



# NEPA Background

- ◆ Lofty goals for federal agencies:
  - Be trustee of the environment for future generations
  - Assure safe, healthful, aesthetic, cultural, and productive surroundings
  - Attain widest range of beneficial uses of environment without degradation
  - Preserve cultural, historic, natural aspects of environment
  - Achieve balance between population and resource use

# NEPA

- NEPA is **PROCEDURAL** statute
  - Agencies must take “**HARD LOOK**” at environmental consequences
- NEPA does not drive decision
  - Not required to select least environmentally damaging alternative
  - Not required to elevate environmental concerns above other considerations
- There is no “NEPA regulator” -- NEPA oversight is through the courts

# **PRINCIPAL PURPOSE IN PREPARING** **EIS**

- IDENTIFY AND ASSESS POTENTIAL IMPACTS ON THE NATURAL AND HUMAN ENVIRONMENT THAT WOULD RESULT FROM IMPLEMENTATION OF THE PROPOSED ACTIONS
- DESCRIBE AND EVALUATE REASONABLE ALTERNATIVES TO THE PROPOSED ACTIONS THAT WOULD MINIMIZE ADVERSE EFFECTS ON THE HUMAN ENVIRONMENT
- IDENTIFY AND RECOMMEND SPECIFIC MITIGATION MEASURES, AS NECESSARY, TO MINIMIZE THE ENVIRONMENTAL IMPACTS
- ADDRESS RELEVANT COMMENTS ON THE DRAFT EIS PROVIDED BY THE PUBLIC

(EIS 1-21 - 1-27)

## ENVIRONMENTAL IMPACT STATEMENT PROCESS

*Public Scoping and Interagency Communication Begin*

**Issue Notice of Intent**

*April  
2009*

**Public Scoping Meetings**

*April  
2009*

**Identify Issues and Develop /  
Screen Alternatives**

**Conduct Analysis on Feasible  
Alternatives**

**Determine Impacts / Evaluate  
Alternatives**

**Issue Draft EIS for Review**

*Public Comment  
Period*

**Prepare and Publish Final EIS  
(opportunity for public review)**

*April  
/May  
2010*

**Prepare Records of Decision**

*June  
/July*

## What Issues Will be Studied?

- Aesthetics/Visual
- Agricultural Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Electric and Magnetic Fields
- Environmental Justice
- Geology and Soils
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Recreation
- Noise
- Public Services and Utilities
- Socioeconomics
- Transportation and Traffic
- Other Issues



## What is the CEQA/NEPA Environmental Review Process?

- Assess potential impacts of the proposed Project
- Identify and analyze alternatives that would avoid or reduce potentially significant impacts
- Recommend mitigation measures that would help reduce potentially significant impacts
- Provide environmental information to decision makers
- Disclose potential impacts to the public

## What is Scoping?

- An opportunity to provide input to the environmental review process by providing information on:
  - Scope and content of the EIR/EIS
  - Potential environmental issues and mitigation
  - Potential alternatives to be analyzed
- To ensure they are considered, written comments are due April 30, 2009



## How Does the Public Provide Input During Scoping?

- Review the proposed alternatives and issues to be studied in the EIR/EIS
- Identify environmental issues of concern to you within or near the proposed study areas
- Propose alternatives, refinements, or mitigation measures that you think would minimize or avoid environmental impacts
- Provide written comments

# NEPA Trigger

- Compliance is required whenever an agency proposes to take “a major federal action”
- A “major federal action” is any action that has the potential for significant impact on human environment
- Typical actions:
  - Constructing facilities
  - Awarding grants
  - Approving permits
  - R&D
  - Real Estate actions (leasing, disposal, acquisition)
- The “BUT FOR” Test....The action couldn't occur but for an action by a federal agency

# Mitigation

- Reduces or lessens environmental impacts
- Options
  - Avoid: select alternative action
  - Minimize: use alternative technologies
  - Rectify: repair or restore
  - Compensate: replace

#### **6.5.1.2 Enablement by Permit, Lease, License, or Entitlement**

When a federal agency has discretion in its enabling decision to consider environmental consequences and when that decision forms the legal predicate for another party's impact on the environment, preparation of **NEPA** documentation is warranted because the agency has substantially contributed to the environmental impact.<sup>14</sup> The Regulations reinforce the concept that enablement involves the execution of a required federal action that enables a private party to pursue an action. The definition of a major federal action includes granting of permits or other regulatory decisions as well as federal and federally assisted activities. Federal actions that amount to less than a legal precondition are noticeably omitted from this definition.<sup>15</sup>

"In woodworking, the saying goes 'measure twice, cut once.' It means take the time to verify that the planned action is correct and then you get to take that action without making mistakes and without having to do the work over. For NEPA analysis, the same is true. Take the time to make sure what you are doing is right and done well, then you can do it without having a judge tell you to go do it over again.

"NEPA is a tool for exploring environmental issues and public concern about these issues at a point when true problems can be resolved without impeding projects. When the NEPA process is followed in the spirit of collaboration, only flawed projects will be challenged. NEPA results in improved agency work."

***Sandra Nichols  
Staff Attorney, WildLaw  
Testimony Before the Committee on Resources  
United States House of Representatives NEPA Task Force  
Field Hearing on the Role of NEPA in the States of Texas, Louisiana, Mississippi and  
Alabama.  
July 23, 2005***