska, and in our Outer Continental Shelf (OCS) regions. And pertinent to this task force, we should also seek to streamline areas that are already open to exploration but that are frequently tied up in unnecessarily complicated environmental requirements, particularly on federal lands.

In summary, I believe that we would all do well to support the general notion that “government that governs least governs best.” No doubt, certain environmental laws and regulations are essential to protect the public health and safety. However, many of these environmental laws far exceed their original intent. To the degree we can,

we must reel in and restrain government regulations that all too often are overbroad, complex, and costly and that stifle innovation, ingenuity & investment growth in private sector. When the federal government does pass a law or regulation, it should be simple, clear, understandable, limited in scope, reasonable, practical, & pass the common sense test.

Finally, let me emphasize the need for flexible regulatory oversight and management tools as opposed to rigid, Draconian measures that simply add cost and delay, and ultimately limit domestic energy production at the very time that we need to be more, not less, energy self sufficient.

Thank you so much for the opportunity to appear before you today. If I can provide any additional information, please just ask. I personally stand ready to assist you in any energy-related matter in which you are interested.

Miss MCMORRIS. Mr. Dean?

**STATEMENT OF STEVE DEAN, PRESIDENT,
TEXAS FOREST PRODUCTS, INC.**

Mr. DEAN. How is that for the mike?

Miss MCMORRIS. Very good.

Mr. DEAN. I want to thank Congressman Gohmert for giving me the opportunity to testify. I also thank Madam Chairman and other Committee members who couldn't come to East Texas today.

My remarks are going to be limited primarily to water.

In 1997, the Texas Legislature passed Senate Bill One, in which Texas was divided up into 16 geographical areas; and a water group was formed for each area. Board members represented a cross-section of the general public, counties, municipalities, industry, agricultural, small business, environmental, river and water districts, and utilities.

Each group had a state and Federal agency representation member, plus coordinating members from adjoining states, from adjoining regions, and from the Republic of Mexico.

The planning process involved water quality and water development.

At our water meeting on April the 21st, 2004, I addressed the board with the following comments regarding drinking water and arsenic:

Since 1942, the U.S. has maintained a standard of 50 parts per billion of arsenic in drinking water. Taking the current drinking water standards into account, Texans enjoy some of the best drinking water in the entire world. The Safe Drinking Water Act of '74 mandated by amendment that arsenic standards would be reviewed.

After a 16-year review by the National Research Council and further review by the EPA, ultimately—based on the standards set by the World Health Organization and the European Union, the EPA recommended the adoption of 10 parts per billion.

Water supply proponents argued that the existing 50 parts per billion were sufficient, while environmental groups pushed for more stringent standards, some as low as three parts per billion. This (inaudible) would not pass three parts per billion. President Clinton signed an order adopting 10 parts per billion as the new standard in the final days of his administration.

The new standard was one of those last-minute rules forced upon the administration.

When President Bush suggested that the standards be left unchanged, headlines throughout the Nation stated, "Bush proposes to add arsenic to drinking water."

During one of our Water Planning meetings, I asked our Texas Water Development Board representatives whether the impact of the new drinking water standards were being considered in calculating our revised water inventory models. He said, "No." No consideration was being given to how the new standards would impact the current water inventory.

As a result of those comments, I made a recommendation to the Water Board; and I'll read that:

I would offer a motion that we adopt a resolution in support of the current administration's desire to retain the 50 parts per billion standard until such time as water inventory calculations and scientific data are taken into account and that any recommendation to change these standards be broad based and discussed in the light of public scrutiny.

The Region D Planning Board adopted that motion.

And then as far as water development goes—economic development, water, energy, transportation, urban development, aviation, timber, agricultural, industry, all face huge challenges for success in the future. It all depends on water.

I made this comment to our Water Board:

Worthy water projects considered for the Texas 2050 Water Plan have come under attack from stakeholders who agree that water is needed, but who disagree with the idea of the multiplier effect of mitigation imposed by the Corps of Engineers.

Environmental interests have already removed the ability of East Texans in Region D to provide for their own water development by blocking construction on the Sabine River at Waters Bluff.

Mitigation requirements have doubled, tripled, quadrupled, and in some cases, proposed acreage set-asides that are forced on land-owners as a result of well-thought-out, logical, and reasonable development.

Mitigation requirements are being used as an enforcement tool against water planners by the U.S. Army Corps of Engineers with disregard to the underlying stated reasons for mitigation lands in the first place.

When reasonable accommodations from the Corps are requested for consideration by stakeholders, the request is generally considered, but almost universally fall upon deaf ears.

As board members of the Water Board, we realized that common sense was a necessary ingredient in making a decision. Consequently, I offer this resolution: Mitigation rules, as we know them and as we are forced to abide by them, have nothing to do with common sense. The State of Texas was built upon sound thinking and common sense. Texas and the U.S. will thrive in the future if we stay with common sense.

I will, therefore, offer a motion that this regional water-planning group adopt a resolution to remove the total concept of mandating and managing mitigation lands from the Corps of Engineers and turn it over to the individual states.

The Region D planning group adopted my motion.

Madam Chairwoman, this concludes my remarks. I have attached the minutes of the water board meeting where these two resolutions were passed. I appreciate your time.

[The prepared statement of Mr. Dean follows:]

**Statement of Stephen E. Dean, President/CEO,
Forest Products, Inc.**

I want to thank Congressman Gohmert for giving me the opportunity to testify today. I also thank Madame Chairman and other committee members for coming to East Texas. I could speak on a number of environmental issues that have affected me and my family on a very direct and personal level. However, I will limit my remarks to an issue that affects everyone in the country.

WATER

In 1997 Senate Bill One was passed by the 75th Texas Legislature. The State of Texas was divided up into 16 regional geographical areas and a water planning group or board was formed for each area. Board members represented a cross section of the general public, counties, municipalities, industry, agriculture, small business, environmental, river and water districts, and water utilities. Each planning group had state and federal agency representation plus coordinating members from adjoining states, from adjoining regions, and from the Republic of Mexico.

I was selected to serve on the initial group for Region D, and I eventually served three consecutive 2-year terms. Senate Bill One laid out a planning process that would address the water needs for the State of Texas through the year 2050.

The planning process involved water quality issues and water development issues.

At our water meeting on April 21, I addressed the board with these comments regarding drinking water and arsenic.

Since 1942 the U.S. has maintained a standard of 50 parts per billion of arsenic for drinking water. Taking the current drinking water standards into account, Texans enjoy some of the best drinking water in the entire world. The Safe Drinking Water Act of 1974 mandated by amendment that arsenic standards would be reviewed by 1996.

After a 16-year review beginning in 1983, the National Research Council recommended in 1999 that stricter Arsenic standards be developed as "soon as possible", but gave no specific recommendations. Next, the EPA studied arsenic effects in other parts of the world and finally recommended adoption of 10 parts per billion, the drinking water standard of the World Health Organization and the European Union.

Water supply proponents argued that the existing 50 ppb standards were OK while environmental groups pushed for more stringent standards, some as low as 3 ppb. In the final days of his administration, President Clinton signed an order adopting 10 ppb as the new standard.

In 1936, there were 2,411 pages in the Federal Register.

Today there are approximately 75,000 pages. President Clinton added 29,000 pages during the waning days he was in office.

The new arsenic standard was one of those last minute rules. Because of the manner in which it was forced upon the incoming administration, with no public forethought or opportunity for discussion, it is clear that the decision to change the standards was completely politically and not scientifically motivated. When President Bush suggested that the standards be left unchanged, headlines throughout the country stated "Bush Proposes To Add Arsenic to Drinking Water."

Early in the Bush administration, during one of our Water Planning meetings, I asked our Texas Water Development Board representative whether the impact of the new drinking water standards were being considered in calculating revised water-inventory models.

He answered NO. No consideration was being given to the impact the new arsenic standards would have on existing water inventories. The water supply models that our consultants and the TWDB use do not take into account the new more stringent standards.

As a water-planning group, we were obligated to set aside political motivation and seek the best and most reasonable course of action to provide water for Texas for the future. We are obligated to use good science and common sense.

I would offer a motion that we adopt a resolution in support of the current administration's desire to retain the 50 ppb standards for arsenic until such time as water inventory considerations and scientific data are taken into account, and that any

recommendation to change the standards be broad based and discussed in the light of public scrutiny.

Naturally occurring background levels of arsenic in soil tests in Gilmer are in the 12 ppb range.

As goes water development, so goes economic development.

Economic development, water, energy, transportation, urban development, aviation, timber management, agricultural, and industrial planners in Texas face a HUGE challenge to success in the future.

I made the following comments to the water board...

Worthy water projects considered for the 2050 Texas Water Plan have come under attack from stakeholders who agree that water is needed, but who disagree with the idea of the multiplier effect of mitigation requirements imposed by the USACE.

Environmental interests have already successfully removed the ability and right of East Texas stakeholders in Region D from being allowed to decide for themselves about water development for their use in the local area on the Sabine River at Waters Bluff.

Mitigation requirements have doubled, tripled, quadrupled, and more in some cases the proposed acreage set-asides that are forced on landowners as a result of well thought out, logical, and reasonable development.

Mitigation requirements are being used as an enforcement tool against water planners by the U.S. Army Corps of Engineers...with disregard to the underlying stated reasons for mitigation lands in the first place.

When reasonable accommodations from the USACE are requested for consideration by the stakeholders, the requests are generally considered but almost universally fall upon deaf ears.

Members of the Region D Water Planning Group were selected because they represent the stakeholders of the region. When they make a decision, the individual member and his family must live with the consequences, good or bad for the future.

As board members we recognize that common sense is a necessary ingredient in decision making for our future.

Mitigation rules as we know them and as we are forced to abide by them have nothing to do with common sense. The State of Texas was built upon sound thinking and common sense. Texas and the U.S. will thrive in the future if we stay with common sense. I would therefore offer a motion that this regional water-planning group adopt a resolution to remove the total concept of mandating and managing mitigation lands from the USACE and turning it over to the individual States.

The Region D Planning Group adopted my motion.

Madame Chairman, this concludes my remarks. I have attached the minutes of the water board meeting where the two resolutions were passed.

Thank you,

Attachment

MINUTES OF THE NORTH EAST TEXAS REGIONAL WATER PLANNING GROUP

WEDNESDAY, APRIL 21, 2004—2:00 P.M.

GILMER CIVIC CENTER

US 271 NORTH

GILMER, TEXAS

The Region D Water Planning Group (NETRWPG) met in an open meeting on Wednesday, April 21, 2004, at 2:00 P.M. The meeting was held at the Gilmer Civic Center located on U.S. 271 North, Gilmer, Texas. Notice of the meeting was legally posted.

The meeting was called to order and invocation given by Chair Williams at 2:00 p.m. A quorum was present.

The following voting members were present:

Larry Calvin	Mendy Rabicoff
Steve Dean	Vernon Rowe
John Durgin	Jim Thompson
George Frost	Tony Williams
Gary Jackson	L. D. Williamson
William R. Justiss	Terry Winn
Richard LeTourneau	Beth Wisenbaker
David Parsons	Eldon Wold

The following non-voting members were present:

Virginia Towles, representing Texas Water Development Board
 Mike Rickman, representing Region C
 Bobby Praytor, representing City of Dallas
 Tommy Slater, representing AEP/SWEPCO

The following non-voting members were absent:

Curtis Campbell, representing Region B
 Jerry Clark, representing SRA
 Kevin Craig, Corps of Engineers
 Glenda Kindle, Liaison for Region I
 Robert McCarthy, NTMWD
 W. David Ryburn, representing City of Irving
 Thomas E. Taylor, representing Upper Trinity Regional Water District
 Greg Conley, representing TP&W

The following alternates for non-voting members were present:

Michael Brice, representing Greg Conley

The following voting members were absent:

Charles Ball
 Barry Boswell
 John Bradley
 Gerald Brewer
 Mike Dunn
 C. W. Forsyth, represented by Aaron Gann
 William Y. Rice

Committee members and alternates each identified themselves and acknowledged the county and area of interest represented.

Minutes of the February 18, 2004 meeting were approved, on a motion by Mendy Rabicoff and seconded by Gary Jackson. Motion carried, all voting aye.

Gary Jackson made a motion to approve the notice concerning expiring terms of Regional Planning Group members. Beth Wisenbaker seconded the motion. Motion carried, all voting aye.

Mr. James Beach of LBG-Guyton Associates gave a presentation concerning groundwater supply and related modeling. Chair Williams thanked Mr. Beach for the informative presentation.

After discussion on the topic of arsenic, Steve Dean made a motion to approve a resolution in support of the current administration's desire to retain the 50 ppb standards for arsenic until such time as water inventory considerations and scientific data are taken into account and that any recommendation to change the standards be broad based and discussed in the light of public scrutiny. Gary Jackson seconded the motion. Motion carried.

After discussion on the topic of mitigation, Steve Dean made a motion to approve a resolution to remove the total concept of mandating and managing mitigation lands from the USACE and turning it over to the individual states. Vernon Rowe seconded the motion. Motion carried with a vote of 10 votes for and 6 votes against.

Vernon Rowe made a motion to approve BWR invoices and the financial report as presented. Terry Winn seconded the motion. Motion carried, all voting aye.

Jim Thompson, the group's liaison to Region C, gave an update on two recent meetings.

Terry Winn presented a report to the group concerning the Desalination Workshop which he attended in Austin. He stated that three projects are actually being funded. They are Rio Grande, Corpus Christi and Freeport. Mr. Winn advised that the price for this activity will be approximately \$2.50 per thousand gallons but the price may not include brine disposal stream. Virginia Towles, of the Texas Water Development Board, added that there is information concerning desalination available online and reminded the group of the Groundwater Rule of Capture meeting in Austin on June 15th.

The meeting was then opened for public comment concerning water planning efforts. Comments were received from Mr. David Nabors of Paris.

Wednesday, May 19, 2004, at 2:00 p.m. was established for the next meeting date at the Gilmer Civic Center.

The meeting was adjourned at 3:30 p.m.

Terry Winn, Secretary/Treasurer

Additional Attendees:

Walt Sears -- NETMWD
 Stan Hayes -- NRS Engineering
 Ray Flemons -- Bucher, Willis & Ratliff
 James Beach -- LBG-Guyton Associates
 William W. Brown -- NETMWD
 Michelle Thorne -- NETMWD
 Nancy Stirl -- NETMWD
 Jodi Sheridan -- Texarkana Gazette
 Shirley Shumake -- DeKalb
 Sharon Nabors -- Paris
 David Nabors -- Paris
 Patricia McKelvey -- Bogata
 Joe Max McKelvey -- Bogata
 Wendell Davis -- Clarksville
 Gordon Hall -- Mt. Pleasant
 Helen Sessums -- Bogata
 Floyd Sessums -- Bogata
 Max Shumake -- DeKalb
 Jack Grant
 Mary Grant
 Linda Henderson -- Douglasville
 Eric Birdsong -- Denton
 Bessie Heath -- Douglasville
 Richard Zachary -- Mt. Vernon
 Tommy Spruill -- Mt. Pleasant
 Mary Templeton -- Lake Creek
 Bill Templeton -- Lake Creek
 Melvin Reynolds -- Gilmer
 Greg Carter -- Corpus Christi
 Nancy Clements -- Douglassville
 Bob Bowman -- Longview
 Robert Haney -- Longview
 L. D. Caudle -- Maud
 Red Birdsong -- Denton

Miss McMORRIS. Mr. Smith?

**STATEMENT OF STEVE SMITH, EXECUTIVE DIRECTOR,
 TEXAS MINING AND RECLAMATION ASSOCIATION**

Mr. SMITH. Good morning, Chairwoman McMorris and Congressman Gohmert. I appreciate the opportunity to be here this morning. My name is Stephen Smith, the Executive Director of the Texas Mining & Reclamation Association.

We're a (inaudible) association. We have a little over a hundred member (inaudible) companies that are either owner/operators in the mining business, active mining operations or (inaudible) provide goods and services to these owner/operators. We mine a lot of resources in the state. Among the resources that our members mine are clay, sand, stone, gravel, uranium, lignite, and coal.

What I would like to share with you are some recent examples of some of our members—and I typically refer to this association as TMRA or TMRA (different pronunciation), with an acronym—some of the TMRA members have gone through in recent years and talked about some of the good things that happened and some things that maybe were not—not so helpful.

But TMRA—we tend to support the NEPA process as it was originally deemed by Congress, and we urge that this Task Force carefully consider whether the NEPA processes are necessary to duplicate the processes of other Federal environmental statutes which have been implemented since NEPA.

We appreciate the work that you've already done. It's a tough job. We look forward to continuing to work with you to achieve an efficient NEPA process.

Several of our members were involved with the NEPA process during the '70s, '80s, early '90s as they expanded their (inaudible).

Recently, we've had two member companies who have gone through the NEPA process, either completed it or are currently involved with it right now. For one particular company, the EIS was recently completed in the (inaudible) time period. I don't know what the cost was. It was an undisclosed cost. The final EIS was 780 pages in length, and I really don't know if that's good or bad in terms of some of the standards across the country. But that has been published and the process followed. Their (inaudible) permit has been issued.

There were some positive experiences. Some things worked well for this particular company. One thing in particular is the project manager that was assigned to that company was a very organized, efficient individual. This individual was very conscientious of deadlines. They were obviously focused on conducting a very efficient process.

So whether that was the luck of the draw or what, I really don't know. They could have just as easily been assigned a project manager who did not have those skills and then maybe their experience would not have been so good.

I think what's interesting, though, is the decision to conduct that EIS rather than pursue the nationwide (inaudible) option for their (inaudible) permit was really driven by the company and not the agency. It was basically a legal decision that company made in response to a recent court decision that required an EIS on a pipeline company here in the state even though there were no grounds for requiring such a study.

So the timing of obtaining that permit was very critical to this company, and they felt like the timing anticipated would be less if we went ahead and pursued the EIS up front rather than pursuing the nationwide (inaudible) and taking the chance of added time to allow for a court-driven EIS. So basically, it was a roll of the dice for them. That's kind of what it's evolved to.

Then as they got into it via the timeline concerns, the need for a permit, they had to (inaudible) during the scoping process (inaudible) they had to accept (inaudible) that are not required under the jurisdiction of any regulatory agency.

Another one of our companies to employ solution mining while mining for uranium has a project out in New Mexico has been issued (inaudible) material license. They were oversighted by ELM, NRC, and the Bureau of (inaudible) Affairs; and when it got down to choosing whether to do an EA or an EIS—typically, these types of projects across the country are handled by an EA, at best, because of the low environmental impact of that particular operation.

In this case, the EA did not have (inaudible) and regulations to address the EA; so it had to go through the EIS process, which they did, costing several million dollars. They published that in February of 1997, so—since the publication of that, this—this EIS has been the subject of litigation before the NRC, ASLD and—which has been brought on by various intervenor groups.

So here it is July 23rd, 2005—this is more than eight years after publication of the EIS—the company still doesn't have its (inaudible) operation. It's spent several more million dollars on legal expenses for litigation. Tens of thousands of pages of material have been produced. The effort has consumed the (inaudible) capabilities of that company and likely will increase the cost of fuel.

Ultimately, the fuel (inaudible) power plants and, therefore, the power that homeowners use. The NEPA process in their situation, developed really into a procedural filibuster, which is what—what has happened there.

A recent judge's decision that dealt only with water issues was 73 pages, and none of the rulings so far—or rather all of the rulings have supported the EIS; so really there was no technical merit to any of the things (inaudible) by the intervenors.

Miss MCMORRIS. Would you please wrap up, Mr. Smith.

Mr. SMITH. We have recommendations in our written comments. I would say in conclusion that NEPA can be fixed. It won't be an easy job. It will be a lot of work to do that, but we feel like it can be fixed and function like Congress intended it to. And it can be fixed so that it can provide certain regulatory processes and still continue to protect the environment.

Thank you very much for the opportunity to comment.

[The prepared statement of Mr. Smith follows:]

TEXAS MINING AND RECLAMATION ASSOCIATION
111 CONGRESS AVENUE, SUITE 1800
AUSTIN, TEXAS 78701

JULY 21, 2005

The Honorable Cathy McMorris
Chair
Task Force on Improving NEPA
1333 Longworth House Office Building
Washington, DC 20515

Re: Comments Regarding Necessary Improvements to NEPA

Dear Representative McMorris:

This letter is submitted on behalf of the Texas Mining & Reclamation Association ("TMRA") and is intended to provide ideas and suggestions for improving the National Environmental Policy Act (NEPA) to the U.S. House Task Force on Improving NEPA.

Introduction

TMRA is a state organization comprised of approximately 140 mining, electric utility, and supplier companies, and more than 800 individuals. TMRA supports coordinated, rational, and consistent federal, state, and local policies to assure proper economic recovery of the state's minable resources in an environmentally sound manner.

TMRA's members play a vital role in Texas' economy. Mining provides more than \$28 billion annually to our state and accounts for more than 50 percent of the local tax base for many of our state's rural communities. TMRA members also significantly contribute to the environmental health of the state. The Texas mining

industry plants more than two million trees annually on reclaimed mined land, spends in excess of \$100 million each year on land reclamation and protection of water and air quality and archeological resources, and reclaims land for cattle grazing, crops, commercial timber, wildlife habitat, wetlands, and recreational use. The industry also promotes and assists in the development and implementation of new environmental controls and technologies by working in concert with environmental and regulatory agencies and university researchers. TMRA industries have a strong environmental ethic and have received numerous state and national awards for their environmental programs.

Comments

1. The Task Force should encourage Congress to revise NEPA to eliminate duplicative and overlapping environmental review processes given the number of environmental laws that have been implemented since NEPA was originally enacted.

NEPA is a procedural law that creates a formal review process for public comments and the consideration of alternatives. NEPA does not have any measurable or substantive environmental protection standards.

Substantive environmental standards are implemented under evolving federal and state environmental regulatory schemes where hosts of environmental protection authorities are vested with the authority to enforce environmental statutes that have been enacted over the last 30-plus years. Examples of these statutes include the Clean Air Act, Clean Water Act, and the Solid Waste Disposal Act. In addition to substantive requirements, these statutes have extensive procedural requirements. Therefore TMRA believes that Congress should 1) evaluate how NEPA interacts with these laws, and 2) identify where there are duplicative review processes. Once identified, TMRA recommends that NEPA be revised to eliminate duplicative processes.

2. The Task Force should work with Congress to clarify the meaning of "major federal action" and what specific activities trigger a NEPA review.

Generally, determining whether an action is a major federal action is the threshold issue for determining whether an EA or an EIS is required. Given that certain TMRA members have mining activities that present relatively similar concerns and circumstances (i.e. environment, geological conditions, and mining methods), it would be beneficial to the industry if Congress clarified exactly what types of actions were "major."

3. The Task Force should encourage Congress to mandate standardized reviews to ensure a more consistent, reliable, and timely review process.

Although site-specific reviews are a necessary component of the NEPA process. There are several standard components of a NEPA review that could be standardized to facilitate a more consistent, reliable, and timely review process. Mandating the use of standardized revised, complete with standardized checklists and timelines (discussed further below), will eliminate much of the inconsistency that results from re-creating the wheel with new agency personnel in each individual case. This approach will also enable the regulated industry and the public to more accurately gauge the substantive and procedural requirements that will apply during a given review so they can better estimate budgets and timelines. Therefore, TMRA encourages the Task Force to urge Congress to mandate standardization to the maximum extent possible.

4. The Task Force should revise NEPA to streamline the number of alternatives proposed by agencies.

Opponents to development routinely use the NEPA process as a delay tactic. For example, federal officials are often forced to consider so many alternatives (e.g. different locations and project sizes) that the review process is tangentially and unnecessarily expanded into many different directions.

From TMRA's perspective, the "alternatives analysis" is often ill-suited for mining and reclamation activities because geological factors—and not mere "alternatives"—dictate where such activities can or should occur. In other words, the coal, ore, or rock is either present or it is not. In this simple, but very real-world scenario, satisfying the current alternatives analysis requirement becomes a time consuming paper exercise that does not add any qualitative or quantitative value to the environmental analysis.

TMRA respectfully request that Congress ensure the agencies' alternatives are reasonable and focused on the purpose and needs of the specific mining or reclamation project under consideration. A focused purpose that keeps the context of the regulated industry in mind will ensure that the most reasonable, technologically achievable, and economically feasible alternatives are considered.

5. The Task Force should ensure that Congress reforms the manner and impact of judicial review under NEPA

Because NEPA issues are usually raised in federal courts, it is common for TMRA members to face conflicting judicial opinion among various federal courts. These conflicting decisions not only create uncertainty for regulated industries, but also create “venue shopping,” which is the practice petitioners often use to seek out a friendlier district to hear their suit. TMRA submits that the Task Force should encourage Congress to significantly restrict venue shopping.

Moreover, NEPA judicial review is often used to delay project development for years even though the substantive standards of all other environmental laws have been satisfied and no other permit or authorization is being challenged. TMRA submits that judges should be restrained from enjoining project development during NEPA judicial review or, at minimum, be required to expedite their decisions.

6. The Task Force should evaluate the timing delays associated with current NEPA processes and recommend to Congress specific timelines for NEPA review.

To add meaningful structure to the NEPA process, Congress should establish clear time frames to all relevant review periods for governmental entities. Statutory time frames would create a quantitative requirement for all NEPA review processes, and cases would be naturally prioritized based on their level of interests and whether there were issues that truly impacted the environment. In addition, each phase of the NEPA process, including the Categorical Exclusion (CE), Environmental Analysis (EA), and Environmental Impact Statement (EIS) should have a clearly delineated timeline.

Revising NEPA to include specific, statutorily-mandated time frames would benefit TMRA members by creating certainty during the permit application process. Congressional direction that encourages focused, streamlined coordination, would also benefit federal agencies by increasing efficiency. If governmental agencies failed to comply with the statutory time frames, the NEPA review should be automatically deemed complete. TMRA believes mandatory “end dates” for reviewing NEPA-related issues would provide much needed closure for regulated entities.

TMRA notes that this solution is not without precedent. The Council on Environmental Quality, as well as several federal land management agencies (e.g. U.S. Forest Service and Bureau of Land Management) have regulations or guidance documents expressing the need for time limits. However, because of the myriad of federal issues or agencies that could potentially trigger a NEPA review, only a congressional mandate is strong enough to bind all federal agencies. In conclusion, TMRA requests that the Task Force recommend to Congress required statutory time lines for NEPA review.

7. The Task Force should encourage Congress to revise NEPA to ensure that non-significant and temporary activities are evaluated under “Categorical Exclusions.”

Categorical Exclusions (CEs) are an effective tool currently authorized under NEPA that provide a mechanism for streamlining and speeding up approval for common projects and activities that do not threaten the environment. Congress should expand the use of CEs by including:

- Existing projects that simply require a renewal permit.
- Activities that are non-significant and temporary.
- Completed or proposed mitigation actions that are sufficient to avoid significant impacts.

It is TMRA’s experience that many agencies do not effectively use the Categorical Exclusion mechanism because of conflicting court decisions. For example, in an effort to avoid costly appeals, agency officials often opt to conduct a full-blown EA or EIS to evaluate every detail of a proposed activity, although the conditions may not warrant such a lengthy review. To encourage the use of categorical exclusions, Congress should better define what constitutes a significant impact to the environment. As noted, TMRA believes that Congress should promote the expanded use of Categorical Exclusions. Such action would allow federal agencies to more effectively execute their NEPA responsibilities.

8. The Task Force should identify areas in the NEPA process that would benefit from risk-based decision making.

As explained, NEPA is a process oriented statute with little or no quantifiable methodologies. Currently, risk based criteria are not used during a NEPA review. TMRA believes the scientific and technical aspects of NEPA would be improved if a more quantifiable approach that included some of the fundamental concepts of risk-based decision making were taken into account.

Conclusion

TMRA requests that the Task Force carefully consider these comments in their efforts to improve NEPA. TMRA is concerned that the existing NEPA process will negatively impact the long-term interests of its members.

TMRA appreciates the opportunity to voice its position and is available to assist the Task Force as it further considers the much needed refinement of NEPA. If you have any questions regarding these comments, please feel free to call at your convenience

SINCERELY,

STEPHEN F. SMITH
EXECUTIVE DIRECTOR

Miss McMORRIS. Mr. Davis?

STATEMENT OF W.I. DAVIS, TEXAS FARM BUREAU

Mr. DAVIS. Good morning, Chairwoman McMorris and Representative Gohmert. Welcome to East Texas, and thank you for your efforts in considering this important issue. Thank you, Representative Gohmert, for hosting the Task Force and championing our local concerns.

My name is W.I. Davis. I represent the Texas Farm Bureau of which I'm a member along with over 380,000 Texas families. The Farm Bureau is a grass-roots organization representing the interests of rural Texas in agricultural production, which includes forestry. Our policies are developed by individuals who are actively engaged in production and who know best the impact of laws and regulations.

Texas is proud of its private property ownership heritage, but we have considerable economic interests related to timber production on Federal lands. The health and prosperity of many local communities and families rely on the sound management practices of our natural resources. Additionally, private holdings are directly impacted by disease and pest conditions on adjacent Federal land.

I am a hands-on active manager of a 3300-acre family tree farm for which I've had an interest for the past 60 years. From 1945 to 1998, we've practiced uneven age management which calls for a selective harvest with the remaining seed trees to regenerate the area.

Miss McMORRIS. I need to ask you to pull the microphone in, please.

Mr. DAVIS. Beg your pardon?

Miss McMORRIS. Please pull the microphone in.

Mr. DAVIS. Oh, OK. I'll get it right.

In the '60s, we experienced a straight-line windstorm which damaged 250,000 board feet, which we were able to salvage. We left the remaining trees to naturally reseed the voided areas. That was a big mistake. From that experience, we learned that under stocked stands quickly fill with undesirable herbaceous and wood plants which prevent natural regeneration.

When the 1998 storm hit our farm and the adjoining Sabine National Forest, the damage suffered in the '60s was remembered. In order to prevent that mistake, we made a complete harvest of the severely damaged area and salvaged the remaining downed trees. This operation covered 900 acres with a salvage of 4.5 million

board feet, which was completed by midsummer of that year. That was only half of the job.

From 1998 through 2003, we reclaimed the devastated area by site prepping and planting with genetically improved seedlings. At this time, I am happy to report that over 95 percent of the storm damage has been reclaimed and is contributing its part to the environment and success of the family tree farm. This was only possible because we did not have to wait for over two years for an EIS.

At this time, I would like to refer you to pictures that's in your—the first picture is a picture that was made by the Austin (inaudible). They came down and did a report on it. The gentleman standing there with his back to the picture is my daughter's family's consulting partner, and he is near the east—the west boundary line of their property. And that windstorm went from west to east, and the trees that you see in the far distance are U.S. Park Service.

The next picture shows a stand of trees that is there now. The ones on the left are longleaf. The ones on the right are loblolly. They're from 15 to 20 feet tall at this time.

The next picture is a part of the 80 acres that were planted with longleaf pine. In that year—which was over 250 acres. 80 acres of it were longleaf.

Now, approximately a mile and a half from that first picture is what you've got just across the county road. It's just wilderness. Nothing has been done. The salvage was made but no regeneration.

These sound management practices, which remove much of the dead timber before pest and disease can set in, and reseed adequately to prevent trashy undergrowth, contribute greatly to healthy woodlands. Similar practices need to be quickly implemented on Federal lands when conditions warrant. Our——

Miss MCMORRIS. Mr. Davis, can you wrap up, please?

Mr. DAVIS. Beg your pardon?

Miss MCMORRIS. You're out of time. Will you wrap up now? Then we'll come back and ask some questions.

Mr. DAVIS. All right. Again, I want to thank you, Chairwoman McMorris and Representative Gohmert. We look forward to working with you to achieve positive results in improving the National Environmental Policy Act. I will do my best to answer any questions later.

Miss MCMORRIS. Very good. Thank you.

[The prepared statement of Mr. Davis follows:]

**Statement of W. I. Davis, Shelby County Farm Bureau Forestry Chairman,
Texas Farm Bureau**

Good morning Chairwoman McMorris, and members of the Task Force. Welcome to East Texas and thank you for your efforts in considering this important issue. Thank you Representative Gohmert for hosting the Task Force and championing our local concerns.

My name is W. I. Davis, I am representing Texas Farm Bureau of which I am a member along with over 380,000 Texas families. Farm Bureau is a grassroots organization representing the interests of rural Texas and production agriculture—which includes forestry. Our policies are developed by individuals who are actively engaged in production and who know best the impact of laws and regulations.

Texas is proud of its private property ownership heritage; but, we have considerable economic interests related to timber production on federal lands. The health and prosperity of many local communities and families rely on sound management practices of our natural resources. Additionally, private holdings are directly impacted by disease and pest conditions on adjacent federal timberlands.

I am a "hands on" active manager of a 3,300 acre family tree farm of which I have had an interest for the past 60 years. From 1945 to 1998 we practiced uneven age management which called for a select harvest with the remaining seed trees to regenerate the area.

In the 60's we experienced a straight line wind storm which damaged 250,000 board feet, which we were able to salvage. We left the remaining trees to naturally reseed the voided areas. That was a big mistake. From that experience, we learned that the under stocked stands quickly filled with undesirable herbaceous and wood plants which prevented natural regeneration.

When the 1998 storm hit our tree farm and the adjoining Sabine National Forest, the damage suffered in the 60's was remembered. In order to avoid that mistake, we made a complete harvest of the severely damaged area and salvaged the remaining downed trees. This operation covered 900 acres with a salvage of 4,500,000 board feet which was completed by midsummer of that year.

From 1998 through 2003, we reclaimed the devastated area by site prepping and planting with genetically improved seedlings. At this time I am happy to report that over 95 percent of the storm damage has been reclaimed and is contributing its part to the environment and success of the family tree farm.

These sound management practices, which remove much of the dead timber before pest and disease can set in, and reseed adequately to prevent trashy undergrowth, contribute greatly to healthy woodlands. Similar practices need to be quickly implemented on federal lands when conditions warrant. Unfortunately, the procedures in place under the National Environmental Policy Act, and the willingness of some to further stifle the process, too often limit the opportunity to restore forest health in the best manner.

Our Farm Bureau policy supports efforts to streamline and expedite the National Environmental Policy Act requirements to allow for the sound harvesting of mature, burned, dying, downed or dead timber. We believe the long term health and viability of our natural resources can best be achieved through these principles. Without these changes, our natural resources will continue to be wasted, opportunities for healthy forest regrowth will be lost, and the best interest of local communities and families will be sacrificed to the misguided policies of activists.

Again, thank you Chairwoman McMorris, Representative Gohmert and members of the Task Force. We look forward to working with you to achieve positive results in improving the National Environmental Policy Act. I will do my best to answer any questions you may have.

NOTE: Attachments to Mr. Davis' statement have been retained in the Committee's official files.

Miss MCMORRIS. Mr. England?

STATEMENT OF STEPHEN M. ENGLAND, MANAGER OF MINED LANDS, TXI GEOLOGIC AND MINE SERVICES

Mr. ENGLAND. Chairwoman McMorris, Congressman Gohmert, thank you for inviting me to provide testimony today. I am here on behalf of the National Stone, Sand & Gravel Association and TXI Operations, LP.

We appreciate the opportunity to provide comments to the Task Force on improving the National Environmental Policy Act.

TXI believes the stated goal of the Task Force of ensuring Federal decisions are made in an appropriate and environmentally sound manner, rather than by litigation, is indeed necessary. TXI does not dispute the intent nor the value of NEPA to the decision-making process.

In fact, in talking with the agencies and consultants (inaudible) permits, the NEPA process has provided guidance to review our applications in an orderly fashion; and that has helped in many instances. In fact, there are several positive aspects of NEPA that we could discuss; but time won't allow that today.

Unfortunately, I have to address some of the other issues. NEPA, as it stands today, is a process that's been used to create regulatory pitfalls, stalling important projects.

Much of what I do with TXI in recovery of the necessary construction aggregates is the reclamation portion and mitigation. To mining projects, TXI provides substantial opportunities to provide filtration and storage along rivers because these are full of deposits that we need to bring to market.

Unfortunately, busy agencies have been forced to try and protect their NEPA documentation from legal challenges by producing piles of paperwork that exhaustively discuss every potential impact in hopes of creating a bullet-proof document. While the agencies may see this padding as a way of reducing litigation vulnerability, padding has a significant impact on the process and is a litigation pitfall all its own.

Perhaps the most frustrating aspect we the regulated community faces is the fact that it's nearly impossible to plan for the permitting process. Wetlands permitting, for example, requires a NEPA process that has no clear end point. Too often, the NEPA process is turned upside down by a game of "gotcha" whereby the agencies complete their review only to be sued for failure to have considered some report or failure to respond in detail to some minor comment on an obscure point.

A recommendation that we would make is the establishment of reasonable deadlines and tighter schedules that will provide significant benefits in terms of planning finality and avoiding delays while still protecting the environment. Data submitted at the last second should not be cause for the agency to have to reopen the entire NEPA process. Data of tangential importance not reviewed by agencies should not be cause for agencies to reopen the entire NEPA process. And I'll emphasize the tangential portion of it.

The conclusion being: The tactics of those wishing to use NEPA to delay resource development are well-known. These tactics deplete important agency resources and siphon away precious tax dollars needed for conservation and stewardship of all our nation's resources.

I think, for the most part, all of us who have come to this meeting today, having worked in offices, lived in homes, driven on roads all provided in large part by construction aggregates—it's not that we are oblivious to the need to protect the environment. It's just that the recovery of resources occurs oftentimes in areas that are sensitive to all of us.

Thank you for the opportunity to comment on how NEPA has affected TXI's aggregate production in Texas, Oklahoma, and Louisiana.

Miss MCMORRIS. OK. Thank you. Very good.

[The prepared statement of Mr. England follows:]

**Statement of Stephen M. England, Manager of Mined Lands,
TXI Operations, LP**

TXI Operations, LP appreciates the opportunity to provide comments to the Task Force on Improving the National Environmental Policy Act (NEPA). TXI believes that the stated goal of the Task Force of ensuring that federal decisions are made in an appropriate, environmentally sound manner, rather than by litigation is indeed necessary. TXI does not dispute the intent and value of NEPA to the decision-

making process. As NEPA stands, at times the process has been used to create a regulatory pit fall, stalling important projects. Moreover, the unfortunate reality is that delays in projects (such as wetlands permitting) due to unnecessarily lengthy NEPA reviews has a "ripple effect" on the cost of construction materials.

Unfortunately, busy agencies have been forced to try and protect their NEPA documentation from legal challenges by producing piles of paperwork that exhaustively discuss every potential impact in hopes of creating a "bullet-proof" document. While the agencies may see this padding as a way of reducing litigation vulnerability, padding has a significant impact on the process and is a litigation pit fall all its own.

Perhaps the biggest permitting frustration we the regulated community faces is the fact that it is nearly impossible to plan for permitting when there is a Federal decision required. Wetland permitting for example requires a NEPA process that has no clear end point. Too often, the NEPA process is turned upside down by a game of "gotcha" whereby the agencies complete their review only to be sued for failure to have considered some report or for failure to respond in detail to a minor comment on an obscure point.

RECOMMENDATIONS FOR NEPA REFORM

- Establishing reasonable deadlines and tighter schedules will provide significant benefits in terms of planning finality and avoiding delays, while still protecting the environment.
- Data submitted at the last second should not cause the agency to have to reopen the entire NEPA process
- Data of tangential importance not reviewed by the agencies should not cause the agency to have to reopen the entire NEPA process

CONCLUSIONS

The tactics of those wishing to use NEPA to delay resource development are well known. By asking for more discussion of peripheral issues, and then moving on to other theoretical concerns, each time the agency responds, does not protect the environment effectively. Under this approach, aggregate resource development opponents will always be able to point to some area of the record that is not discussed as much as other areas, and or claim that the failure to properly analyze one small issue is fatal to the overall process. These tactics deplete important agency resources and siphon away precious tax dollars needed for conservation and stewardship of all of the nations resources.

Thank you for the opportunity to comment on how NEPA has effected TXI's aggregate production in the Texas, Oklahoma and Louisiana region. Should you have any questions or require further information from me please call me at (214) 502-0571. We look forward to working with the Committee in this effort.

Miss MCMORRIS. Mr. Shelton?

STATEMENT OF LARRY SHELTON, TRUSTEE, TEXAS COMMITTEE ON NATURAL RESOURCES

Mr. SHELTON. Good morning. I would like to offer my appreciation first to the invitation and opportunity to address the Task Force this morning.

My name is Larry Shelton, and I have lived in Nacogdoches County for the past 25 years. I have been a member of the Texas Committee on Natural Resources, also known as TCONR, since 1985. TCONR is a citizen conservation group that works on conservation and public health issues in both rural and urban areas.

Today I'm here to offer my support for the National Environmental Policy Act in its entirety. I would like to talk about its benefits and my experience under NEPA, as well.

Passage of NEPA in 1969, clearly marks a milestone in the long history of America's relationship to its national resources. NEPA acknowledges the paramount importance of this country's national resources and the inseparable connection between Americans and the environment. Additionally, NEPA addresses environmental management in a comprehensive and consistent way by estab-

lishing specific protocols for the guidance of Federal land and resource managers.

To fully appreciate NEPA, one must recognize that it took this country nearly two centuries to finally pass legislation and create a single comprehensive policy for managing our environment. Prior to this, a lack of foresight in planning essentially created boom and bust cycles that frequently left in its wake a trail of economic depression and hardship, community deterioration, impairment of natural resources, and environmental degradation. So we can see from the past that the cost of no comprehensive environmental planning is also very high, as well.

By the 1960s, the Nation was forced to acknowledge that we were facing an economic, human health, and sustainability crisis due to the lack of comprehensive environment planning and full assessment of environmental impacts.

Clearly, we had a problem; and NEPA was the solution. NEPA calls for the comprehensive disclosure of environmental impacts. NEPA mandates consultation with state and local agencies and does provide a comprehensive forum in which to view environmental-significant actions in light of all current legislation.

In essence, NEPA serves the same function as the rudder of a ship. It provides guidance and direction. NEPA brings a wide range of agencies, jurisdictions, and mandates under one umbrella so the Nation can make environmental decisions in intelligent and consistent ways.

NEPA allows the process of public participation, and any attempt to repeal the rights afforded to the American citizen under NEPA is an affront to the democratic institution of this country and the belief in the citizens' ability to control their own destiny.

NEPA is (inaudible) the participation of diverse agencies and the public. This cooperation leads to areas of agreement and also provides for resolving conflicts before final decisions are made. So sensibility at the start helps to reduce legal challenges to final decisions and helps to avoid the high cost of correcting poorly planned projects, hence the opportunity for NEPA to save money.

In the past 20 years, working through the NEPA process, I have brought important resource information and experience to the planning table to supplement agency personnel and information, especially on national forest issues here in Texas.

In my written testimony, I have included some of these NEPA experiences, but today I just have a few minutes to offer a brief example of how NEPA has been successful in East Texas.

Following a tornado in the Davy Crockett National Forest last year, the Forest Service sought NEPA on the best way to reforest the area after the damaged timber was salvaged. By convening diverse groups and having meetings and working through the NEPA process, a proposal was made to naturally regenerate the area rather than replant seedlings.

As a result of this proposal, all of the objectives of the area were met. The proposal resulted in the least impact to the environment and also resulted in savings of the tens of thousands of dollars in replanting costs.

In terms of meeting its goal to reduce environmental impacts, reduce conflicts, and save money, NEPA has been extremely

successful. NEPA has worked here in East Texas; and as a result, the vast majority of final decisions on the national forests in Texas are implemented without opposition or appeal.

With regard to the Abitibi plant, we are all sympathetic to the hardships caused by unemployment; but we truly believe that (inaudible) are the result of a host of different issues, and NEPA should not be singled out for disproportionate scrutiny.

Also, with regard to NEPA being cited for—cited as (inaudible) to the harvest of timber in the national forests, I would like to address that. Timber harvest objectives are established in the National Forest Management Plan which is mandated by the National Forest Management Act which in turn calls for the (inaudible) resources to meet the various needs and values of the country. So NEPA does not set specific timber value—timber harvest levels.

Also, to put things in perspective, the National—

Miss MCMORRIS. I need to ask you to wrap up, Mr. Shelton.

Mr. SHELTON. OK. Can I have 30 seconds?

Miss MCMORRIS. All right.

Mr. SHELTON. The national forest constitutes only 5 percent of the timberland in East Texas and contributes to only about 3 percent of the timber mix for a harvest year.

The timber industry is, in fact, self-sustaining.

(Inaudible) national forest. The industry no longer depends on the national forest timber harvest ability to be there because it is (inaudible).

So in essence, only 5 percent is national forest land and 85 percent of those are timber harvesting; so in all, 98 percent of East Texas forest lands are open to harvesting. And NEPA has very little impact, as a result, on the timber industry.

I strongly urge the Task Force on Improving National Environmental Policy Act to make no changes to NEPA or to the regulations promulgated by the Council on Environmental Quality and other Federal agencies who implemented NEPA.

Thank you.

Miss MCMORRIS. Thank you.

[The prepared statement of Mr. Shelton follows:]

**Statement of Larry D. Shelton, Trustee,
Texas Committee on Natural Resources (TCNR)**

My name is Larry D. Shelton and I live at 15449 FM 1878 Nacogdoches, TX. 75961. I have lived in Nacogdoches County continuously since 1979. I have been the owner and operator of Osage Woodworks, a custom woodworking business, since 1983. I have been a member of the Texas Committee on Natural Resources (TCNR) since 1985 and have served on the board of trustees since 1994. TCNR is a citizen conservation group that works on conservation and public health issues in both rural and urban areas of Texas and the United States. Since 1997, TCNR has been the state affiliate of the National Wildlife Federation.

TCNR very much appreciates your inviting me to be a witness at this hearing. In my testimony today I offer clear and unambiguous support for retaining the full integrity of the National Environmental Policy Act (NEPA) and to urge this Committee to make NO changes to the substance or intent of NEPA and none to the regulations that have subsequently been promulgated to implement NEPA.

I will discuss some of the benefits that this country has reaped as a result of the passage of NEPA and will share with this committee my personal experience with NEPA over the past 20 years.

The passage of NEPA in 1969 clearly marks a milestone in the long history of America's relationship to its natural resources. NEPA acknowledges the paramount importance of this country's natural resources and the inseparable connection

between Americans and their environment. Additionally NEPA addresses environmental management in a comprehensive and consistent way by establishing specific protocols for the guidance of federal land and resource managers as well as interested and affected parties and user groups of federal lands and resources.

To fully appreciate the logic and intent of NEPA one must first look at the history of America's relationship with the abundant natural resources that constitute our environment. As a young nation our first century was marked by phenomenal expansion and an insatiable consumption of natural resources that at the time were thought to be inexhaustible. Our forefathers cleared the land for crops, often burning or otherwise destroying the virgin forests. In ignorance we depleted the soil through unsustainable farming practices, only to move on when the land would no longer produce. When forests were harvested, it was for quick profit without regard for sustainability, regeneration or maintenance of native wildlife habitat. Wildlife was slaughtered, often to the edge of extinction. The common result of this thoughtless exploitation of resources was a "boom and bust" cycle that frequently left in its wake a trail of economic depression and hardship, community deterioration, impairment of natural resources, and environmental degradation.

Advances in technology and industry through the 1950's further enabled this country to exploit and modify our resources to the point that environmental systems were becoming dysfunctional. The cumulative impacts of chemicals, pesticides and other pollutants were beginning to negatively affect human lives and livelihoods. Loss of habitat was threatening the continued existence of much wildlife, including popular game species. Extensive dam building and water diversions had significantly altered the natural dynamics of the nation's watersheds. By the 1960's the nation was forced to acknowledge that we were facing economic, human health and sustainability crises due to the lack of comprehensive environmental planning and full assessment of environmental impacts and potential alternatives.

NEPA is the result of the courage and diligence of those willing to recognize the lessons learned from our past mistakes and to commit to preventing the repetition of those mistakes. I would like to share with you a very good summary of the importance of NEPA that was provided in 2003 by the General Counsel for the Council on Environmental Quality:

At its heart, the NEPA process is grounded on certain basic beliefs about the relationship between citizens and their government. Those core beliefs include an assumption that citizens should actively participate in their government, that information matters, that the environmental impact assessment process should be implemented with both common sense and imagination, and that there is much about the world that we do not yet understand. NEPA also rests on a belief that the social and economic welfare of human beings is intimately interconnected with the environment. [Dinah Bear, 43 Nat. Resources J. 931, 932 (2003)]

Due to increased population and development pressures, the challenges we face today in terms of managing our environment and resources to benefit people over the long-term are perhaps even more imperative than they were at the time of the original passage of the Act. NEPA acknowledges the significance of environmental management and provides the guidance to carry it out.

The significance of NEPA is paramount in that it calls for the comprehensive disclosure and full accounting of environmental impacts associated with federally funded projects and other actions requiring a federal permit. NEPA establishes a process wherein the public has the right to offer comments prior to final decisions on environmentally significant actions. NEPA mandates consultation with relevant federal, state, and local agencies and provides a comprehensive forum in which to view environmentally significant actions in the light of all current environmental legislation. NEPA calls for the development of multiple alternatives, including the option of "No Action". In some regards the passage of NEPA constitutes a "bill of rights" allowing for the American citizen to engage in the democratic processes of this country regarding actions that have significant environmental impacts. These impacts relate to the physical environment, public health, social, cultural, and personal values, impacts on biotic communities, and economic repercussions.

Any attempt to repeal the rights afforded to the American citizen under NEPA is an affront to the democratic institutions of this country and further reduces the democratic principles Americans support and live by and citizens ability to control their own destiny. The many provisions of NEPA are inseparably linked. To preserve the integrity of the legislation it must be preserved in its entirety.

NEPA Ensures Disclosure of Impacts and Alternatives

NEPA is about creating an informed public by broadly sharing important information that prior to NEPA would have been restricted to a handful of federal bureau-

crats or might never have been developed or analyzed at all. NEPA calls for the full disclosure of environmental impacts associated with federally funded and federally permitted projects. The many actions of the federal government often result in varied impacts not only to the physical environment, but to the economy and on citizen's personal lives as well. It is through the development and public distribution of environmental impact statements that the citizen's "right to know" is maintained.

Environmental impact statements and environmental assessments provide the public with information on the impacts of the proposed action, along with the cumulative impacts of that action when considered together with other related or similar actions. They also must set out a reasonable range of alternative actions for public consideration. The development of alternatives lies at the heart of NEPA. For the average American, this consideration of alternatives is a vital force toward lower-impact and more sensitive project design. Only when the population has ready access to accurate information can members of the public engage fully and competently in the democratic processes of this country. The current federal requirements for reporting impacts associated with the physical environment gives the citizen information that may reveal additional impacts to one's health, finances, property and community. We urge you not to deny citizens the knowledge they need to provide meaningful input in the decisions that affect their lives.

NEPA promotes the democratic process

NEPA allows citizens the right to participate directly in the processes that result in decisions that affect their environment and subsequently impact their lives. Whereas our country is founded on the principles of democracy including the involvement of the public in shaping the laws and decisions of government, NEPA directly empowers the citizen to participate in the democratic process. Americans cherish their freedoms and rights afforded under the laws of this land. Alterations that have been proposed to NEPA would relinquish some of those rights

NEPA is a forum

NEPA provides a framework to view the environmental impacts and significance of federally permitted projects within the context of the full spectrum of laws and mandates applicable to that project. Through the NEPA process a project is analyzed in the light of all natural resource laws including those related to water, air, wildlife, public health, sustainability and land and resource management. Such a forum allows for truly comprehensive disclosure of impacts and the development of alternative actions intended to minimize or mitigate those impacts.

NEPA promotes informed decisions that avoid costly mistakes

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.

NEPA has been a success

NEPA has been a tremendous success. It works. It has provided innumerable benefits to the public by preventing and reducing environmental impacts that also save the federal government money. Because NEPA calls for a comprehensive disclosure of the impacts related to a project as well as public participation we often see a well-reasoned decision making process emerge from the consensus of interdisciplinary management teams and affected publics and user groups. Such cooperation at the planning stages of projects works well toward finding areas of agreement and for resolving conflicts before final decisions are made. Such consensus building at the start helps to reduce legal challenges to final decisions and to avoid the high cost of correcting poorly-planned projects.

Public participation can be a valuable service to government agencies that lack sufficient resources and insight to fully identify and articulate all issues and concerns. The downsizing of government agencies has in many instances left those agencies understaffed and overworked to the point that full development of issues and concerns is not possible without public participation. And it is the full development of issues, concerns and information that leads to consensus building and conflict resolution. NEPA equates to fairness by offering a "level playing field" for those groups competing for the same resources. It helps us manage our natural resources and the impacts associated with using our natural resources in a way that provides enduring benefits to people over the long-term.

My participation in NEPA processes

As a member of TCONR over the past 20 years I have engaged extensively in the NEPA process at many levels. My most persistent work has been with the National Forests and Grasslands in Texas (NFGTX). I provided input to two Land and Resource Management Plan (LRMP) revisions and one amendment. I have worked with planning teams developing management plans for three wilderness areas in Texas as well as numerous other individual project plans. After these 20 years of working closely with federal resource management issues I would claim NEPA to be a rousing success. Coordination between federal, state, and local agencies and affected user groups has led to many projects being fully developed and implemented to the satisfaction of all parties involved. As a representative of TCONR I have often brought important resource information and experience to the planning table to supplement agency personnel and information. The diligent work of all involved parties has resolved conflicts and resulted in a satisfactory decision that was ultimately implemented.

NEPA successes I've witnessed

The following are but two of many examples of NEPA success stories that I have participated in, beginning with a recent episode from the Davy Crockett National Forest. A tornado had damaged a portion of the forest, precipitating a discussion on the best way to salvage damaged timber and then regenerate the area to forest. Through the NEPA process a consensus was reached that satisfied the needs for both salvage and regeneration in a way that was satisfactory to most agency personnel and to participating user groups. Rather than implementing expensive site preparation and replanting of the site, the decision was made to allow natural regeneration after the salvage operation was finished. Natural regeneration of the site will result in savings to the federal government of tens of thousands of dollars in replanting costs—a result driven by NEPA.

In a case on the Sabine National Forest, timber harvesting was planned for portions of a recognized sensitive area. TCONR and other citizen groups expressed concern that high-impact logging would occur in the primary zone of a designated natural heritage site. A scoping meeting and field trip including agency personnel and user groups was held to assess the situation. With only this one-day meeting, a consensus was reached that satisfied all parties. By slightly modifying the sale boundary, to avoid logging the primary protected area and allowing for thinning in the secondary buffer area, all parties involved felt that their objectives were satisfactorily met and the project was greatly improved. These are but two of many such NEPA engagements in which TCONR has been involved that resulted in a satisfactory consensus, decision and implementation.

Attached to my testimony are three other NEPA success stories that were compiled by other TCONR members. If you have questions about those stories, I would be happy to put you in touch with persons who worked with those projects.

NEPA has been misrepresented

Despite the many successes some individuals have sought to distort NEPA's proud record of forging reasoned decisions based on the full spectrum of information, public participation and implementation options. One such example is the case of the Abitibi-Consolidated owned paper mill in Lufkin, Texas.

NEPA has been attacked as one of the cause of the paper mill impasse when in fact NEPA was not relevant to the decision-making process. The decisions about Abitibi were actually the state's obligations under the mandates of the federal Clean Water Act that preclude the downgrade of water quality standards. NPDES permits, such as Abitibi was seeking, are exempted from NEPA.

Because there is misunderstanding about the role of NEPA in the Abitibi case, I think it is appropriate to take a few paragraphs to describe what actually happened. As Abitibi-Consolidated made clear in its public statements when the plant was closed in 2003, this case involves a difficult suite of issues including economics, public health, pollution of public waterways and multiple jurisdictions. In newspaper accounts at the time, Abitibi cited weak markets for newsprint, the weaker market due to the technology industries "bubble" bursting, continuing after-effects of the September 11, 2001 attack on the World Trade Center, a stagnant market dynamic, and high energy costs as among the reasons for the closing. A spokeswoman for Abitibi specifically stated that the shutdown was unrelated to what the company had invested in environment-related projects at the mill, saying that they had met their environmental challenges. Critics have linked NEPA to the increase in costs of energy, but there are a large number of reasons for increase in energy costs. Any impact NEPA would have had, if any, on the plant closing would be

minuscule compared to other factors, such as increased global competition for limited energy supplies and weather-related impacts like hurricane damage.

The paper mill has a decades-long history of discharging industrial effluent into the Angelina River which currently flows into the Sam Rayburn Reservoir. This reservoir is a regional recreation and municipal water supply resource for a multi-county area. The effluent discharge flowing into Sam Rayburn Reservoir has serious public health implications. Warnings have already been posted at the reservoir advising limited fish consumption due to mercury contamination, probably from atmospheric mercury fallout. There is pending litigation regarding alleged dioxin contamination in the reservoir. Sources of pollutants in the reservoir, which the City of Lufkin plans to use as a municipal water supply, are very controversial.

Lufkin's initial plan was to place a water intake at the upper (north) end of the reservoir, close to the city, where the Angelina River enters. The city has made subsequent plans to move the water intake further south on the reservoir, possibly in an attempt to avoid the lower quality water resulting from the industrial effluent discharged from the paper mill. The placement of the water intake further south in the reservoir increases the distance to the city itself, resulting in more pipeline distance (at greater cost), a longer cleared right of way and more energy consumed to pump the water to the city.

Due to the new water intake location the pipeline right of way is now proposed to cross the Angelina National Forest resulting in the permanent loss of federal forest as the land is converted to a cleared right of way. This forest land currently provides forest products, vast public recreational opportunities, jobs to the forest products industry and critical habitat for the endangered red-cockaded woodpecker.

A quick enumeration of the costs and benefits on both sides of the issue reveals the inequity involved in the discharge of pollutants that degrade water quality the mill's proposal to increase the discharge of industrial effluent. The debate over the continued operation of the paper mill at Lufkin has been misconstrued as a simple choice between local jobs and unnecessary government regulation. This perception is simply untrue. It was not NEPA that caused the closing of the Abitibi plant, but rather the overall economic situation concerning the paper mill.

Conclusion

As the world's population increases with each passing year, more pressure is placed upon natural resources and the environment that sustains us. Polls conducted over many years consistently reveal that the great majority of Americans are strongly aware of our important relationship with the environment and that they support conservative resource management. America is considered the world leader in terms of progressive environmental policies enacted to conserve resources, guard public health, promote sustainability and reduce unnecessary impacts during resource management and extraction. This honor has not been achieved by chance but through the conscientious and far-sighted efforts of dedicated leaders. This honor is the result of the passage of the National Environmental Policy Act and over thirty-five years of sound, competent environmental management carried out in a comprehensive and transparent fashion.

NEPA has been a tremendously successful and popular piece of legislation for a number of reasons. NEPA's authors recognized the complex and comprehensive relationship that modern humans have with the environment and penned its provisions accordingly—the Act calls for full and in-depth analysis of potential impacts of proposed actions. NEPA's authors sought to uphold the democratic spirit of government that has shaped so many of our laws—the Act allows for full interagency and interdisciplinary participation as well as that of interested and affected public and private organizations and individuals. NEPA's comprehensive and inclusive approach to planning as well as the development of different alternatives provides the best chances for final decisions to be implemented with the least amount of controversy—the vast majority of final decisions on the National Forests in Texas are implemented without opposition or appeal.

Considering the ongoing high rates of success enjoyed by the NEPA process, the enduring public support for NEPA over the past thirty years and the continued relevance that NEPA holds for the ongoing resource and public health challenges we will be facing for many decades to come, NEPA is as important now as ever.

NEPA has not only served as a stellar domestic policy but has earned for America prestige and respect at the global level. As legislation goes, the text of NEPA is not long, but each of its provisions is important and essential to the integrity of the Act as a whole.

In its current form, NEPA achieves its intended purpose of providing comprehensive environmental and resource policy guidance that provides the greatest benefit to the most people without causing unnecessary impacts or jeopardizing public

safety and health. As a representative of TCONR and a long-time participant in resource planning through NEPA, I strongly urge the Task Force on Improving National Environmental Policy Act to make NO changes to NEPA or to the regulations promulgated by the Council on Environmental Quality and other federal agencies to implement NEPA.

Again, thank you for the opportunity to testify this morning.

ADDITIONAL NEPA SUCCESS STORIES

Sims Bayou Federal Flood Control Project—Compiled by Evelyn Merz

Beginning in 1991, the Houston Regional Group of the Sierra Club questioned the proposed design for the Sims Bayou Federal Flood Control Project contained in the EIS prepared by the U.S. Army Corps of Engineers. Local residents quickly formed the Sims Bayou Coalition (SBC) which mobilized opposition to the Corps's plan to channelize and concrete Sims Bayou.

Under the NEPA process, the Coalition was able to counter the Corps design with an alternative that relied primarily upon detention instead of channelization. Although the Coalition alternative has drafted was not accepted by the Corps, meetings held between the Coalition and its supporters, the Corps, the Harris County Flood Control District, and elected officials from the county and Congress led to an agreement for a vastly improved modification of the original Corps plan in 1992.

In the modified plan, the rigid trapezoidal channel shape was replaced with a flood bench having gently sloping side, most of the concrete was removed and replaced with vegetated slopes over cellular mats, and trees became a part of the design specifications. The residents and representatives from the Corps and Harris County Flood Control walked sections of the project together to determine where the orientation of the channel excavation could be changed to avoid disturbing valuable trees and mapping trees to be saved in place or marking trees to be moved.

As of 2005, the Sims Bayou Project is still under construction and is often used by the Harris County Flood Control District (the local project sponsor) as an example of its new approach to a "greener" form of flood control. The Coalition and other residents benefited from a design that allowed for Sims Bayou to be a green ribbon through its neighborhoods instead of a concrete ditch and offered an opportunity to preserve and restore habitat. The NEPA process allowed all parties to compromise on an acceptable flood control design for Sims Bayou.

Wallisville Reservoir—Compiled by Evelyn Merz

The Wallisville Reservoir project is in Liberty County near the mouth of the Trinity River as it flows into Galveston Bay. Construction began in 1966 and halted in 1974 under an injunction. The Corps of Engineers had not prepared an adequate EIS.

Through following the NEPA process, a 20,000-acre project which would have inflicted major damage upon the Galveston Bayou estuary system was scaled back to a salt-water barrier to protect agricultural water intakes, which was the only valid reason for proposing the project. Water rights sought by the City of Houston through construction of the project were satisfied by the construction of the salt water barrier. The saltwater barrier allowed downstream flows of nutrients which would have been blocked by the original design. The reduction in size and depth of the reservoir allowed the preservation of the Lake Charlotte cypress swamp area.

Lake Jackson Golf Course—Compiled by Brandt Mannchen

From 1995 to 2000 the Houston Regional Group of the Sierra Club, the Houston Audubon Society, and an individual participated in the National Environmental Policy Act (NEPA) process; U.S. Army Corps of Engineers (ACOE) Section 10/404 permit process; and a lawsuit regarding noncompliance with NEPA for ACOE Permit, No. 20271.

The proposal originally would have created a municipal golf course on 400 acres, many of which were wetlands. Due to concerns about wetland impacts the golf course proposal was reduced to approximately 209 acres. Additional mitigation conducted during the NEPA process reduced impacts to 154 acres, with about 54 acres remaining undisturbed.

The lawsuit was filed because the ACOE did not analyze the cumulative environmental impacts that the golf course would have on Columbia Bottomland forests and neo-tropical migrant birds in its environmental assessment. The federal judge ruled that the ACOE must assess cumulative effects due to construction of the golf course. The ACOE did this and the case was dismissed in 2000.

Addendum to Testimony Presented by Larry D. Shelton

Please accept these additional comments relative to my original written TESTIMONY submitted July 20, 2005, and my ORAL TESTIMONY presented on July 23, 2005, in Nacogdoches, Texas. I request that they be submitted into the record of the hearing.

While the hearing was to consider the "Role of NEPA in the Southern States" it was apparent that much of the testimony presented concerned situations where NEPA had no bearing or direct impact. I cite some examples below.

Oil and gas drilling

Many comments were made concerning high energy costs. Delays caused by NEPA were cited as the cause.

Statements presented by Texas Railroad Commissioner Victor Carrillo revealed that Texas in fact has very little federal land and that as a result very little oil and gas drilling in Texas is subject to the NEPA process.

Mr. Carrillo further explained that the state had streamlined the permitting process such that a delay of one to five days for a drilling permit was now reduced in most cases to a single day. Clearly, NEPA is not causing serious delays in oil and gas drilling in Texas.

The committee should also recognize that oil and gas prices are set on the world market and therefore local increases in production do not significantly affect prices as a whole.

The argument presented was that making changes to NEPA would expedite oil and gas production and therefore lower the price of energy. We would hope that the committee recognizes the fallacy of this argument. In fact oil and gas reserves are finite and as reserves dwindle the price will rise based on simple supply and demand principles. Expedited production simply reduces reserves faster. The real reason for escalation in energy costs is that global demand is continually increasing at the same time that reserves are being depleted. Simple logic tells us that increasing demand on finite reserves will result in rising prices until fossil fuels are fully depleted or other energy sources become available.

In summary, testimony presented on July 23, 2005 in fact verified that NEPA has very minimal impact on the length of time needed to obtain a drilling permit in Texas. Oil and gas prices are set on the global market where the United States is a minor producer in comparison to many other countries.

Forestry-related issues

Testimony was presented suggesting that NEPA has had a significant impact on forestry related issues. In fact, federally-managed National Forest land in Texas makes up a very small portion of the overall commercial timberland area—only about 6% of the commercial timberland base is federally owned. Additionally, National Forests contribute only about 3% of the overall mix of forest products harvested in Texas. It should also be noted that of the National Forest land in Texas, 85% is managed for the growth and harvest of pine timber, which means that less than 1% of Texas commercial timber land is taken out of the productive timber base. In reality, the timber industry is able to meet their needs independently of the National Forests due to the extensive industrial and private land base currently being managed for timber harvest. NEPA does NOT place any restrictions on these lands.

Testimony was presented concerning the large blow-down of timber on the Sabine National Forest in 1997. This testimony mentioned a special arrangement made with the Council on Environmental Quality to expedite the salvage of the downed timber. The record shows that the salvage operation was carried out in an expedited manner due to this arrangement and that the current regulations allow for such exceptional circumstances. Testimony presented by Mr. Davis said that "the salvage was carried out successfully." This episode strongly suggests that the current situation is working.

It is worthy of mention that mistakes were made in terms of protecting federal resources apparently due to the wide-spread nature of the operation and insufficient oversight from Forest Service personnel.

Specifically, a Special Management Area that was NOT supposed to be logged was cut over on a Sunday under what appeared to be suspicious circumstances. An additional important point: a Forest Service hydrologist brought in from another region to provide expertise for the salvage effort wrote a letter clearly stating for the Forest Service record that in his professional opinion stream protection as a whole was NOT adequate during the salvage operation. These lapses resulted from the expedited "arrangements" already made under NEPA. We oppose any changes to NEPA

that would make failure to adequately protect resources as mandated a more common occurrence.

Water Development

Testimony was also heard concerning water development and the construction of Marvin Nichols Reservoir on the Sulfur River. From the testimony it was unclear as to specifically how NEPA was influencing that project.

Part of this testimony included a reference to mitigation that would amount to a 10 to 1 compensation rate of mitigated land to inundated land. In 1990 biologists with Texas Parks and Wildlife Department and the U.S. Fish and Wildlife Service estimated that mitigation for Marvin Nichols could range between 163,620 and 648,578 acres, depending on intensity of management. This would be a ratio of 2.3 to 1 for the smaller number of acres and 9 to 1 for the larger number. Proponents of the reservoir are saying that they have done more site-specific studies and are using mitigation cost estimates that indicate roughly a 2 to 1 ratio for Marvin Nichols. Mitigation formulas are admittedly complex but the suggestion that the entire area affected by the lake would be subjected to the 10 to 1 standard is exaggerated by any estimate. At best, only a portion of the site would be subject to the highest rate; other portions of the site would be subject to a lower rate or to no mitigation at all. In reality, the 600,000 acre mitigation figure cited is so unlikely that people close to the reservoir issue, neither proponents nor opponents, routinely use it.

The construction of Marvin Nichols is a state project rather than a federal one. Several other issues figure prominently in the challenges that the proposed lake faces. Among those are the huge impacts to the agricultural and timber economy of Northeast Texas, the length and expense of the pipeline to the nearest market for water, and the fact that the lake would be built to serve the distant Dallas-Fort Worth area that has the highest per capita water consumption rates in the state. The Region C Water Planning Group, the official water planning group established by the Texas Legislature, has shown that there is almost twice as much water available from already-existing reservoirs as will be needed in the Dallas-Fort Worth-North Texas area in the year 2060. The fairness issue is raised when one area is expected to give up productive lands to meet the water needs of other areas with exceptionally high water consumption rates. Again, we urge the Committee to be diligent in separating state from federal issues and in deciding the actual degree of NEPA influence, if any.

Abitibi Consolidated paper mill

The spokeswoman for Abitibi presented testimony that the mill's primary issue was securing a long term supply of lower priced energy. As mentioned above it is very unlikely that world energy prices will significantly decrease considering the ever increasing demand and the finite nature of oil and gas reserves. The Committee must exercise great care in weighing the relative impacts of diverse issues on the price of energy, especially NEPA and the far greater global energy market conditions.

Abitibi also faces significant water quality issues at the state and local level that are minimally influenced by NEPA. At issue is the discharge of industrial effluent into the Angelina River and in turn the Sam Rayburn Reservoir. This Reservoir is a regional recreation and municipal water supply resource. The right of self determination rises to the forefront here as local citizens see the water they use for recreation and water supply polluted. Those of us here in the counties surrounding Sam Rayburn do not want to see any changes in federal statutes that would make it easier for local industries to discharge toxins into our drinking water. Nor should NEPA be cited as the main impediment to the mills operation when the water quality issue is the real problem facing our communities.

The Committee faces a huge challenge in sorting through the diverse testimony and written comments that will be generated as a result of the Task Force's review of NEPA. I strongly urge the members to exercise the utmost caution in segregating actual NEPA issues from state, local and even larger global issues. NEPA should not be used as a scapegoat for unrelated issues.

I would also urge the Committee to maintain its bi-partisan mission to objectively look at the Role of NEPA. At the Nacogdoches hearing, the representatives of southern industrial America were lined up both physically and symbolically in close proximity to members of the Committee. The industrial representatives (including Texas Railroad Commissioner Carillo) argued to the last witness that economic considerations should be elevated in priority such that their respective industries may have quicker and wider access to the natural resources of this country.

I wish to make my belief clear that resource consumption is necessary and a part of all of our lives.

It is the responsibility of the Resources Committee to make the distinction between the original intent of NEPA and this clear lobbying effort of American industries to prioritize their personal economics over all other considerations in resource management decisions. NEPA mandates that all aspects of resource management be considered including the diverse personal values represented in resources and the impacts associated with resource utilization, both for today's Americans and for future generations. There is a strong appearance of bias in this NEPA review process from both the disproportionately large representation of industry on the witness lists and the uniform assertion by those witnesses that NEPA should be changed to allow easier and wider access to resources to increase their profitability. There also appears to be a discrepancy between the mission of the Task Force to "improve" NEPA and the apparent agenda of industrial representative witnesses to weaken its provisions meant to insure strong environmental protection and equity through reduced impacts and comprehensive consideration of resource values.

Again I urge you to make no changes to NEPA that would weaken environmental and human health protection. Additionally a full range of resource values should be considered without prioritizing economics over the others.

Miss MCMORRIS. Ms. Nichols?

STATEMENT OF SANDRA NICHOLS, ATTORNEY WILDLAW

Ms. NICHOLS. Hi. I'm Sandra Nichols. I'm with WildLaw, an environmental nonprofit law firm. I would like to thank Chairwoman McMorris and Representative Gohmert for this opportunity to talk about this.

My organization, WildLaw, has reviewed over 5,000 NEPA documents, including several hundred full Environmental Impact Statements. We work throughout the Southeast and work on a range of environmental issues, but we focus on national forests; so I would like to share with you some of our experiences working with the national forests in Alabama, Mississippi, and Louisiana.

I would like to begin by saying we need to keep this in perspective. The vast majority of projects subject to NEPA proceed without any problems, and there's no controversy or litigation. In fact, changing laws results in more litigation. When the law changes all those (inaudible) are uncertain, and that's when litigation and challenges result.

In fact, NEPA is already a flexible law. The standard of how much information needs to be collected is a reasonable standard. There's no page limit—page requirements for Environmental Impact Statements.

When implemented correctly, NEPA makes projects better. When Federal agents use the law in the spirit in which it was intended, conflicts and potential problems are resolved early in the planning stages. The law allows identification of environmental, social, economic, and historical concerns early on; and they can be resolved before the project—before there's too much invested in the project.

NEPA does not stop projects. Problems with projects stop projects.

We all know from—hearing from across the country the great controversies caused by fire danger in the national forests. The problem is that not only do fires threaten public resources, our national forests; but often communities that are part of the national forests are endangered by this risk, as well.

Well, right next door, in Louisiana, they have a fire danger problem; but we don't hear about it on the news. The Forest Service in Louisiana has used NEPA to do exemplary planning and involved

the community, and there's no objection to their plans. The way that they have accomplished this is by keeping the public informed.

They send out scoping notices with details about what they're planning to do, and they do thorough Environmental Assessments with detailed site-specific information, photos, and they—they inform the public so that the public is aware in advance, and they collaborate. Now, NEPA does not require consensus. It only requires collaboration.

The (inaudible) in the Kisatchie National Forest has won an award for their (inaudible) based on this process.

Another example of a successful implementation of NEPA is from Alabama. The Conecuh National Forest—I've heard mention of the longleaf pine. That's one of the rarest ecosystems in the country. And up until the early '90s, the longleaf was being systematically destroyed by (inaudible).

There was a change in personnel in the agency in Alabama and in—and the new personnel decided that they wanted to restore the historical longleaf and wire grass ecosystem, and they went about it by fully embracing the spirit of NEPA.

NEPA encourages taking a holistic view of resources and gathering full information in order to make informed decisions. One complaint about NEPA is that it requires a lot of procedure.

Well, the personnel at Conecuh found a way to follow NEPA without bogging down their work. They did one large comprehensive Environmental Impact Statement on the whole restoration project. They included all the stakeholders from the area, and they looked at all the resources in the forest.

Now, it did take them some time. For the past five years, they've been implementing their plan out there, working on the ground; and all the stakeholders, including the loggers and all the different (inaudible) in the community are happy with the results.

NEPA resolves conflicts. It allows different perspectives (inaudible) potential problems to be revealed early.

Citizens sue when they're surprised. If they're not informed or if there's a problem with the project, that's when they report it. And the courts—courts aren't biased toward citizen groups. They only stop projects that are actually bad projects.

Because of the great attitude toward NEPA in the three states that we work in, there's no—there's currently no litigation in Alabama, Mississippi, or Louisiana national forest areas on NEPA issues. In fact, the Forest Service actually does a great job of collaborating with citizen groups in these three states.

In conclusion, I would like to say if not for NEPA there would be a lot more litigation. I agree that changes can be made, but they should be changes in the implementation but not the law.

When NEPA—when agency personnel implement NEPA according to the spirit it was intended, if they're motivated to do so, and they're trained to do so, NEPA results in better projects. Thank you very much.

[The prepared statement of Ms. Nichols follows:]

Statement of Sandra Nichols, Staff Attorney, WildLaw

The National Environmental Policy Act¹ (NEPA) is perhaps the shortest federal environmental statute. Yet its benefits are incalculable. In countless cases, NEPA procedure has enabled the discovery of potential problems early enough to resolve them before they became obstacles to the completion of federal projects. This small act's purpose is to require federal agencies to consider the environmental consequences of major federal actions; it is aimed at the federal government and not at individuals or the states. NEPA directs that all federal agencies must include in all "major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on...the environmental impact of the proposed project...."² This requirement is the genesis of what is commonly known as the environmental impact statement (EIS), and the cases that deal with whether a federal agency must prepare an EIS on a particular project are legion.

Congress created NEPA to provide procedural steps for agencies to take prior to initiating projects to assure that the decision maker and the public would be aware of the environmental consequences of the project. When making project decisions, among the factors federal agencies must consider, NEPA requires a look the environment and public concerns. The Supreme Court has held that NEPA is strictly procedural in nature, which means that NEPA requires only that an agency evaluate the environmental consequences of any action. NEPA require agencies to consider the environmental impacts of their decisions, but it does not mandate projects or methods. NEPA requires an agency to take a hard look at environmental impacts, but that agency can still take any course of action. There is no requirement in NEPA that the agency bias its decision in favor of protection of public health and the environment.³

NEPA and the regulations adopted there under by the Council on Environmental Quality (CEQ) are binding on all federal agencies. For every federal project an environmental assessment (EA) must be performed. The main purpose of the EA is to determine whether an EIS needs to be done. If, as a result of the EA, the agency finds that there is no "significant" environmental impact, then the agency issues a Finding Of No Significant Impact (FONSI) and continues with the project. The definition of "significant" has been heavily litigated because if an agency issues a FONSI as the result of its EA, and there are unresolved conflicts about the impacts of the project, those concerned will argue that the FONSI was incorrect and that an EIS must be prepared prior to continuing.

WildLaw attorneys have reviewed more than 5,000 NEPA documents, including several hundred EISs, thousands of EAs, and thousands of Categorical Exclusions (CEs), Decision Memos (DMs) and other related work. We have seen 12-page EAs that fully complied with NEPA, and we have seen 450-page EISs that did not even come close. Page length and "administrative burdens" have nothing to do with whether an agency complies with NEPA or not. It is the attitude of the agency personnel that matters most.

If agency personnel see NEPA as a burdensome hurdle to be overcome, they will inevitably fail to comply with the law. When they see NEPA as a process to improve information collection and decision-making and as a means to improve public participation, they invariably do excellent work, both in the NEPA analysis and on the ground.

Examples of NEPA Working in the Southeast

Kisatchie National Forest, Louisiana

Some U.S. Forest Service District Rangers use the new Healthy Forests Initiative (HFI) authorities (which deal with NEPA requirements, mostly) to shortcut public participation. When they decide to undertake a project on their national forest they send out generalized scoping notices (sometimes no more than two paragraphs) and do not allow public comment on any draft EAs they do. The only information the public ever gets about any categorically excluded HFI project before it is decided is the scoping notice. Thus, if the scoping notice does not give specific details, the public is taken by surprise, after the decisions are made.

Districts in the Kisatchie National Forest, such as the Kisatchie District, send out 5-10 page scoping notices that include detailed maps and several photos of the project areas, all with brief, but clear and detailed, descriptions of the project areas and planned actions.

¹42 U.S.C. " 4321 et seq.

²42 U.S.C. ' 4432(C)(i).

³See generally Robertson v. Methow Valley Citizens Council, 109 S.Ct. 1835 (1989), and Marsh v. Oregon Nat. Resources Council, 109 S.Ct. 1851 (1989).

After a CE project is decided, it is important that the decision memo (DM) cover the analysis done and properly justify the project and the use of the CE under the HFI. Otherwise, a member of the public concerned about the project will have no way to find out more. Commonly, citizens in this position resort to litigation in order to learn the details of the project. Again, districts in the Kisatchie shine in providing detailed DMs, including analysis of data on management indicator species and other surveys, that give a very clear picture of the staff's work and analysis and of the project's proposed actions and impacts.

A good CE scoping notice and a good CE DM can head off much trouble if they show thoughtful, careful and proper use of the HFI authorities in ways that actually do address forest health problems.

If a project is too big for a CE and requires an EA, the agency should send out the draft EA for a reasonable period for public review and comment. Courts have ruled that the public must have a chance to review and comment on a draft EA (or NEPA material that is substantially equivalent to the EA) from the Forest Service.

All the districts in the Kisatchie provide reasonable comment periods on their draft EAs. For an example of an exemplary EA, get a copy of the draft EA for the Little Kisatchie Project Area project from the Kisatchie District. It is a very fine EA giving the reader an excellent and clear review of the project, its purpose and its impacts.

National Forests in Alabama

In 1992, the National Forests in Alabama were the worst in the whole Forest Service system. Their only goal was logging and this negligence resulted in legal violations. A series of lawsuits, appeals and other legal actions shut down all logging in the National Forests in Alabama in 1999. Since then, the leadership of the Forests and much of the staff has changed. Now, the National Forests in Alabama are implementing scientifically-valid restoration programs, all of which were prepared under (and in full compliance with) NEPA. If NEPA can be followed in Alabama, after such dismal failure, such a reversal can be achieved anywhere. The first to do this new type of restoration work, the Conecuh National Forest prepared a full Environmental Impact Statement (EIS) on what restoration is needed for that forest's unique Longleaf Pine/Wiregrass ecosystem (the rarest forest type in North America) and on what work could be done in five years to correct past mismanagement and restore the natural and healthy forest native there. That restoration plan was not challenged legally in any way and is proceeding successfully.

The Talladega National Forest just released their five-year restoration EIS in early 2004. It covers 19,000 acres. They had MIS data for the entire area over several years, and they did complete surveys for endangered, threatened, proposed and sensitive species on every acre of that 19,000 acres.

Now National Forests in Louisiana, Florida and parts of Mississippi are also doing great Longleaf Pine restoration work, all in compliance with NEPA. Population trend data on management indicator species is being collected and analyzed. Survey data on threatened, endangered, and sensitive species is being collected and analyzed. Public participation is open and good. NEPA analysis for most of these projects is exemplary and does not slow down the agency at all. Indeed, most of these forests have found that doing NEPA analysis right, instead of trying to shortcut NEPA, makes their final decisions better and more successful.

How can agencies comply with NEPA? Simple, do these things: Follow the law, use good science, be honest and open with the public.

Which takes longer? (1) Doing a quickie EA in four months, or (2) Doing a full and thorough EIS for two years? Answer: (1).

Consider one timber sale WildLaw challenged in the late 1990s. The EA came out, and it was garbage. We appealed the decision to proceed with the project and we won. The second EA came out much the same, and we appealed and won. The third EA came out, and, yep, we appealed and won again. The fourth EA came out; it was finally better but still lacking. It got stopped by a lawsuit. So, the EA that took four months to do has still not been implemented now eight years after it was started.

Around the same time, the Conecuh National Forest did a full EIS on longleaf pine restoration on the forest; it took them about two years to plan and prepare the EIS. They are now entering year five of that five-year project and are starting the phase two EIS tiered to the first EIS. That Ranger has won numerous awards, got a nice, big Tahoe to drive, and has made the local loggers and politicians happy. Scientists and all environmentalists involved in that forest are pleased. The Ranger who did the crappy EA has disappeared somewhere into the bureaucracy.

Read the Conecuh Longleaf Pine Restoration EIS. It is not a long EIS in page-length as it is a good example of site-specific detail and data without unnecessary filler. When they did it, they got a lot of flack within the agency about how "this is not the way we do things," but guess what? Once it was done, it was not appealed or sued over (not even by that 5% who oppose logging on principle), and the Conecuh is now winning awards and national recognition for their work. And rightfully so. Now, all the forests in Alabama are doing restoration EISs. The analysis work takes longer than for an EA but the result is MUCH better.

Below are photos showing how the Conecuh National Forest uses clearcuts with reserves to eliminate unnatural Slash Pine plantations to restore them to native Longleaf Pine:

NOTE: The following pictures have been retained in the Committee's official files.

- Figure 1: All Longleaf is retained and debris is spread to prevent erosion and rutting.
- Figure 2: Longleaf seedlings are planted and prescribed fire maintains the composition of the stand.
- Figure 3: Longleaf forest in need of fire.
- Figure 4: Prescribed fire in action.
- Figure 5: Restored Longleaf forest after thinning and with regular prescribed fire.

Also, you don't see massive wildfires on Alabama's National Forests, precisely because they have a well-planned work program to restore the natural forests, including regular prescribed fire. Instead of disingenuously claiming that clearcuts done to get the cut out "mimic natural processes," they are actually restoring and assisting natural processes. These photos show how using prescribed fire for restoration purposes works in the Conecuh National Forest.

The other National Forests would do well to learn from the Conecuh in Alabama. They should take a year or two to do a full and excellent EIS on what restoration really means for their district or forest. If they consider all forest needs, road repair and road obliteration, stream rehabilitation, indeed entire watershed rehabilitation, etc., and involve all stakeholders at every step they will be in a vastly better position for future projects. It is more effective to do a comprehensive analysis than to analyze individual projects which cumulatively are big. Yes, that takes longer than an EA, BUT the rewards could be significant. They include:

- No need to do NEPA analysis, National Forest Management Act data collection or Endangered Species consultation for five years. Instead of doing EAs and having to do the same analysis over and over for each project, do all the analysis at once and do 20 projects together as one restoration plan. Then, the 20 projects will make more sense and do a better job for the land than if you did them all piecemeal. Do the analysis once and then do work in the woods for five years before you have to do analysis again.
- 95% of your opposition will be gone. Why? If you comply with the law, collect and use good data, utilize good science and be open with everyone and keep them involved, the result will be better. Sure, there is 5% out there who will oppose anything the Forest Service (or other federal agencies) does, but how often do they sue? They do occasionally, but they only win when the agency has broken the law.
- Make your work truly bulletproof. For years WildLaw has heard about Forest Service people trying to "bulletproof" their EAs by using certain language or by making up shortcuts that they think will look like compliance with the law. Guess how many of these "bulletproof" EAs WildLaw has been able to shoot dead? The only way to "bulletproof" your work is to do the work right. Follow the law, use good science, be honest and open with the public, and no attorney with any sense will dare sue you.
- Awards, big vehicles, commendations, accolades, promotions and fast career advancement (for solving the "analysis paralysis"), admiration from your fellow agency people and from a variety of folks in the public, and good beer and fine whiskey.

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. And over again....

The solution to NEPA "burdens" lies not in changing the rules of analysis but in changing how the analysis is done. For too long, agencies have compartmentalized (literally) their work. Trying to make each project look small and insignificant seemed like a good way to avoid doing population data collection, cumulative

impacts analysis and a host of other things required by law for “big” projects. That hasn’t worked too well, has it?

Agencies need to stop looking at compartments and individual projects. Instead, they should use NEPA as a tool to assess what the land needs and what they can do to meet those needs over a longer term, at least five years. This is not project planning but rather an approach to how to implement plans with a broad vision instead of a microscope.

Main problems we see with EAs (in no particular order)(and many of these will be in the context of National Forest projects, which we review the most):

1. Emphasis with packing EA with boilerplate language. More does not make better; better makes better.
2. Lack of site-specific information about the project area and the impacts to it.
3. Lack of cumulative impacts identification and assessment.
4. Failure to consult with and use the expertise of local scientists.
5. In the rare species realm, the idea that “if we assume they are there and plan the project accordingly, things are okay.” The idea that you do not impact rare species if you assume they are there is a fallacy. It is impossible to know that mitigation measures and other actions to reduce impacts to rare species work unless there is some science showing they do. If you do not survey for rare species and just assume they are there, you have no way to know if your assumed mitigation works. Example: you can assume that Passenger Pigeons are in a project area and execute the project and its mitigation accordingly, but you will not have any Pigeons when you are done.
6. Conversely, without truly looking for sensitive species there is no way to know whether they are present in a project area and how a project may impact them.
7. Similar to the above, the assumption that leaving habitat available for a species means that the species uses it. Without actual, on-the-ground, survey data, you have no way to know this. Example: the National Forests in the South have plenty of good habitat for Passenger Pigeons, so that means we have lots of them, right? You can build a \$100 million baseball stadium in Slapout, Alabama, but that does not mean a major league team will use it. In order to know you are doing the right thing, you must know the facts about the land and about the impacts of your actions on it; you cannot guess, estimate, speculate or model reality. You have to know to know.
8. Lack of reasonable alternatives. Some EAs have even had only one action alternative (with the obligatory but readily dismissed “no action” alternative). Really give consideration to the “no action” alternative; it won’t kill you, honest. I know of two Forest Service projects (one in AL and one in LA) where, once the Ranger gave real thought to the “no action” alternative, they chose it. Action is not always the best action.
9. Do not limit your decision or your alternatives by drawing up an artificially narrow purpose and need for the action. Remember: if we can show a court that you fiddled with the purpose and need to predestine the outcome, we can get the project enjoined no matter how well you complied with the laws after that. Some forests are now giving full consideration to noncommercial methods of achieving the purpose and need; doing so does not mean you have to choose it but failing to consider the option when it is possible means losing in court. But some districts have chosen noncommercial alternatives, particularly for thinning young, dense stands of pines. Sometimes, not selling trees works best.
10. Conversion of natural forests, example: hardwoods to pine.
11. Perpetuation of problems. We saw half a dozen Southern Pine Beetle projects in 2001-02 that planned on logging infected Loblolly Pine and then planting Loblolly right back again. You cannot solve a problem if the solution recreates the very conditions that caused the problem in the first place. If you are not going to truly solve a problem, it would be better just to leave it alone. Districts that solved the problem replanted with Longleaf, which was what was supposed to be there.
12. BEs based on lack of data from project site and on overall population data on rare species.
13. “Site-specific” information that is clearly wrong. We do check the sites of projects from time to time; we won’t claim that we check every stand in every project, as we don’t have enough people or money for that. But we get out to more of them than you will ever know. The odds are if you are misrepresenting the situation on the ground, we will nail you on it sooner or later.

14. Assumption that “because what we are doing is supposed to be good for the environment, then we don’t have to do much analysis.” NEPA requires equal identification and analysis of all impacts, even “good” ones, to make sure that the real result of a proposal can be reasonably known ahead of time.
15. Use of “paper reality.” Example: “Visual Quality Objectives will not change due to clearcut.” VQOs are standards set on paper, and they are changed by changing the paper; they won’t change even if a nuclear blast hits the site. A clearcut will change the scenic and visual quality of an area even if Plan and paperwork says the VQO stays the same. NEPA requires assessment of real world impacts, and that duty cannot be foregone by saying your paper classifications would be changed by timber cut. Another example: classifying a site as a “pine site” in order to claim that cutting down the 100-year-old hardwoods there is “not conversion.”
16. Failure to show how mitigation measures will be applied in a site-specific manner and how they will work. Merely listing mitigation measures in the EA is not legally sufficient. You must show that they will reduce impacts to a level of insignificance or you HAVE TO prepare an EIS. If you have used those mitigation methods in the past and they have worked, don’t just say so; demonstrate that success in the EA through data, studies, research or even well-documented observations and photographs. Although a scientific study on how stream buffers in your district did indeed prevent sediment from entering the water is best, accounts of actual field observations of similar buffers on similar slopes and soils in the past that did show that sediment stopped yards from the stream is an acceptable demonstration of the impacts and results of mitigation. Unsupported claims of “best professional judgment” mean nothing, but judgment based on documented past experience is something worthwhile. Include in the EA accounts of past similar projects and how the mitigation measures worked there; include photos, maps, field notes, etc.
17. Misunderstanding of the “significance” standard in NEPA. An EIS must be prepared unless the agency can show that the impacts will be insignificant, either in themselves or through use of properly documented mitigation measures. If the impacts might be significant, or if the agency just does not know if they will be significant or not, the agency must prepare an EIS. Most districts assume that unless the impacts are clearly shown to be significant, then an EA is all that is needed; that is not the law. NEPA assumes that an EIS is required unless the EA can prove that the impacts will not be significant; failure to make that proof mandates an EIS. The burden is NOT on the public or environmental groups to prove significance.
18. Minimization of negative impacts, a lack of honesty about things being bad. Example: claims that a clearcut will not look bad, it will provide “visual diversity” or “a deeper view into the forest.” Use of euphemisms or contrived language (“timber harvest,” “visual diversity,” “regeneration cut,” etc.) Don’t make ridiculous claims like “portions of the public like how clearcuts look.” Yes, the 1/10 of 1% of the public who are loggers may like a clearcut but to “balance” that evenly with the 99.9% of people who do not is just deceptive. BE HONEST! A clearcut to restore the native forest type WILL look bad for many years; admit that but explain clearly that the adverse visual impact is needed to get the beneficial result of restoring the natural forest in that area. Admit where you lack data. Admit where you do not know if mitigation measures will work. We will be inclined to work with you to address those deficiencies if you admit them, but if you hide them, we will attack you (and rightfully so).
19. Attempts to minimize negative impacts by artificially limiting space and time of impacts analysis. Examples: using a three-year time frame for assessing impacts from clearcuts; real world impacts from a clearcut last much longer than three years. Limiting analysis to artificial boundaries such as compartments or “action area” or a conveniently drawn “project area.” A clearcut in compartment X will have cumulative impacts (scenic, wildlife, etc.) with a clearcut 30 feet across a road from it in Compartment Y, but if EA analysis only looks at Compartment X or the watershed that holds X (although X and Y are compartments next to each other at the top of two adjacent watersheds), real world impacts will be ignored and public will be deceived by the paper. But a judge will see my photographs and video showing how you missed a cumulative impact that was just 30 feet from your project.
20. Attempts to force inappropriate projects into types that are categorically excluded from the requirement to conduct an EA. If the project is valid, considering the environmental impacts and informing the public can only make it better.

Suggestions for ways an agency can improve its NEPA compliance (in no particular order):

1. Better maps in EAs (need clear copies, color works best).
2. More detailed scoping notices.
3. Provide more information on projects even when they are categorically excluded from the EA requirement.
4. Distribute EAs and EISs on CD-ROM in addition to paper. You will save paper, and those of us who are computer savvy will appreciate it.
5. More site-specific description and information.
6. More identification and assessment of cumulative impacts. Really monitor after the project and develop real data on what impacts are. This will be very useful to you for future projects.
7. Less boilerplate language. Use it only when really appropriate; do not try to use it as a substitute for real work. Packing an EA or EIS with irrelevant information is a waste of your time; it will not "bulletproof" your work.
8. Use local data and studies. Less reliance on distant studies to justify action. Example: a southern National Forest in the 1990s used New England bird studies (from more than 1000 miles away) on impacts from clearcuts planned in Alabama (totally irrelevant to local climate, forests and bird species) and rejected local studies done in that very district by the state's foremost ornithologist; even though those local studies were complementary to 80% of what the district was doing in its timber program. Things like this make for easy winning appeals and lawsuits for us.
9. Seek out and use work and opinions of local experts. Local university scientists, studies funded by environmental groups (For five years, WildLaw and its client Wild Alabama funded more studies on the National Forests of Alabama than anyone, including the agency), Natural Heritage Programs, National Speleological Society (for finding caves and assessing them for endangered bats), etc. The Forest Service admits it lacks resources to do all the scientific research it would like, so you need to be more proactive in getting help from outside sources. Form networks with experts BEFORE projects are proposed and get their input at all stages. Don't just assume experts will know about projects and comment if needed, because often they do not.
10. Consider more alternatives.
11. Give consideration to economic impacts other than those that support the proposal. For example, when planning a timber sale, consider the effects of lost recreational use.
12. Use reality. If real world and paper classifications do not match, admit it and assess the real world impacts; do not sweep them under the rug.
13. Admit it when you don't know things. NEPA does not require perfect knowledge but a reasonable attempt to identify impacts. Do the best you can and admit data gaps. "Best professional judgment" means nothing when you have collected no data; when you use your "judgment" on a foundation of nothing, you are just guessing, and smart judges know it. But when you have made a good, honest effort to collect what data and research you could and then make reasonable assumptions based on best professional judgment to fill gaps, that can be okay.
14. And when in doubt about the data and impacts, be humble and act cautiously. Do not take a "see no evil" approach. Be respectful of the fact that you really do not know everything there is to know about a forest; no one every will. Environmentalists are much more willing to work with agency people who recognize and admit the limitations of their knowledge. Agency people who act like they know it all are big, bright (and EASY) targets for us.
15. Give equal weight to other uses of the land in question.
16. Give REAL consideration to the thoughts, ideas, and (yes) feelings of the people who use and love the area. In some areas and in many ways, the people who use the area for hunting, hiking, etc. do indeed know the place better than the agency people do, and you must be honest and brave enough to admit that fact and REALLY seek their help. Do not just pretend to seek public input and then brush it off and do what you want anyway. Example: a number of truly world-class archeological finds have been made on the Bankhead National Forest in the last 15 years, ALL by local people, none by the Forest Service.
17. Distribute information widely. Make the mailing lists open; assume that people want the stuff unless they tell you otherwise. Do not try ways to get people off the list so that you can "hide" projects from them; do not send out quarterly notices saying, "If you do not return this card within ten days, we will assume you have no further interest and will drop you from the list."

Your default should be that people are interested until they say they are not, not the reverse. In this age of electronic mailing lists, you have no excuse for not including everyone on everything.

18. Get out into the woods with environmentalists. We are not your enemies, unless force us to be. WildLaw has often found common ground while actually out standing on the ground and discussing things as we saw them. Invite all environmentalists who comment or show interest in your forest for hikes, cook outs, canoeing, camping, whatever. Those who are truly interested in the forest and the project will accept and be willing to talk with you. Those who refuse your repeated attempts to reach out to them are more interested in their agenda than anything real; we cannot help you with those folks other than to say to do your job right and the best you can and ignore them the best you can. If you comply with the law, they cannot beat you in court. Environmentalists only win in court when they are right; there is no "bias" among federal judges toward environmentalists. We have practiced before more than 200 judges; none of them let us have what we wanted just because we wanted it.

Remember: if an agency hides things, minimizes real world impacts or evades full compliance with the laws and regulations, the public will assume that it is up to something, and they will challenge the proposal. Even if a proposal will have beneficial results (such as restoring the natural forests in that area), if you cut corners, we have to assume that you are up to something dastardly. Otherwise, why would you be cutting corners? Honesty and openness in all things will do you much more good than anything else.

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.

I deeply appreciate this opportunity to address the Committee and present this testimony before it. I remain committed to working with the Committee's members and staff to find real solutions for making NEPA a better and more effective law. Representative Joe Barton has publicly invited environmental groups "to come out of the trenches" and meet you halfway. If that invitation is truly sincere, as we believe it is, we are here to do that.

Thank you,

Miss MCMORRIS. Thank you. Excellent testimony. Congressman Gohmert and I are going to take turns now asking questions.

I'll let you start.

Mr. GOHMERT. (Inaudible) I really appreciate your time. (Inaudible). So let me go straight to our Texas Chairman of the Railroad Commission.

You had mentioned in your testimony, Chairman, that there was some storm water runoff issues that apparently you didn't get to. Would you care to address that issue?

Mr. CARRILLO. Yeah. There's some particular provisions to the proposed EPA rulemaking under the NPDES storm water permits that would potentially require a storm water permit for oil and gas operators for activities affecting 1 acre or more of activity, particularly with what's referred to as the common plan of development concept in the Construction General Permit.

From my perspective, what would happen is—if that occurs is—that EPA's rule would really improperly seek to put oil and gas exploration and development—categorize it as if it was residential/commercial development. There are big differences in residential and commercial development. Clearly, if you're building a subdivision, you start out here and you know you're going to have 500 homes, you can plan.

You can say that, yes, indeed, the total activity is going to impact this certain amount of acreage.

In oil and gas development, for example—I'll give you an example. You may spend 2 1/2 million dollars to drill a well and you— you certainly have plans to develop that property beyond that; but it could very well be that that is a dry hole and you abandon those plans and the impact ultimately ended up being just one pad site.

So there's some rules that are being considered that I think could negatively impact development to the tune of—one study said it could cost the country from 1.3 to 3.9 billion barrels of domestic oil production and 15 to 45 trillion cubic feet of domestic gas production over the next 20 years.

To put that in perspective, Councilman, taking the median of those numbers—that represents over five total years of Texas natural gas production and over seven years of Texas oil production that would be lost.

And the issue, as I see it—and I recognize that we're doing—NEPA is kind of used as an umbrella through which all of these other laws are considered, whether it's the Clean Water Act, Clean Air Act, Endangered Species Act, et cetera. And so while it doesn't relate directly to NEPA, I think due to the—due to the fact that you're dealing with these additional environmental laws, it does come into play.

Mr. GOHMERT. Let me follow up, too. You're familiar with hydraulic fracturing, for example. I understood that the State of Texas had a program that's worked for a hundred years that has oversight over hydraulic fracturing. Can you explain some of the steps in place that—the Texas regulations that protect the environment and perhaps that could be exported into the Federal level?

Mr. CARRILLO. Hydraulic fracturing refers to fracturing the subsurface strata, generally thousands of feet below the surface, to release oil and gas that is—that is currently trapped under there. The Barnett Shale Gas Play, the hottest gas play in the State of Texas, and one of the biggest and most important plays in the nation, is just under the City of Fort Worth and surrounding counties.

If we—if industry was not allowed to fracture the rock and the subsurface that—that play would not be a viable economic play. That represents about 26 trillion cubic feet of natural gas potential.

So at the very time that this nation needs more energy resources—we're importing about 50 percent of our oil—we're actually importing gasoline right now, and we're looking to build liquified natural gas facilities. This is the very time that we need to encourage more domestic production, not unnecessarily discourage it.

Now, hydraulic fracturing does have a history—about a hundred years here in the state—of production without any known damage to groundwater resources, because, in fact, the fracturing is limited to those strata thousands of feet underground, not anywhere near the—the near surface, I guess, groundwater resources.

And so I guess my encouragement is to give the states more flexibility to deal with these issues internally as opposed to having a Federal answer—one-size-fits-all answer to the very different and varying problems of the individual states that I believe deal with them and do on a regular basis.

Mr. GOHMERT. Thank you, Chairman.

Miss MCMORRIS. I wanted to direct a question to Mr. Dructor. I was—found it interesting to hear about the alternative arrangement that was made with the CEQ in response to the wind that (inaudible). I understand that you mentioned in your testimony it was only the 38th time that they had granted such a request.

I wanted to ask if you—were alternative arrangements used to expedite other restoration activities such as reforestation? If not, what do you believe were the consequences?

Mr. DRUCTOR. I think according to Mr. Davis' testimony and what I saw in the photos he presented, there's evidence there that the alternative NEPA arrangements (inaudible) harvesting activities of that timber.

When it came down to reforestation projects and NEPA processes were involved, full EISs had to be administered; and because of that—those pictures were taken on July 13th of this year. When I was out there looking last week, taking those pictures, they were still doing sod prep (inaudible). They hadn't been planted yet.

And so we're looking at trees that haven't been put in the ground versus 15- to 20-year-old trees already re-establishing. And as a result of that, you know, we're losing habitat for our Red-cockaded Woodpecker every time one of these storms hits. And the frequency of these storms is not just every once in a while. It's quite often in the southern forests due to hurricanes, tornadoes, windstorms, all that.

And so if we're really going to be concerned about protecting these Red-cockaded Woodpeckers, we need to get something done a little bit faster. And we propose, you know, to do that, we need to look at some alternative ways to evoke NEPA or to streamline NEPA to get these projects underway.

I think it's amazing that, you know, that out of the 2 billion board foot allowable to be cut right now, the Forest Service are under litigation for 1.6 billion board feet. So is NEPA working? I don't think so.

I brought this with me. I'm sorry I didn't have time to show it a minute ago. This is the timber sale volume that is under litigation across the national forests throughout the United States. And certainly, you heard we don't have but about 3 percent of volume of Federal lands in Texas. In Region 8, where we fall, we have 50 million board foot of timber that's under litigation.

Miss MCMORRIS. I'm in Region 6.

Mr. DRUCTOR. Pardon?

Miss MCMORRIS. I'm in Region 6.

Mr. DRUCTOR. Region 6? Yes, Washington. There's 277 million board foot under litigation. And this doesn't include the timber in the Timber Sale Program that's under appeals prior to being (inaudible). It's being determined how it's going to be managed.

So is NEPA working? Are we using the best process? I think NEPA has got good (inaudible) to it, but we need to take it back to its original intent.

Miss MCMORRIS. If we were to put something, you know, administratively to establish an alternative arrangement, how do you believe it would impact public participation? Because that is one of the bases of the NEPA process, encouraging—we want to be encouraging public participation. Can you talk to me a little bit about

how, you know, we could encourage more people in this process with arrangements—how it might impact public participation?

Mr. DRUCTOR. Well, I think—I think, again, you have to get it back down to more of the local level. You can't do everything out of Washington, D.C. We've got the (inaudible) office building right here at Stephen F. Austin State University.

These guys (inaudible) for our forests, and they know what's going on on the ground. We can't legislate and set forest policy (inaudible) each individual impact down here on our forests. We've got to get control back to the local levels and invite public input on the processes, the local folks who it's going to have the biggest impact on.

Miss MCMORRIS. In your written testimony, you referred to an assessment by Congressman Greg Walden of the timber sales program; and you were commenting a little bit about it, you know, I think, by showing this chart, the state of timber sales program. What do you feel the effect has been on local communities?

Mr. DRUCTOR. Devastating. I certainly know of mills that have closed here in East Texas because they were dependent on Forest Service timber sales, (inaudible) in Huntsville, Texas, and a few others around. Because they didn't own their own acreage, they had to go out and buy—the Forest Service usually had some set-aside sales where they could go out and get on those (inaudible) support.

So I think it's (inaudible) important when you start getting an even analysis of what are the economic impacts. I don't think there's enough emphasis put on—in the NEPA analysis of how it's going to affect the local economies.

Miss MCMORRIS. Thank you.

Mr. GOHMERT. I'd like to hear from Ms. Nichols.

Ms. Nichols, I appreciate your comments and appreciate the information you also provided in writing. We don't know each other personally, but I've heard a good deal about your organization and you personally, and the—

From my understanding, you and your organization are a great example of how people can approach things from two different positions in concern for the environment that your organization has and concern for individuals and families that are adversely impacted. My understanding is that your group has worked well with other groups, that you try to arouse common sense.

You testified a moment ago that the vast majority of your projects proceed without any problems. From what I understand, that may be true because of the commonsense approach that you've had in protecting the environment. But from testimony we've seen around the country, with litigation just skyrocketing over the last 35 years and continuing that rapid growth and—for example, as board feet continue to decline in inverse proportion to the amount of litigation—it seems that it's—not everyone uses good judgment in trying to protect the environment, as I understand you and your group have. So I think you-all are to be applauded.

I do need to make—since all of this is being recorded and will be part of our Congressional Record on this issue, with regard to (inaudible) and Environmental Impact Statements, Section 1502.7 requires that there not be—the final EIS shall normally not be less

than—I'm sorry—shall normally be less than 150 pages; and proposals of unusual scope and complexity shall normally be less than 300 pages.

But when you—you say that NEPA resolves conflicts. I mean, we're seeing this heightened litigation that's created more conflicts; and we saw in our hearing in Spokane where there were, like, eight feet or more of just documents over a (inaudible) less than a mile of road. It's been in litigation for years.

I really appreciate your approach; so let me just ask: How is it that you have been able—what have you done to work with groups to come to conclusions so that you can say the majority of the projects proceed without problems? What are you—how do you—

Ms. NICHOLS. Well, I have to start—thank you. I have to point out that there are always going to be people with extreme positions on both sides; so there will always be conflicts of this type, and it's not—NEPA doesn't give them any advantage. People would be objecting to development projects, no matter what.

Our approach is that, you know, logging trees is legal. Mining is legal. All these projects are very important to our economy, but we just want to see them done in the best way possible.

And from our perspective, NEPA—when—with an emphasis on when it is implemented correctly. If the stakeholders are involved and there's collaboration and different perspectives are respected, conflicts get resolved. It's really when people are shut out of the process—we are talking—NEPA only affects public resources; so when people are—when the public is shut out of the process, they're more inclined to sue, even if it turns out it's a good project.

If they're listened to, if informed, and their perspective is at least considered—and we all know NEPA doesn't dictate how Federal agencies do their work. They can still do with any project what they want; but 99 times out of a hundred when concerns are at least considered and decisions are explained, then most reasonable people will try not to fuss.

Is that basically what you're saying?

Mr. GOHMERT. Uh-huh. I appreciate that insight, yes, ma'am.

Ms. NICHOLS. Thank you.

Mr. GOHMERT. And let me also mention that it seems that one of the problems we hear is it's not necessarily just NEPA, itself; but as with any law that Congress passes and—then you get the agencies involved and people that are not elected ending up giving their twists on regular—regulations, it ends up creating more problems for individuals than was ever intended by the laws.

And so as you continue to answer questions, if you know of regulations that have created problems that we can address rather than the law, itself, then that would be a good insight.

If I might just add this last: I like this as an example of regulations being completely different from the law's intent. Congress wanted, after 9/11, for airline pilots to have the right to carry guns in the cockpit. If they're going to fly one of the biggest weapons in America, a jet airliner, then surely, they can be trusted to have a gun.

And I asked one of the pilots, "Do you-all carry guns?" And he said, "Do you know what the regulations are in order to carry a gun? We've got to go through this intensive psychological review

and testing and all these rigorous requirements.” Most people are not going to—and that becomes part of your permanent file. Well, nobody wants all this psychological testing in their file. Regulators knew that; so they overcame the will of Congress just by the regulations they put in place.

So any insight that you might have about Federal regulations that we need to get after will be helpful.

Miss MCMORRIS. And I might just mention that our goal is—as a Task Force, we haven’t yet figured out what our recommendations will be, but it is—there could be recommendations to the statute or to the way NEPA is implemented; so we’re open to any suggestions you might have.

I want to get back to Ms. Johnston. You said that the plan was impacted by the high natural gas prices, and we wanted to share with the audience—we have a chart that shows natural gas prices around the world, and I think it is important to note that we, in this country, are paying the highest of any country around the world.

Ms. JOHNSTON, can you just talk a bit more about your—you know, you made some choices, using what was probably the most environmentally friendly option that you had; and yet those choices ultimately affected your decision to shut down the mill; is that correct?

Ms. JOHNSTON. Yes, that is correct. And as I stated in my testimony earlier, the infrastructure—the energy infrastructure of the mill was put in place at a time when natural gas was plentiful and inexpensive, and so we saved money. And certainly, we didn’t see the kind of prices that we experienced in 2002 and 2003. Prior to that time, we did have fluctuations in gas prices, but nothing like the levels that we saw at that particular time and have continued to sustain themselves, which was a huge problem.

The other problem was we were making product that did not have high profit margins; so we weren’t able to build additional costs into price of the product. And so with no end in sight in gas prices, the only decision that the company could make at that time was to close the facility, take a step back, and look and see if there aren’t some other energy options that could be pursued to give us some relief on the costs.

Miss MCMORRIS. Just so everyone understands, NEPA does come into play in natural gas contracts. The government considers open-land explorations or giving lease permits, and I wanted just to ask: What do you think it would take for you to be able to plan and make appropriate cost adjustments? If supply were increased, that might lead to more stable pricing. Would that be something that would be helpful?

Ms. JOHNSTON. Certainly. And you are exactly correct in connection with closing the mill. The fact that—one of the primary reasons that the facility closed was because of these energy costs (inaudible) current configuration with prices in natural gas.

And if exploration and drilling were expanded for natural gas, that would increase the supply, and we believe that it would impact the pricing of natural gas. We are a perfect example of what happens to a facility when the prices remain high and we can’t overcome them by incorporating them into our prices.

Miss MCMORRIS. Good.

Mr. Carrillo, I want to follow up. You made some statements related to the difference between state and the Federal processes and talked about the state—you were able to work through the state process in 25 to 35 percent of the time it takes to meet Federal requirements.

I wanted just to have you talk a little bit more about some of the differences; and from that experience, if you have some recommendations as to how we might be able to improve the process, that would be—

Mr. CARRILLO. Certainly. Thank you. Actually, I would like to follow up on her response briefly. I think one of the things that I mentioned but didn't elaborate on is that for the good of the Nation and on a long-term basis, developing a liquefied natural gas facility to bring natural gas to some of these places far away from where the natural gas is said to be stranded, is less expensive than bringing it (inaudible) is an answer—may be the answer for stabilizing natural gas prices over the long term.

I do think that the American public needs to brace themselves, frankly, for relatively high energy prices for, you know, the mid—short term to mid term; but, ultimately, some of these prices can be stabilized by what you said, increasing domestic production and, frankly, building an LNG facility, which we are doing, as I mentioned—Texas, Louisiana, and the Gulf Coast areas are doing. Even those areas in the northeast and west aren't willing to have these facilities along their shores; so that's one (inaudible).

With regard to your question—and I was specifically mentioning—referring to permits to drill oil and natural gas. And I mentioned that we, here in Texas, have almost 50 percent of the total activity across the Nation in terms of onshore drilling.

Typically—for example, at our state agency, we're on pace to approve some 15,000 drilling permits this year.

That's a huge number of drilling permits. We have a system in place where, under normal circumstances, that takes from about one to five days. We have an expedited process, frankly. Operators can pay an additional fee; and they can walk it through, basically. And we can have a typical turnaround time of one day.

We also have, over the years, increased our electronic filing ability so people can, from their office through the computer, via the Internet, submit their forms. We can process them more efficiently and do a turnaround time that's much quicker, and that is one thing—I'm not that familiar with the Federal process and whether electronic processing is available, but it should be. It should be encouraged. It certainly enhances the speed with which one can get that accomplished.

I don't know if that answers your question.

Miss MCMORRIS. Thank you.

Mr. GOHMERT. Following up on the permit issue and the ability of the Railroad Commission to process permits promptly, apparently, you have the data in place that allows you to examine what will be impacted by a particular permit; is that correct, so it can be reviewed.

Mr. CARRILLO. Certainly. And we have cooperative working relations with other state agencies. For example, we can get informa-

tion from the CEQ and Water Board that tells us to what depth is drinking quality water found so that we, in our requirements—our regulations require adequate protection of that water be—occur with the operator.

So there's a lot of cooperation with different agencies that—I know it's more difficult at the Federal level, but it needs to be encouraged.

I don't know if that answers—

Mr. GOHMERT. Yes, it does. And so—so in consideration of a permit and whether or not you approve it, you take into consideration the drinking water, the groundwater, those different aspects that are so vital to the rest of us. Is that accurate?

Mr. CARRILLO. That is accurate. And frankly, I mean, there's been oil and gas drilling activity here for over a hundred years. Over a million wells have been drilled in Texas; so a lot of it comes with the fact that we have just, over the years, had to develop some processes to work these efficiently through the system.

Texas is also rather fortunate that we—there's very little federally owned land as opposed to some of the other western states, in particular; so it really doesn't—some of these Federal laws and regulations don't necessarily impact the state or the industry to the degree that they do in certain other states, particularly in the west.

Mr. GOHMERT. Following up on permits, Ms. Johnston, is it your experience with Abitibi that you-all could pretty well get permits reviewed and a definitive answer in one to five days?

Ms. JOHNSTON. That's a loaded question.

Mr. GOHMERT. That's an opening to discuss any permit problems that you face.

Ms. JOHNSTON. Well, (inaudible). Congressman, as you're aware, we have had a problem. We've had a (inaudible) permit that has been hanging out there for probably five to seven years. The permitting process—now, this is state, not Federal; but it does begin to be quite burdensome. And as many of my colleagues have said, it leads to additional costs and drain on the company.

Mr. GOHMERT. Well, Mr. Dean, you brought up, obviously, water; and obviously, you've been an active advocate on water issues. And then we've heard from Ms. Nichols that one of the keys is getting adequate input from the public—getting adequate information and availability from and through the public and to the public.

What's your sense about the effect that—public comments you've made and others have made on the water laws that you've been discussing?

Mr. DEAN. Well, one thing—it seems like the public comments are invited, but then the reaction to those comments is—has been—it seems to be falling on deaf ears.

And the point about trying to get—I've talked to the Corps of Engineers, for example, on mitigation issues. When the Texas Water Plan effort started in Northeast Texas, we were looking at building a large reservoir in Northeast Texas (inaudible) Marvin Nichols Reservoir, for example, 65,000 acres.

And in some of the conversations that we had with the consultants who were sitting around the table and representatives from the other agencies, I asked the question—I just threw the question

out on the table. I said, "What is the thinking on mitigation for this reservoir?"

And one of the representatives from one of the state agencies said, "Oh, well, we like to think in terms of 10 acres of mitigation for every one acre that you put in the lake." So they're planning in terms of 650,000—600,000 acres of mitigation for a 65,000-acre lake.

And one of the Water Board members who is here today, Mr. LeTourneau, just reported to me—I asked him, how things were going on the Water Board. He said, "Well, maybe you didn't know; but the Marvin Nichols Reservoir has been taken off of the agenda as far as our Water Board in concerned."

So Northeast Texas has 55 percent of the developable water in the State of Texas; and yet we have to go through such regulatory land mines, so to speak, that we can't get anything done.

It takes 30 years to get a lake permit, and yet it—and it costs millions and millions of dollars; and so apparently, the Water Board for Northeast Texas has decided it wasn't worth it for the Marvin Nichols to go through all that.

So—so we have obvious needs that need to be fulfilled. We have reasonable ways to follow and fulfill those needs. We have—we have both sides of the public who are trying to work together, from the environmentalists—you know, all the way from the left to the right.

And yet we have government agencies who have their own agenda or their own turf that they want to protect, and so it makes it impossible for—for the public—for us as general—as average citizens to get anything done. So we're just going to sit here and wait until we run out of water, I guess.

Miss MCMORRIS. Mr. Shelton, first of all, thanks for your testimony—your written testimony. It was very thorough, and I appreciate the time that it must have taken you to put that together and the examples that you shared about where NEPA has been a success and has worked well.

One thing that struck me about your testimony was going back to the '50s and the '60s and the conditions that were present when NEPA was passed, and I wanted to ask if you feel the same conditions today exist.

Mr. SHELTON. Well, I guess the answer would be yes and no. We've solved some of those problems, but what's happening out there with—with our resources can be looked at as a slice of pie—or pie, so to speak; and we're just continuing to divide that pie up into smaller and smaller pieces.

And what's interesting to note in the conversations we've had today is in some cases, with some resources, you can compromise. You can have your cake and eat it, too; but in other resource management decisions, they constitute an irretrievable commitment.

And I believe the conversation about building Marvin Nichols—I mean, how can you compromise on building a lake? Because on the one hand, you have a functional stretch of river bottom which provides jobs and wildlife habitat and functional farms and productive timberlands; but once you build a lake, those are gone. So you're faced with an either/or.

I think that the challenge we face in managing our resources and our environment today is trying to find positions where we truly can compromise and have our cake and eat it, too, rather than being faced with an irretrievable commitment that we cannot take back.

So, you know, as our lands are divided and developed—you know, things have changed a lot since the '50s and '60s. And even though, in terms of impact on the environment, each particular industry may have reduced significant acts or conditions on the environment, we have more and more industries who are, in fact, contributing to this. So the cumulative effects over time are adding up.

And as people increase, as demand on resources increase, you know, we're—we're eventually going to hit—hit a dead end somewhere along the way. So we really need to be very careful with what we do.

Miss McMORRIS. You—you made it perfectly clear that you—there should be no changes to the substance of the regulations, that any attempt to repeal the rights under NEPA confronts the democratic institution.

I just want to make it clear that I think that more public involvement is very important in the NEPA process. I think there are—I do personally believe there's ways that we can improve this law and build upon what has been started, and it goes beyond just filling out reports or—and handing them off to the public and asking for public—you know, that we have disclosure or more information or more reporting. I'm not sure that that accomplishes our ultimate goal of protecting the environment.

I really believe that if we can, early on, start the collaboration and work together that we're going to ultimately make better decisions for the environment.

I wanted to ask you about the—the alternative approach that was used with the blowdown and to ask if you feel that there's an opportunity in some circumstances where we can utilize that type of approach when it's important that the decision be made quickly, because I understand that—that it was appealed, too, and that an EIS—you know, there's still resistance.

Mr. SHELTON. Yes. I was involved in that particular action; and, you know, ultimately, the timber was salvaged, as we saw. But pretty much what happened is due to this act of nature. We had a volume of timber that was impacted or damaged that was equal to, I believe, approximately two or three years' worth of timber harvest.

It would have been—it would have been the allowable sale quantity of the amount of timber that they would have normally harvested during that period. We would have had this—literally, a huge windfall out there; and rather than having these impacts and this timber harvest distributed out over a period of years and, actually, over the whole land base of the national forests, it was all concentrated in one particular area.

So I think the concern there was that we were actually accelerating the harvest rate for that particular area of the Sabine National Forest. Of course, there was nothing that could be done about that. The timber was down.

But the concerns were the impacts that go along with that, and I think that a really important point that needs to be made here today is that with respect to the national forests, you have all kinds of mandates which (inaudible) multiple uses and multiple resources out there.

Mostly what has been focused on today is timber and forest products coming from the national forests and the great thing about a democratic country is that we can all have our input and we can pass laws which reflect our personal values and what we feel like our personal needs are.

And we need to stress here that the national forests are trying to provide for the diverse values and needs of the whole population. There's no mandate out here that says we have to turn national forests into tree farms, because the same tree that will provide 2-by-4s also provides wildlife habitat and habitat structures, provides (inaudible) resource that protects the soil and water, and these are all very important values to the diverse American public out there.

And so our group, especially, thinks that with respect to the national forests we should manage it with types of resources which are not well-represented in the private sector. As I mentioned, 94, 95 percent of East Texas is—manages the timber it's harvesting. So we—we feel like we should give special consideration to those other resources out there that are not being well-represented on private land, and we should focus those things on the national forests and should be especially conscientious of resources there.

Miss MCMORRIS. The private landowner also has to comply with the Endangered Species Act and the Clean Water Act and other laws.

Mr. SHELTON. The Endangered Species Act, yes. The best management practice is a voluntary thing which is supposed to help them comply with the requirements of the Clean Water Act, though. There's—there's a whole host of mandates out there that (inaudible).

Miss MCMORRIS. OK. I might have to come back to you for all my questions.

Mr. SHELTON. Sure.

Miss MCMORRIS. Did you want to—

Ms. NICHOLS. I wanted to add—I just wanted to add one quick comment about responding to unusual emergency situations in projects that relate to NEPA.

There is a whole (inaudible) in the regulations of (inaudible) that a category be excluded from the whole NEPA process. It's a much briefer process, and emergencies such as storm damage and field outbreaks are generally often covered by those exclusions.

I just wanted to point out that NEPA already is flexible. I'm not familiar with the specifics of that issue, but I wanted to point that out. Thank you.

Mr. GOHMERT. And I do appreciate those comments. We have heard—and you've got it in your testimony previously. You said generally they're excluded. Well, they can be; but you have to go through the process of getting an exception. And as was pointed out by Mr. Dructor, the alternate arrangements have only been allowed 38 times in 28—in 20 years.

And we've heard testimony in cases in which pine beetles have devastated an entire forest without anything being—ever being done because an exception was not granted.

Forests have been destroyed by natural elements like the—a winter storm and then not getting a permit in time to go in and salvage the timber before it's completely lost and worthless.

So it's one of those things—in fact, in his written testimony, Mr. Shelton had a quote—had a quote from an article. The article was entitled "Some Modest Suggestions for Improving the Implementation of the National Environmental Policy Act. And you note the article—that NEPA wants to protect NEPA, and that's the gist—I mean, that is his title, "Some Modest Suggestions for Improving Implementation"; and he has a quote in his article that says (quote read).

And that's what we're trying to do, even though I don't know what ossified means. So anyway—I know what mechanical means, and the mechanical approach it seems has gotten us into some problems.

And it was mentioned a moment ago, Mr. Shelton, about the forests; but there also is no mandate that the forests become wilderness. And as we've seen here in Texas—and you can go to the Sahara Desert—there are areas where there have been wonderful, wonderful environments that nature, itself, has destroyed.

And I think—this an editorial comment of my own. I think we were given the job to tend the garden here; and if we don't try to protect it, it goes to a terrible situation. Species go extinct on their own without man ever having a role in that, before man was around. So our goal is to try to be a good steward. And I appreciate everyone's testimony.

I would like a little input—Mr. Smith, we didn't ask you a bunch of questions. And going back to permits, if you could give us a little snapshot of your—the problems or lack of problems for getting permits in order to proceed in mining areas.

Mr. SMITH. That's a great question. We have a very good relationship with Chairman Carrillo's agency. We meet with members of the (inaudible) Committee on a regular basis—on a quarterly basis, and we address permit issues.

There's a great exchange of information there where the staff of the Railroad Commission—if there's any explanation—discussion of the permitting requirements, that's thrown out on the table. If we have any questions or concerns, we throw that information out on the table. We work with them.

We—Chairman Carrillo, himself, directed us about a year or so ago to take a special look at our permitting system in the State of Texas, which we did. Are there some ways that we can streamline that permitting process to make it go quicker in the state? So we have done that. We're continuing to do that.

You always have parts of the permit—the Railroad Commission permit to go into an area and mine for lignite is a very unique permit in terms of complexity, length, and all that. There's a lot of pieces to that permitting system, and I would say that the best thing you can have is a good agency relationship and a good focus on making the best permitting system you can possibly make. That's what we've got in place now.

There will always be parts of that permitting process that we wish would work a little quicker, whatever; but we're working on those things and hope that the end result will continue to be as efficient as we can possibly make it.

Miss MCMORRIS. Very good.

Well, I thought I would go back to Mr. Shelton real quick. My friend here mentioned the Council on Environmental Quality, and they did a—you know, they did a review of NEPA and came up with some more—came up with internal recommendations of how to better implement NEPA.

You, in your testimony, quoted the—what you thought was a good summary. And it is mentioned under a title that is about modest improvements for NEPA, and I just wanted to give you the opportunity, if you had any—if you could change anything about NEPA, what would it be?

Mr. SHELTON. Well, it's interesting that NEPA—and (inaudible) talked about this—is a relatively short piece of legislation as it goes. It's only several pages long.

And as I mentioned, it's really an umbrella—several of the witnesses have mentioned it—it's an umbrella. It essentially establishes a direction for this country so that we would have a consistent and comprehensive, you know, environmental policy.

So I think that's essentially sound, and its provisions that would avoid any unnecessary impact are good.

(Inaudible) impacts if we can avoid them. It also helps protect the public health and safety and gives alternative actions to choose from and public participation. These are all very sound aspects of the foundation of NEPA. As far as those myriad other mandates and laws which are tucked under this umbrella, I certainly can't say that I'm familiar with every last one.

I think that the rest of my testimony is that we are opposed to weakening environmental protection. I don't think any specific (inaudible) has been put forth by this Task Force. I think your job here is to take testimony and listen. So until we really have anything specific to respond to, you know, it's hard to do. But I think that my point here is that the principles and the practices of NEPA are sound and, you know, its purpose is to protect our environment and our public health and I think that's what it should do.

Miss MCMORRIS. Good. Thank you.

Mr. England, would you speak to the ripple effect of current NEPA reviews on cost of construction, if you would?

Mr. ENGLAND. Certainly.

Miss MCMORRIS. Make sure you pull the mike in.

Mr. ENGLAND. If the permitting process—we—projects are on a particular schedule. In order to close real estate, for instance, you get the permits. If it's not in a timely fashion—in order for you—the owners are not obligated to follow through with a real estate deal, and we lose that opportunity to develop those resources.

If the permit costs or permit process results in delays, you end up with additional consulting costs. You end up with additional financial costs. You have laborers and equipment you're not working. That ripples through the entire process.

If we can't provide construction aggregates to market, the same kinds of effects occur. It's becoming more and more difficult for

construction companies, themselves, to—with big projects to (inaudible) both financial, labor, and other costs.

Miss MCMORRIS. Would you—would you just describe a little bit what happens when NEPA has to be reopened?

Mr. ENGLAND. My view of what happens when NEPA has to be reopened is that you end up with the additional delays that we're talking about. If we—if—the NEPA process, as I understand it, is a process that you can check and ensure that the myriad of regulations are being addressed; but once an agency has checked off that issue, they should feel comfortable in being able to move on to their (inaudible) document with the assurance that it's not going to go into litigation.

If it's reopened for some minor item, oftentimes not necessarily directly related to the specific site condition, it—it results in substantial delays and loss of (inaudible.)

Miss MCMORRIS. Very good. Thank you.

Mr. GOHMERT. I couldn't help but be struck by—as we were talking about some of these, thinking about an issue that's gotten a lot of attention in the (inaudible) Resources Committee; and that's the energy bill. One of the most controversial issues is MTBEs, and when MTBEs—you'll have to check the history of when they were first brought up as a way to make gasoline burn more cleanly and efficiently, which it does. MTBEs make gas burn more efficiently and saves air. Congress demanded and passed laws requiring MTBEs to be put into gasoline.

The gas companies—oil and gas companies were screaming, "Please don't make us do that. It's going to be more costly. It's going to cost us in the long run. We're not sure about the long-term effects. There's things we don't know about MTBEs. Please don't make us do that."

Congress didn't hear. They said, "Put it in. It's going to make gasoline burn more cleanly. We need that to (inaudible). It was required. They put it in anyway. They didn't care what the companies thought.

And now one of the biggest issues before Congress and one of the hang-ups in the energy bill is that some of the same people that said, "These oil and gas companies are corrupt. Make them put the MTBEs in there." You know, "They should be required to put MTBEs"—they're now saying, "Can you believe these corrupt oil and gas companies? They're asking that they not have to pay every dime to clean up the environment that's been devastated by MTBEs being put in gasoline."

They didn't want to put it in there, and Congress required them to put it in. Now these same people that found out it can pollute drinking water are saying, "Make those sorry companies clean up the water they polluted. They should have known those MTBEs"—well, I'll stop it there.

Anyway, it's nice if we can come and figure out and—get all of the input on issues before they're forced through legislation, and so I would just encourage each of you—I appreciate your testimony and any insights you have on any part of the process that can be made better, can be streamlined, can be made more effective.

Obviously, as Ms. Nichols said, we can do a better job when we get more input from people; so I don't—well, I'll tell you what, why

don't we follow up with our—and we are good friends. Chairman Carrillo, I appreciate you coming, but with—you had mentioned the IOGCC study that had been done, a survey.

Let me ask you to—you know, that apparently indicated that there were personal agendas by some team members who work on permits and issue the permits that contribute to permit delays. It also was found that NEPA activity involved in oil and gas permitting was more process oriented and did not readily accommodate useful, proven remediation techniques. Do you know of any specific incidents of remediation techniques that were not adequately accommodated?

Mr. CARRILLO. I have to apologize. I do not—I don't think I have an adequate answer for that particular question. The gist of the—of the 2005 IOGCC survey was that there are inherent issues that operators/producers routinely run into; but as to that very specific question, I do not have any (inaudible) of some of those proven remediation techniques that were not allowed to be used. So I apologize.

Mr. GOHMERT. OK. Well, I don't have any further questions. I do thank all of you. I know it's taken your Saturday morning. We got elected to do this kind of thing; so we brought it on ourselves. You—all didn't get elected to do this; so thank you very much for taking time to help us.

Mr. England, do you—

Mr. ENGLAND. Yes, I apologize. I would like to follow up with the two additional points with regards to the (inaudible) Act. Specifically, when geology dictates where we can get construction aggregates and we are forced to seek other sites, two specific ripple—additional ripple effects occur. One is that the sites aren't (inaudible). You can't get quality aggregates everywhere; so if you cannot get a permit to a particular place, you lose that opportunity and/or—you're forced to seek a permit farther away.

The result being further delay for us on the (inaudible) process with regard to that. Thank you.

Miss MCMORRIS. Well, Mr. Davis, we don't want you to get away without a question. Do you want to do—just speak to your experience as it relates to how—you know, in the event of a windstorm or fire or insects or disease, how you, as a private tree farmer, can respond compared to the Forest Service?

Mr. DAVIS. Thank goodness we weren't—we weren't under the regulation of NEPA. (Inaudible). We didn't have to follow—follow the regulation. We were free to go and do what needed to be done immediately. We were able to—and actually, I think that I would like to see that, when those types of disasters happen, that the Forest Service has the opportunity to act and act immediately, not only to salvage, which was a success, but the reestablishment (inaudible).

They've got—they've got some longleaf pines that's still in the grass stage that are trying to fight its way through underbrush to get sunlight. So hopefully—hopefully, some relief can be given there to the Park Service.

What I would like to do is—I missed this. I want to get a Farm Bureau statement in. Our Farm Bureau policy supports the effort to streamline and expedite the National Environmental Policy Act

requirements to allow for the sound harvesting of mature, burned, dying, downed, or dead timber. We believe the long-term health and viability of our natural resources can best be achieved through these principles.

Without these changes, our national resources will continue to be wasted, opportunities for a healthy forest regrowth will be lost, and the best interests of local communities and families will be sacrificed through misguided policies.

Miss MCMORRIS. Amen. Thank you. I think we'll wrap it up. I want to thank everyone in the audience for being here today. What makes America great is the fact that citizens are involved directly in our government. Thank you for taking the time on a Saturday morning to be here. If you have brought written comments and want to leave them, there is a table in the back of the conference hall. We would welcome any comments you have for us.

I want to thank the panelists for being here. Each of you did excellent. We may have other questions for you, and we will submit those to you in writing and ask that you respond in writing when you receive such questions.

This hearing is a continuation of the process of listening to a range of people as to how they've been impacted by NEPA. And we heard from all of you today, impacts from three states. We shared a host of perspectives and recommendations. I think that the views provided today, as well as those provided to the Task Force via e-mail and fax have laid a foundation for developing recommendations on improving NEPA.

I would like to thank Congressman Gohmert for welcoming me to East Texas, for hosting the Task Force meeting here today. It's great to be here.

Is there anything you want to add in closing?

Mr. GOHMERT. Thank you. And we do appreciate you coming to East Texas. We do feel like it really is as close to the Garden of Eden as you can get, but—I hope by the time you leave, you'll understand that Washington is not my home, and it will never be my home.

Again, thanks to the panel. Thank you all. And I did want to mention one other thing, though. I read an editorial in the Tyler paper today that indicates that because of some of the Federal laws more and more companies like Temple Inland—and I've discussed this with some of their officials, but we have laws that are almost pushing them into selling off some of their timberland to private owners who are seeing the short-term benefit of cutting trees and not remediating and not planting more trees to replace the ones they've cut down.

So it's an ongoing process of trying to make the laws help the country more and (inaudible) laws that encourage people to have long-term visions for continuing to provide trees, and we shouldn't be discouraging that, so...

There is—anything I've ever written in my life, I've always found ways to edit it. Even after it has won awards or things like that, I go back and go, "Oh, that can be said better." That's what we're trying to do with NEPA, and we appreciate the audience participation.

I will tell you this, too: We'll try not to let you get away before we serve you some real barbecue. It's not like what you get around Washington, D.C.

Miss MCMORRIS. With that, we're adjourned. Thank you.

[Whereupon, the Task Force was adjourned.]

[NOTE: Information submitted for the record has been retained in the Committee's official files.]

