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The Western Landowners Alliance advances policies and practices that sustain working lands, connected landscapes and native species.

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November 22, 2021

Amy B. Coyle  
Deputy General Counsel  
Council on Environmental Quality  
730 Jackson Place, NW  
Washington, DC 20503

**Re: National Environmental Policy Act Implementing Regulations Revisions. Docket Number CEQ-2021-0002**

Dear Ms. Coyle:

Western Landowners Alliance appreciates the opportunity to comment on the Council on Environmental Quality's (CEQ) proposed revisions to its implementing regulations for the procedural provisions of the National Environmental Policy Act (NEPA).

### **STATEMENT OF INTEREST**

The Western Landowners Alliance (WLA) is a landowner-led organization representing over 15 million acres of western comprised of rangeland, forests, waterways and river corridors through its members and supporters. We work to advance practices and policies that sustain working lands, connected landscapes and native species. This vision encompasses vast landscapes across the West without regard for land ownership. In order to realize the goal of healthy rangelands and forests, stable rural economies and species diversity, landowners and land managers must work with federal agencies to implement uses and projects. These actions often require conformance to the NEPA. Implementation of the NEPA has an impact on landowners and their ability to reach land management, conservation and operational goals. Because of the potential impact an action – or inaction – has on a landowner's ability to improve their livelihoods and provide stewardship benefits, WLA offers the following comments on the proposed rule.

### **BACKGROUND**

WLA expressed concern with several provisions in CEQ's update to its NEPA regulations finalized in 2020 [85 FR 43304], but appreciated the intent of the 2020 regulations in some sections to modernize NEPA implementation and streamline processes. As CEQ considers this current suite of revisions that would largely roll back provisions finalized in 2020 in addition to planned future substantive proposals, we urge the Council to do so with long-term durability and predictability of NEPA implementation in mind.

Increasingly pronounced regulatory pendulum swings threaten land stewards' ability to plan and conduct basic land management, conservation and restoration activities. For example, uncertainty regarding federal policy on compensatory mitigation in recent years has led to unsuitable conditions for the establishment of mitigation markets, a potential revenue diversification source for private landowners looking to receive

compensation for stewarding public goods and resources. Regulatory uncertainty will also further complicate landowners, land managers and rural communities ability to build in ecosystem resiliency against the impacts of climate change, including drought mitigation and watershed restoration activities.

## **PURPOSE AND NEED**

WLA does not take a formal position on the proposal to remove language from the 2020 regulations requiring agencies to base the purpose and need on the goals of an applicant and the agency's authority when the agency's statutory duty is to review an application for authorization. We understand and appreciate the intent of this proposal to ensure that agencies are not prioritizing the applicant's goals over other factors including the public interest or community wellbeing. To address concerns over an expansive purpose and need statement leading to a superfluous set of alternatives, CEQ should provide additional guidance on how agency discretion should be exercised in addressing an applicant's purpose and need in balance with other considerations.

## **AGENCY NEPA PROCEDURES**

WLA appreciates the effort to restore agency discretion in designing NEPA procedures. Ultimately, we believe that agency processes should be adaptable, flexible, and tiered toward outcomes, not top-down rulesets. However, inconsistency across agencies in designing NEPA procedures does present challenges, particularly in the West given the patchwork nature of land ownership. We encourage early and consistent coordination among federal agencies in designing NEPA procedures, and emphasize the importance of meaningfully involving state and local governments along with directly impacted stakeholders and communities.

## **DEFINITION OF "EFFECTS" OR "IMPACTS"**

WLA generally supports the intent of CEQ's proposal to restore the definitions of "effects" at 40 CFR 1508.1(g) to align with the 1978 NEPA regulations. Beyond restoring previous language, the Council should take this opportunity to modernize the definitions to ensure durability, reduce the potential for litigation and increase predictability moving forward.

### **Reinstating "Direct" and "Indirect" Effects**

WLA supports reinstatement of the terms "direct" and "indirect" to the definition of "effects." Removing consideration of indirect impacts may in theory reduce paperwork and streamline NEPA analysis, but ultimately could result in a failure to consider impacts on adjacent private lands. Holistic approaches to land management and stewardship in the West are founded on the interdependence of public and private lands. Failure to consider indirect impacts in NEPA analysis ignores this relationship and may inadvertently impact private land conservation and restoration efforts, livestock production and much more. Additionally, if indirect and cumulative effects are not evaluated, it diminishes opportunities to effectively mitigate those impacts.

### **Adding "Cumulative Effects" to the Definition of "Effects"**

WLA supports restoring the definition of “cumulative effects” at § 1508.1(g)(3) due to concerns expressed above of inadvertent negative impacts to land management on federal and adjacent private lands. However, we emphasize that it is not necessary to exhaustively examine cumulative and indirect impacts to the point that a NEPA analysis becomes unwieldy in time to develop, cost, length and complexity. CEQ and other federal agencies should provide guidance on how to balance reasonable analysis of extended impacts and timely NEPA review processes.

#### Removing Limitations on Effects Analysis

WLA appreciates the intent to address ambiguity and remove internal inconsistencies from the current definition of “effects.” However, we emphasize that it is reasonable and prudent to provide guidance and further expand upon application of agency discretion in determining foreseeability and causality of indirect effects.

#### **CONCLUSION**

WLA appreciates the opportunity to provide comments, and encourages ongoing discussion on efforts to modernize and update the Council’s NEPA implementing regulations. In addition to emphasizing durability and predictability, we encourage federal agencies to provide more resources and training on processes proven to improve efficiencies in the NEPA process without sacrificing a thorough analysis and engagement with landowners and others.

Thank you for your consideration of these comments. If you have questions or if WLA can be of further assistance as you move to finalize this rule, please do not hesitate to reach out to me.

Sincerely,

Lesli Allison  
Executive Director  
Western Landowners Alliance