



January 30, 2018

Mr. Tony Tooke, Chief  
United States Forest Service  
Department of Agriculture  
1400 Independence Ave SW, Washington, DC. 20250  
*Submitted via email to:* [nepa-procedures-revision@fs.fed.us](mailto:nepa-procedures-revision@fs.fed.us)  
*Submitted via public participation portal to:* <https://cara.ecosystem-management.org/Public-/CommentInput?project=ORMS-1797>

Re: Advanced Notice of Proposed Rulemaking, Request for Comment, National Environmental Policy Act Compliance (83 Fed. Reg. 302, Jan. 3, 2018)

Dear Chief Tooke,

Friends of the Inyo is pleased to provide the U.S. Forest Service with comments on the agency's advanced notice of proposed rulemaking (ANPR) regarding National Environmental Policy Act (NEPA) compliance, 83 Fed. Reg. 302 (Jan. 3, 2018). Our organization has over 30 years experience tracking and commenting on local Forest Service (USFS) NEPA projects ranging from forest planning, vegetation, wildlife, mining, grazing, aquatics, and recreation management decisions. As a public lands advocacy group working both on the ground and at the desk we appreciate, rely on and value NEPA particularly because it ensures that federal decisions are at their core democratic, and guarantees meaningful public involvement. NEPA improves the quality of the public lands people recreate on and the wildlife and plants that depend on them, by relying on sound science to reduce and mitigate harmful environmental impact.

Friends of the Inyo urges the USFS to maximum transparency and accountability, and give the public a continued voice in federal government decision-making. Instead of using valuable time and resources amending its NEPA regulations, the agency should fight for more funds, personnel and education to ensure effective environmental review and public participation. Problems with NEPA today relate to funding, training and staff, not issues with the regulations.

Additionally, litigation is frequently cited as delaying or preventing projects however, the agency's own data demonstrates that very few NEPA decisions are ever challenged in court; and even fewer projects are enjoined by court order such that project implementation does not occur<sup>1</sup>. The incredible forests and grasslands that the Forest Service manages are a unique natural heritage enjoyed by all Americans: consequently, it is not surprising that the Forest Service – as stewards of these lands – may prepare more NEPA documentation for their actions than those of other federal agencies. Friends of the

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<sup>1</sup> See Western Environmental Law Center, et al. comments Feb 1, 2018

Inyo urges the Forest Service to conduct a thorough analysis prior to commencing the rulemaking process and publish a draft proposed rule to amend its NEPA procedures that the public may comment on.

The inherent flexibility of NEPA allows for the Forest Service to conduct efficient yet meaningful analysis, including through use of tiering, mitigated findings of no significant impact, appropriate application of existing categorical exclusions, and other tools. In many case the USFS conduct highly efficient yet robust NEPA analysis, however, we agree that many USFS NEPA processes could be more efficient and represent the desires of both stakeholders and the agency. However, the primary problems with – and solutions to – the Forest Service’s NEPA process lie not with the agency’s regulations and procedures but with operational and cultural issues that can be addressed within the scope of the agency’s existing authority.

We are tracking the current legislative and administrative efforts to modify and weaken NEPA. Past attempts to undercut NEPA’s democratic principles of government accountability and public engagement often result in more controversy and less trust, collaboration, and efficiency in the long run. The USFS is embracing a new era of collaboration and partnerships and NEPA should be central to this. The Forest Service can better utilize partnership expertise to undertake programmatic, landscape-scale analysis that will streamline NEPA and result in more work getting done, similar to what has been proposed for Region 5’s meadows and forest restoration projects. Utilizing partnerships also reduces the burden on precious agency resources. We also recommend the USFS start public engagement earlier and further invest in public outreach and engagement, especially with underserved and underrepresented communities. We oppose any considerations to changes in NEPA that would reduce or eliminate public engagement opportunities.

Prior to initiating the rulemaking, we recommend the USFS conduct an adequate and complete analysis of the issues and challenges facing NEPA, including examining operational hurdles. The agency should craft a strategy, including an action plan, to address operational and cultural issues related to environmental analysis and decision-making. Accurately defining the problems is a necessary prerequisite to finding effective solutions. The agency’s data shows that delays in project implementation are most often the result of operational and cultural issues such as staffing, funding, and training.

Before considering new authorities, the Forest Service should analyze its current use of existing authorities designed to make NEPA more efficient, document if and how those authorities are being utilized, and provide direction to field officers on improved utilization if needed. Categorical exclusions (CE) must contain a meaningful analysis documenting no significant individual or cumulative effects. The analysis must be shared with the public for comment. There are examples of places to expand existing CE’s such as the restoration of unneeded closed roads to address the agency’s significant backlog of road maintenance needs and the resource concerns these roads cause. CEs have the potential to facilitate restoration of aquatic and terrestrial systems in a timely matter as well. The Forest Service should not consider further relaxing its definition of

extraordinary circumstances. Extraordinary circumstances direction is integral to appropriate application of existing categorical exclusions. The public needs the assurance that the filter is sufficiently rigorous.

Thank you for providing an early public comment opportunity and considering our initial thoughts on Forest Service NEPA rulemaking. We look forward to commenting on the draft proposed rule and the broader Environmental Analysis and Decision Making initiative.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jora Fogg". The signature is fluid and cursive, with a long horizontal line extending from the top of the first name.

Jora Fogg  
Policy Director  
Friends of the Inyo