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April 9, 2010

The Council on Environmental Quality  
Attn: Ted Boling  
722 Jackson Place, NW  
Washington, D.C. 20503

**Re: Establishing and Applying Categorical Exclusions under the National Environmental Policy Act**

Dear Mr. Boling:

The Northwest Mining Association (NWMA) appreciates the opportunity to comment on the Council on Environmental Quality (CEQ) Draft Guidance on Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act (NEPA).

NWMA is a 115 year old, 2,094 member, non-profit, non-partisan trade association based in Spokane, Washington. NWMA members reside in 40 states and are actively involved in exploration and mining operations on public and private lands, especially in the West. Our diverse membership includes every facet of the mining industry including geology, exploration, mining, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. NWMA's broad membership represents a true cross-section of the American mining community from small miners and exploration geologists to both junior and large mining companies. More than 90% of our members are small businesses or work for small businesses. Most of our members are individual citizens.

Many NWMA members conduct mineral operations on federal lands and have extensive experience with the NEPA process, especially the project delays and escalating costs associated with NEPA compliance. Therefore, NWMA members are interested in and supportive of efforts to make the NEPA process more streamlined and efficient. However, we are concerned that the proposed guidance from CEQ will have the opposite effect.

**Proposed 2010 Guidance on Establishing and Applying CEs**

A categorical exclusion (CE) is a vital tool which enables Federal agencies to expedite the environmental review process for proposals that typically do not require more in-depth and costly Environmental Assessments or Environmental Impact Statements. Exempting such actions from a more detailed NEPA environmental review promotes the cost-effective use of agency NEPA-related resources. Federal agencies should be encouraged to utilize CE's whenever possible and appropriate. Unfortunately, it appears this latest guidance from CEQ is geared more toward limiting the use of CE's.

In the introduction of the proposed guidance, CEQ cites the need for additional guidance on the use of CE's due to "the expansion of the number and range of activities categorically excluded

combined with the extensive use of categorical exclusions” and that “inappropriate reliance on categorical exclusions may thwart the purposes of NEPA, compromising the quality and transparency of decisionmaking as well as the opportunity for meaningful public involvement and review.”

CEQ is encouraging agencies to increase public participation in the use of CE’s. By definition, though, a CE describes a category of actions that do not typically result in individual or cumulative significant environmental effects or impacts. Therefore, there is no need to further delay the process by creating unnecessary bureaucratic procedures to increase public participation in an environmentally benign project. Increasing public engagement and disclosure of the use of CE’s is an inefficient use of scarce agency resources and a waste of time for citizens wanting to have meaningful participation in the environmental review process.

For example, CE’s are often used to approve projects for which a programmatic protocol, environmental assessment (EA) or procedure has been developed, such as a drilling procedure. These programmatic procedures are the subject of a NEPA analysis in which the public has had full participation. Therefore, to require additional public participation in a CE based on a programmatic protocol, EA or procedure that already has been the subject of a full NEPA analysis is redundant and unnecessary.

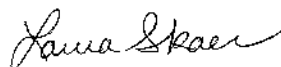
CE’s, when used properly, are a legitimate part of the NEPA process. The existing CEQ regulations provide adequate protections to ensure against misuse of CE’s by agencies tempted to escape public scrutiny or the need to prepare detailed environmental analyses. Consultation with CEQ is required for development of NEPA regulations generally, and specifically on adoption of categorical exclusions. Also, agencies are required to identify “extraordinary circumstances” when an action that otherwise might be categorically excluded would require an environmental analysis under NEPA. Furthermore, agencies must put proposed new categorical exclusions in the Federal Register for public comment. These safeguards mean that the documentation and decision-making necessary for a categorical exclusion are largely similar to those required for other NEPA actions. Consequently, NWMA views the new proposed guidance as a solution in search of a problem.

## **Conclusion**

NWMA is concerned that the guidance will result in limiting the use of CEs by placing too many constraints and paperwork burdens on agencies seeking to use them. Existing CEQ regulations adequately ensure against agency abuse of CEs, and additional impediments to their use should not be put in place. To do so as outlined in the proposed guidance is contrary to the very purpose of a categorical exclusion.

Thank you for the opportunity to comment.

Sincerely,



Laura Skaer  
Executive Director

