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***A Grassroots Coalition Supporting Environmentally Responsible Mining***

## **Testimony**

**Before the Committee on Resources**

**United States House of Representatives**

**Task Force on Improving the National Environmental Policy Act**

***The Role of NEPA in the Southwestern States***

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## INTRODUCTION

My name is Debra Struhsacker. I very much appreciate the opportunity to present written and oral testimony to the House Resources Committee, NEPA Task Force today on behalf of the Women's Mining Coalition (WMC), a grassroots group supporting environmentally responsible mining. I, along with two other Reno-based female geologists, founded WMC in 1993 to provide factual information about the mining industry to members of Congress. I currently serve on WMC's Board of Directors. WMC is comprised of women working in many facets of mining including geology and exploration, engineering, management, government affairs, environmental permitting, mining and heavy equipment operation, equipment manufacturing, and sales of goods and services to the mining industry. We have members located from coast to coast in many different states. I, along with many WMC members, have extensive working experience with NEPA.

My testimony describes some of the problems the NEPA process creates for the mining industry and presents some suggestions for improving NEPA to solve these problems. WMC is convinced that the NEPA process can be modified and streamlined in ways that will improve the timeliness, quality, and relevance of NEPA decisions for mining projects. These improvements will benefit all stakeholders and result in mineral projects that are the best they can be for the environment and local communities.

## EXECUTIVE SUMMARY

1. As one of the first environmental laws in this country, NEPA was landmark legislation, signaling the dawning of environmental awareness and the first step down the path of enacting what has become a comprehensive and effective statutory framework to protect the environment. NEPA is a procedural law that creates a process to seek public comments, consider alternatives, and disclose impacts. It does not include any substantive, on-the-ground environmental protection requirements or standards. These environmental protection authorities are derived from the many other environmental laws passed since the enactment of NEPA.

**Recommendation:** The Task Force should evaluate NEPA in the context of the many substantive environmental laws enacted since 1969 to:

- a. Evaluate whether NEPA and this body of environmental laws work well together;
  - b. Determine if there is duplication and overlap in the environmental evaluation process, and if so, how to eliminate or minimize this duplication; and
  - c. Develop ways to integrate and optimize the NEPA analysis and impact disclosure process with the environmental permitting processes established in other laws.
2. Anti-development groups have hijacked NEPA by turning it into a process of conflict and confrontation rather than an opportunity for communication and collaboration, as Congress originally intended. These groups use NEPA as their 37-cent ticket to delay, oppose, and litigate natural resource development projects on public lands. As such, NEPA has become the anti-development groups' dream and the natural resource developers' nightmare.

**Recommendation:** The Task Force should recommend changes in the NEPA public scoping and appeal processes. Issues and concerns raised by local interests should be accorded more importance than comments from outside groups and individuals who are not directly affected by a proposed project or land use decision because local people know what is best for their environment and their community. Additionally, NEPA appellants should be required to post

bonds to cover the government's and the private-sector's costs due to delays and legal fees if the agency's NEPA decision is sustained.

3. Project opponents are misusing the NEPA process as a surrogate land use management law to stop mining on public lands on a project-by-project. These anti-development activists seek an outcome that is inconsistent with current land-use plans that authorize multiple use, including mineral development, and that exceeds the agencies' authority to reject Plans of Operation. Congress has constitutional authority to determine where mining can occur on public lands. Federal land managers do not have authority under NEPA to prohibit mining or to withdraw specific project areas from operation of the U.S. Mining Law.

**Recommendation:** The Task Force should recommend that NEPA public comment scoping notices specify the range of decision options authorized by statute and land use plans, and establish that project-specific NEPA documents cannot be used to change existing law or to challenge previously authorized land use plans. Interest groups seeking to oppose natural resource development on public lands already have an opportunity to express their viewpoint in NEPA documents that agencies prepare for their land use plans. Agencies should thus be granted the authority to dismiss public comments that attempt to change land management status in project-specific NEPA documents.

4. The NEPA alternatives analysis requirement creates specific problems for mineral exploration and development projects which must occur at specific locations based on geologic factors. Because mineral deposits cannot be moved, exploration must be performed in areas of favorable geology, and deposits can only be mined where mineral deposits are discovered. Unfortunately, the requirement to analyze alternatives to the Proposed Action adds considerable complexity to many NEPA documents for mineral projects with little or no commensurate environmental benefit.

**Recommendation:** The Task Force should recommend modifications to the NEPA alternatives analysis requirement that recognize the fixed location of mineral deposits and other natural resources due to geologic constraints.

5. Greater use of programmatic NEPA documents, categorical exclusions, and NEPA checklists to evaluate mineral exploration projects would save agency and private-sector time and resources. The types of environmental impacts associated with short-duration exploration drilling projects are predictable, well understood, and readily reclaimed. A programmatic approach for reviewing exploration proposals would save significant agency and private-sector resources.

**Recommendation:** The Task Force should recommend greater use of programmatic documents to evaluate mineral and energy exploration projects that propose using a pre-determined set of Best Management Practices. Following preparation of a statewide or agency-wide programmatic NEPA document, exploration projects should be approved using categorical exclusions or NEPA checklists rather than individual NEPA documents.

6. The uncertainties, delays, and costs associated with the NEPA process are compromising this Nation's ability to develop domestic mineral and energy resources. Proposed projects are held hostage because agencies are reluctant to make NEPA decisions, fearing their decisions will be challenged in court, thus jeopardizing responsible development of this Country's natural resources.

**Recommendation:** The Task Force should recommend that all NEPA decisions analyze impacts to domestic mineral and energy resource development and require that NEPA decisions evaluate compliance with the following:

- a. The Mining and Mineral Policy Act of 1970, 30 U.S.C. § 21(a), that states the federal government must encourage the development of an economically sound and stable domestic mining industry and the development of domestic mineral resources to satisfy industrial, security and environmental needs;
  - b. The Federal Land Policy and Management Act of 1976 at 43 U.S.C. § 1701(a)(12) which requires managing the public lands in ways that recognize the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands; and
  - c. The Presidential Executive Order 13211 to consider domestic energy supply, distribution, or use.
7. The NEPA process consumes agency resources and private-sector capital that would be better spent on projects with tangible environmental benefits.

**Recommendation:** The NEPA Task Force should evaluate ways to re-direct the public- and private- sector resources that are currently being spent on the NEPA process to on-the-ground environmental improvement projects. Instead of having to prepare lengthy and complex NEPA documents, there should be provisions added to NEPA that encourage direct investment in projects to enhance and improve our environment.

## NEPA SHOULD BE REVIEWED IN THE CONTEXT OF THE MANY ENVIRONMENTAL LAWS THAT POST-DATE NEPA

As one of the country’s first environmental laws, the National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190, 42 U.S.C. §§ 4321-4347, January 1, 1970, as amended, was visionary for its day. Passage of NEPA in 1969 laid the foundation for what has become a comprehensive framework of federal environmental protection statutes. As shown in Table 1, in the 35 years since NEPA was enacted, Congress has developed many other federal laws designed to protect all aspects of the Nation’s environment.

In evaluating NEPA and its interaction with other federal environmental statutes, it is important to recognize the substantially different purposes between NEPA and other environmental laws. The acronym NEPA stands for “National Environmental *Policy* Act” – not the “National Environmental *Protection* Act.” As such, NEPA is a process, a procedural law that requires federal decision makers to seek public comment, to consider alternatives, and to evaluate and disclose impacts.

In contrast, the environmental laws that post-date NEPA, like the Clean Air Act of 1970 and the Clean Water Act of 1972, protect specific environmental resources. Other post-NEPA environmental statutes deal with other aspects of environmental protection. For example, the Resource Conservation and Recovery Act of 1976 governs the management and disposal of solid and hazardous wastes. The Toxic Substances Control Act of 1976 deals with the manufacture, distribution, use, and disposal of toxic substances. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 pertains to the cleanup of the Nation’s most polluted sites. These and the other laws shown in Table 1 provide substantive on-the-ground environmental protection mandates and compliance requirements.

<b>Table 1</b>	
<b>Chronology of Enactment of Selected U.S. Environmental Laws</b>	
<b>Enactment Date</b>	<b>Federal Environmental Protection Statute</b>
1966	National Historic Preservation Act (NHPA)
1967	Air Quality Act
<b>1969</b>	<b>National Environmental Policy Act (NEPA)</b>
1970	Clean Air Act (CAA)
1972	Federal Water Pollution Control Act/Clean Water Act (CWA)
1973	Endangered Species Act (ESA)
1976	Federal Land Policy and Management Act (FLPMA) Resource Conservation and Recovery Act (RCRA) The Toxic Substances Control Act (TSCA)
1977	Surface Mining Control and Reclamation Act (SMCRA) Clean Water Act Amendments (CWAA)
1979	Archaeological Resources Protection Act (ARPA)
1980	Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) also known as “the Superfund,”
1984	Hazardous and Solid Waste Amendments (HSWA)
1986	Superfund Amendments and Reauthorization Act (SARA)
1990	Clean Air Act Amendments (CAAA)

The environmental statutory and regulatory framework of this country is thus significantly different than it was in 1969 when Congress developed NEPA in response to a growing awareness and concern about the importance of environmental protection. Now, 35 years later, it is appropriate to examine NEPA in the context of this environmental statutory and regulatory framework to determine if there are areas of

duplication and overlap, ways to strengthen and improve NEPA, or opportunities to achieve better coordination of NEPA with the body of other environmental laws.

Understanding the difference between NEPA and other environmental laws is critical to engaging in a constructive and meaningful dialogue about NEPA. Broader public awareness of this difference would greatly enhance the tenor of this discourse because NEPA must be evaluated in the context of the entire body of law to protect the environment. Since their enactment, the environmental laws that post-date NEPA have been enormously effective in improving the quality of our environment and will continue to provide comprehensive environmental protection for the future. Modifying the NEPA process will not change or compromise these substantive environmental laws. To the contrary, changing NEPA in ways that would allow federal decision-makers to get to a decision point sooner could actually improve environmental protection by expediting the approval process for proposed reclamation, cleanup, and other environmentally beneficial projects.

**Recommendation No. 1:** The NEPA Taskforce should evaluate NEPA in the context of the many substantive environmental statutes that post-date NEPA. This evaluation should:

1. Examine whether NEPA and this body of environmental law are working well together;
2. Determine if there is unnecessary duplication and overlap, and if so, how to eliminate or minimize this duplication; and
3. Develop ways to make the NEPA analysis and impact disclosure process work more efficiently with the process for obtaining permits under the CWA, CAA, etc.

### **TIGHTER STANDING REQUIREMENTS AND APPEAL PROCEDURES WOULD IMPROVE THE NEPA PROCESS**

As enacted, NEPA was designed to be a process of communication and collaboration. Unfortunately, anti-development interests have hijacked the NEPA process and turned it into a process of conflict and confrontation with the goal of stopping natural resource development on public lands. These interest groups misuse NEPA as a tool with which to categorically oppose mining and other natural resource development on public lands. This is in marked contrast to Congress' intent for NEPA, which was to create a constructive process to identify and evaluate the environmental impacts of activities and agency decisions affecting public land.

The misuse of NEPA stems largely from the NEPA appeal provisions, which anti-development groups use as their 37-cent ticket to delay and stop projects. The NEPA process has consequently become a far too fertile field for litigation, giving interest groups nearly endless opportunities to challenge NEPA decisions.

This litigious atmosphere severely clouds NEPA's strengths and purpose. Congress passed NEPA with the laudable intent to balance the need for an adequate supply of natural resources, while at the same time, protecting the environment. Unfortunately, the NEPA process does not achieve the balance of interests as originally intended. Instead, NEPA has become the anti-development groups' dream and the resource developers' nightmare. NEPA also creates nightmares for federal agencies charged with conducting NEPA analyses and preparing NEPA documents. These officials are often reluctant to make NEPA decisions for fear of having their decisions appealed and ending up in time-consuming and expensive legal battles.

This fear of litigation contributes significantly to the costs and delays associated with the NEPA process. In an attempt to minimize the potential for their NEPA decisions to be appealed, federal agencies frequently require additional studies and engage in "analysis by paralysis," with the hope that these extra measures will make their NEPA documents less vulnerable to appeal. Unfortunately, these additional

steps rarely provide protection from an appeal because the process itself – not the technical findings of the NEPA document, are typically the subject of the appeal.

**Recommendation No. 2:** The Task Force should recommend changes in the NEPA public scoping and appeal processes. Issues and concerns raised by local interests should be accorded more importance than comments from outside groups and individuals who are not directly affected by a proposed project or land use decision because local people know what is best for their environment and their community. Giving local viewpoints more consideration in the NEPA process would ensure that the real economic and social impacts associated with a proposed action are properly evaluated, and that local and state concerns are adequately considered. Additionally, appellants should be required to post bonds to cover the government’s and private-sector’s costs due to delays and legal fees if the agency’s NEPA decision is sustained.

### **THE FEDERAL LAND POLICY AND MANAGEMENT ACT — *NOT* NEPA GOVERNS USE, DEVELOPMENT, AND WITHDRAWAL OF PUBLIC LANDS**

NEPA does not govern land use and does not authorize federal land managers to make decisions that functionally withdraw public lands from responsible development that complies with land use plans and environmental statutory requirements. The Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1701 *et seq.*, governs the management of the public lands. Congress passed this landmark legislation in 1976, seven years after NEPA was enacted. FLPMA establishes guidelines for administering the public lands consistent with the constitutional authority that grants Congress the “power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.” (United States Constitution, at Article IV, § 3, cl. 2.)

FLPMA clearly establishes that Congress, not the Executive Branch, has the principal authority to withdraw public lands:

“The Congress declares that it is the policy of the United States that — ... the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action.” 43 U.S.C. § 1701(a)(4).

FLPMA at 43 U.S.C. § 1701(a)(2) establishes a land use planning and inventory requirement that directs federal land managers to conduct a periodic and systematic land use planning process to inventory present and future use. Federal land managers prepare NEPA documents, typically an Environmental Impact Statement (EIS), in conjunction with this land use inventory and planning process. The resulting NEPA documents consider public comments and land use alternatives and disclose the environmental impacts associated with agency land use decisions. Thus, as required by FLPMA, there is considerable public involvement in agencies’ land use management decisions. Sometimes these decisions are the subject of considerable public debate and controversy.

In the case of mining, FLPMA at 43 U.S.C. § 1732(b) directs the Secretary of the Interior to manage the public lands “by regulation or otherwise take any action necessary to prevent unnecessary or undue degradation of the lands.” In response to this directive, BLM developed surface management regulations at 43 C.F.R. Subpart 3809 that define compliance with the mandate “to prevent unnecessary or undue degradation.” In this manner, Congress has given BLM the authority to say *how* mining is done in order to prevent unnecessary or undue degradation while retaining for itself the authority to say *where* mining can occur on public lands.

There is no provision in NEPA that confers any authority upon the Executive Branch to make land use decisions that trump Congress’ plenary authority over public lands. Unfortunately, anti-development

groups frequently attempt to use NEPA as if it were a land management law that gives federal land managers authority to withdraw public lands from mining and other natural resource development. In doing so, these activists create a very awkward situation for federal land managers because they are essentially asking them to go beyond their authority to designate where natural resource development on public lands can occur with the hope of restricting or precluding development. This tactic, which is used during both the land use planning and project permitting processes, causes agencies to expend significant time and effort during the NEPA process to respond to comments seeking an outcome that exceeds the regulators' authority. This is a tremendous waste of both public - and private-sector resources.

**Recommendation No. 3:** The NEPA Task Force should evaluate ways to discourage the misuse of the NEPA process as a surrogate land management law. The Task Force should recommend that NEPA public comment scoping notices specify the range of decision options authorized by statute and land use plans, and establish that project-specific NEPA documents cannot be used to change existing law or to challenge previously authorized land use management decisions. Interest groups seeking to oppose mining and other natural resource development on public lands already have an opportunity to express their viewpoint in NEPA documents that agencies prepare for land use plans. Agencies should be granted the authority to dismiss public comments that attempt to change land use status in project-specific NEPA documents

### **IMPROVING THE NEPA PROCESS FOR MINERAL PROJECTS ON PUBLIC LANDS**

The Council on Environmental Quality (CEQ) regulations that implement NEPA (40 C.F.R. Parts 1500 – 1518) create specific problems for proposed mineral projects. The requirement at 40 CFR Part 1502 § 14 to analyze alternatives to the Proposed Action is not well suited for many mineral projects because geologic factors must dictate where mineral exploration and development occurs. Unlike some commercial development projects where it makes sense to perform a site selection study to identify the optimal location for a proposed project, miners do not have the ability to choose where they mine. They have to explore and mine at the exact locations where mineral resources are found. Unfortunately, satisfying the alternatives analysis requirement is often a time-consuming paper exercise that adds unnecessary length and complexity to NEPA documents without adding much value to the environmental analysis.

Once a mineral deposit is discovered, there may be some flexibility in locating the mineral processing and ancillary facilities at some projects depending upon site-specific factors such as topography and land ownership patterns. In these situations, analyzing alternative locations for discrete project components may be a meaningful exercise. However, for many mineral projects, the range of alternatives that is practical, technically and economically feasible, and environmentally beneficial is extremely limited.

It should be noted that the FLPMA mandate to prevent unnecessary or undue degradation from mineral activities functions as a requirement to analyze and select alternatives that would reduce environmental impacts. In order to satisfy this mandate, mineral project proponents must prove that the proposed project facilities and mining and reclamation techniques will not create unnecessary or undue environmental impacts. This burden of proof necessarily considers different project layouts and other mining methods to determine whether there are technically achievable and economically feasible alternatives that would reduce impacts. The FLPMA unnecessary or undue degradation mandate requires that exploration and mining projects use feasible alternatives that minimize environmental impacts.

The requirement at 40 CFR Part 1502 § 14(d) to analyze the No Action Alternative creates a unique problem for mineral projects because federal land managers usually cannot select this alternative due to mandates in the U.S. Mining Law (30 U.S.C. §21(a) *et seq.*) and FLPMA that authorize mining on public lands.

Specifically, the Mining Law at 30 U.S.C. § 22 states:

“Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States...”

The following sections of FLPMA specifically authorize mining on public lands:

“the public lands be managed in a manner which recognizes the Nation’s need for domestic sources of minerals, food, timber and fiber from the public lands...” (43 U.S.C. § 1701(a)(12)); and

“no provision of this section or any other section of this Act shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress.” (43 U.S.C. § 1732(b)).

So long as a proposed mineral project complies with the FLPMA mandate to prevent unnecessary or undue degradation, an agency cannot wholesale reject a Plan of Operations. Rather, the agency’s authority rests with regulating *how* the proposed activity must be conducted to comply with the unnecessary or undue degradation requirement.

Although agencies cannot typically select the No Action Alternative, the requirement to consider the No Action Alternative adds considerable length and complexity to some NEPA documents with no meaningful environmental or land management benefits.

For these reasons, aspects of CEQ’s current NEPA rules are not ideal for evaluating impacts associated with proposed mineral activities. Agencies charged with preparing NEPA documents for mineral projects have to force-fit the project into the NEPA document template that revolves around considering alternatives including the No Action Alternative.

**Recommendation No. 4:** The NEPA Task Force should recommend modifications to the NEPA alternatives analysis requirement for mineral and other natural resource development projects in ways that recognize the fixed location of mineral deposits and other natural resources due to geologic constraints. The Task Force should also eliminate the requirement to consider the No Action Alternative for mineral projects that comply with the FLPMA mandate to prevent unnecessary or undue degradation.

#### **AGENCY RESOURCES WOULD BE BETTER SPENT BY DEVELOPING PROGRAMMATIC NEPA DOCUMENTS FOR EXPLORATION PROJECTS**

BLM and USFS currently devote enormous time and energy preparing individual NEPA documents, typically Environmental Assessments (EAs), for exploration drilling projects. A more efficient and cost-effective approach would be to prepare a programmatic document that analyses the environmental impacts and appropriate mitigation measures for a typical exploration drilling project that employs a pre-determined set of Best Management Practices. This document could then be used as the basis for evaluating individual exploration drilling project proposals. Projects that fit within the parameters of the programmatic document and that adopt the recommended Best Management Practices and mitigation measures recommended in the programmatic document could then be approved with either a Categorical Exclusion or a Determination of NEPA Adequacy (DNA) checklist.

A typical exploration drilling program involves a limited range of activities that result in easily predictable and well understood environmental impacts. Constructing temporary access roads and drill pads disturbs soils and vegetation on a temporary basis. The mining industry has a demonstrated track record of successfully reclaiming this disturbance. Moreover, the outcome of the NEPA analysis for a typical proposed exploration project is predictable. Assuming the project is located on lands open to operation of the Mining Law, and the project complies with the FLPMA mandate to prevent unnecessary

or undue degradation, the agencies approve the project. Their approval may include special stipulations or required mitigation measures as necessary to address site-specific conditions and to avoid any environmentally sensitive areas with cultural resources or sensitive habitat. However, as discussed above, the agencies do not have the authority to categorically reject a Plan of Operations.

Using a programmatic approach to approve routine, short-duration projects would not modify in any way the level of environmental protection or reclamation applied to these projects. Operators would still have to collect site-specific baseline data to determine whether cultural resources or sensitive species or habitats exist in the project area, and if so, how to apply the Best Management Practices to mitigate impacts to these resources. It would, however, get to a decision point much sooner, with obvious benefits to the private sector and the Nation's supply of energy and mineral resources. It would also substantially benefit the quality of BLM's and USFS' land management activities because it would allow the agencies to spend more of their time on more complex and important decisions and less time preparing *pro forma* NEPA documents on routine matters. Moreover, a programmatic approach is consistent with 40 C.F.R. Part 1500 § 4(i) that directs agencies to use "program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§§1502.4 and 1502.20)."

**Recommendation No. 5:** The Task Force should recommend greater use of programmatic documents to evaluate mineral and energy exploration projects that propose using a pre-determined set of Best Management Practices. Following preparation of a statewide or agency-wide programmatic NEPA document, these types of projects should be approved using categorical exclusions and NEPA checklists rather than individual NEPA documents.

## **NEPA IS ADVERSELY AFFECTING THE NATION'S SUPPLY OF DOMESTIC ENERGY AND MINERAL RESOURCES**

Reducing our reliance on foreign sources of mineral and energy resources is critical to this country's economic health and national defense. Unfortunately, the delays, costs, and uncertainties associated with the NEPA process create a significant and sometimes insurmountable barrier to responsible natural resource development.

This barrier is inconsistent the original intent of NEPA to achieve a balance of interests. NEPA at U.S.C 42 § 4331(b)(5) describes the balance of interests Congress intended for NEPA, speaking specifically to the objective of balancing the need for natural resource development and environmental protection:

"In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may...achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities.

**Recommendation No. 6:** The Task Force should recommend that all NEPA decisions analyze impacts to domestic mineral and energy resource development and require that NEPA decisions evaluate compliance with the following:

1. The Mining and Mineral Policy Act of 1970, 30 U.S.C. § 21(a), which mandates "that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, and the orderly and economic development of domestic mineral resources, reserves, and reclamation of

metals and minerals to help assure satisfaction of industrial, security and environmental needs;”

2. The Federal Land Policy and Management Act of 1976 at 43 U.S.C. § 1701(a)(12) which mandates that “the public lands be managed in a manner which recognizes the Nation’s need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970;” and
3. Presidential Executive Order 13211 to consider domestic energy supply, distribution, or use.

### **CONCLUSION**

WMC is confident that the NEPA process can be improved for mineral projects on public lands. Instead of the confrontation and conflict that all too often cloud the NEPA process for many mineral projects, a far better use of public and private sector resources would result if the NEPA process were managed in a different way. WMC’s vision for an improved and updated NEPA process would be one of collaboration and communication in which stakeholders participate in the process with the mutual goal of making proposed mineral projects the best they can be for both the environment and local communities.

WMC can only speculate upon what could have been accomplished over the past 35 years since enactment of NEPA if even just a fraction of the public- and private-sector resources devoted to the NEPA process could have been spent instead on tangible environmental improvements. WMC contends that the Nation’s resources could be better spent if the NEPA process were changed in ways that would allow federal agencies to make decisions faster in order to facilitate projects that include water quality improvements, wildlife habitat enhancement, abandoned mine reclamation, cultural resource preservation, etc. This change would be a far better way to comply with the NEPA mandate at 42 U.S.C. § 4331(b)(1) to “fulfill the responsibilities of each generation as trustee of the environment for succeeding generations” than the current NEPA paper exercise.

**Recommendation No. 7:** The NEPA Task Force should evaluate ways to re-direct the public- and private- sector resources that are currently being spent on the NEPA process to on-the-ground environmental improvement projects. Instead of having to prepare lengthy and complex NEPA documents, there should be provisions added to NEPA that encourage direct investment in projects to enhance and improve our environment.