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May 24, 2010

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

**Re: Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions**

Dear Mr. Boling:

The Northwest Mining Association (NWMA) appreciates the opportunity to comment on the Council on Environmental Quality (CEQ) National Environmental Policy Act (NEPA) Draft Guidance, "Consideration of the Effects of Climate Change and Greenhouse Gas Emissions."

NWMA is a 115 year old, 2,000 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 to consider the effects of climate change and greenhouse gas emissions as part of the NEPA process will have the opposite effect, and should be withdrawn.

**Proposed 2010 Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions**

This guidance document is intended to affirm the applicability of NEPA to greenhouse gas (GHG) and climate change impacts and would require agencies to consider opportunities to reduce GHG emissions caused by federal actions and adapt their actions to climate change impacts.

However, considering the effects of climate change as part of NEPA will require additional unproductive and costly analyses by federal agencies and lead to unnecessary delays in an already exhaustive permitting process, with little or no environmental benefit.

According to a report by Behre Dolbear, the U.S. is tied with Papua New Guinea for the longest approval process among the top 25 mining countries in the world. Consequently, the U.S. is seeing fewer investment dollars for new projects, leading to an increased reliance on foreign imports. A 2010 U.S. Geological Survey report stated that the U.S. is now 100% dependent on foreign sources for 19 strategic nonfuel mineral materials and more than 50% dependent for 38 nonfuel minerals, despite having abundant resources of many of these materials. This draft guidance from CEQ will only exacerbate an already untenable situation.

Furthermore, CEQ's draft guidance is inconsistent with the purpose of NEPA and U.S. Supreme Court decisions that have clearly determined that NEPA is a purely procedural statute that cannot be used to effectuate substantive constraints on approval of any given project.

### **Proposed Guidance uses Uncertain Climate "Science" to Create Regulatory Uncertainty**

The guidance is predicated on the EPA's endangerment finding, which in turn is based on modeling from the Intergovernmental Panel on Climate Change (IPCC). Predictive models are not scientific data on which determinations of actual climate change impacts can be based. While virtually all scientists agree that the Earth has been warming since the end of the Little Ice Age, temperatures have actually declined for the past eight years. This cooling has proceeded in spite of the fact that manmade greenhouse gas emissions have continued to increase. Many climatologists, including those who believe strongly that anthropogenic greenhouse gas emissions are the primary driver of global warming, now predict that this global cooling may persist for one or two more decades, if not longer.

What this dip in temperature means in the larger scheme of things is obviously unclear. However, it is important that this remarkable change in our climate is something that virtually none of the IPCC and other climate models predicted. It underscores the importance of taking our time and getting climate policies right, based on actual scientific data – not highly subjective and often inaccurate predictive models.

Furthermore, the recent revelation concerning emails and internal documents from the IPCC's Climate Research Unit at the University of East Anglia in the U.K. brings into serious question the validity of the "science" used as the basis for the endangerment finding. Particularly in light of this new information, attempting to rush through broad new policies such as considering the effects of climate change in the NEPA process is not justified.

The science of climate change is certainly not "settled." There are bipartisan efforts in Congress challenging EPA's endangerment finding in addition to a suite of litigation. As stated in CEQ's own memorandum on this draft guidance, "NEPA demands informed, realistic governmental decision making." Given the uncertainty surrounding the science of climate change, it is impossible to have informed, realistic decision-making in this arena.

There is much uncertainty regarding climate change, and to incorporate that uncertainty in the NEPA process would unduly burden federal agencies. For example, in *Lands Council v. McNair*, the ninth circuit stated:

“...none of NEPA’s statutory provisions or regulations requires the Forest Service to affirmatively present every uncertainty in its EIS. After all, to require the Forest Service to affirmatively present every uncertainty in its EIS would be an onerous requirement, given that experts in every scientific field routinely disagree; such a requirement might inadvertently prevent the Forest Service from acting due to the burden it would impose.”

For that reason alone, it is unreasonable for CEQ to require federal agencies to attempt to consider climate change issues as part of the environmental review process.

CEQ acknowledges the scientific limits of federal agencies’ ability to accurately predict climate change effects and states that agencies should not devote effort to analyzing wholly speculative effects. However, given the direction to consider climate change in the NEPA process will give agency personnel and groups opposed to the development of our nation’s resources an opportunity to delay projects through analysis paralysis.

### **CEQ Thresholds for Assessing Impacts of GHG Emissions are Too Low**

The guidance uses the 25,000 tons per year (tpy) threshold for determining when GHG emissions and climate impacts should be quantitatively and qualitatively studied in the NEPA process. CEQ is basing the 25,000 tpy level on the proposed EPA rulemakings under the Clean Air Act. However, through its final Tailoring Rule, EPA raised the thresholds of the Clean Air Act Prevention of Significant Deterioration and Title V programs applicable to GHGs to 75,000 and 100,000 tpy respectively. If CEQ’s proposed guidance is not withdrawn completely, it should at the very least reflect these higher thresholds.

### **Proposed Guidance will Harm the U.S. Mining Industry and the Nation**

Creating unnecessary regulatory uncertainty by requiring the consideration of climate change in the NEPA process will have a deleterious effect on the U.S. mining industry, and the high-paying jobs and critical minerals and metals it provides. Minerals and metals mining and processing will be already directly and profoundly affected by CAA regulation of GHGs because these industries are highly energy-intensive. Spending on energy and electricity by both the nonferrous metals manufacturing and metal mining sectors represents up to 30 percent on their total costs. These companies are highly sensitive to increased energy costs that GHG regulation will create.

At the same time, they have no ability to pass increased energy costs on to customers because metals and minerals prices are largely set in international markets, often on commodities exchanges, reflecting international supply and demand. Thus, U.S. GHG regulation, when not matched by foreign regulation, can create a tremendous competitive disadvantage for these companies that will lead to a leakage of jobs and economic development (not to mention emissions) overseas. This also would lead to an increase in an already dangerous reliance on foreign sources of minerals, metals and energy.

Despite the inevitable economic harm caused by the endangerment finding and consequent regulations, there is no discernable environmental benefit. In fact, EPA’s own analysis strongly suggests that a 60 percent reduction in carbon-dioxide emissions by 2050 will reduce global

temperature by 0.1 to 0.2 degrees Celsius by 2095. While putting in place costly regulations on the entire U.S. economy is always a bad idea, it's especially nearsighted to do so in such difficult economic times for a negligible environmental benefit. This will result in a lower standard of living Americans relative to the rest of the world.

It is unconscionable for CEQ to add to that inevitable economic harm by unnecessarily creating additional delays in the NEPA process.

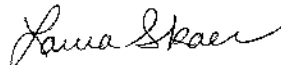
### **Conclusion**

Both the environmental benefits and detriments of a changing climate are difficult to predict, yet CEQ is asking Federal agencies to do so in NEPA analyses. Not only will this result in additional delay of the NEPA process, but will result in speculative and inaccurate modeling that will have direct impacts on approval of specific projects. NEPA serves a specific purpose, but asking Federal agencies to make permitting decisions based on ever-developing climate science falls outside of that purpose.

Given the uncertainty surrounding the "science" of climate change and the unresolved status of the federal regulatory agenda and climate legislation in Congress, NWMA believes the proposed guidance is premature and we urge CEQ to withdraw the proposal.

Thank you for the opportunity to comment.

Sincerely,



Laura Skaer  
Executive Director