

19 May 1997

Re: NEPA Call-In Technical Inquiry 0085 - Format, Public Notice for ROD

Dear NEPA Call-In User:

This letter is in response to your April 28, 1997 request for information on the requirements for public notice of availability of a Record of Decision (ROD) after an Environmental Impact Statement (EIS). Specifically, you want to know if the actual ROD document needs to be published or just a notice of its availability. You would also like guidance on the format for a Notice of Availability (NOA) for a ROD.

#### SUMMARY OF FINDINGS

NEPA Call-In found only a NOA for a ROD needs to be published, and not the actual ROD document. Once the availability of a ROD is published, no public comment period is necessary prior to starting the action because the decision has already been made. NEPA Call-In's detailed findings are provided below.

#### DETAILED FINDINGS

NEPA Call-In reviewed the Council on Environmental Quality (CEQ) regulations in Title 40 Code of Federal Regulations (CFR) part 1505.2, "Record of decision in cases requiring environmental impact statements" (enclosed). Sections (a), (b), and (c) provide the following guidance for the content of the ROD. The ROD must: (1) state what the decision was, (2) identify all alternatives considered by the agency and discuss all factors influencing the decision, (3) state whether all practicable means to avoid or minimize adverse environmental impacts were adopted and, if not, why, and (4) be accompanied by the Final or Supplemental EIS.

NEPA Call-In reviewed the CEQ document titled "40 Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations" printed in the Federal Register, March 23, 1981. Questions 34 a-d (enclosed) address the most frequently asked questions pertaining to Records of Decision. Question 34 (a) explains how the ROD should be made available to the public. Question 34 (b) explains that the summary section of the final EIS may not substitute for or constitute the agency's ROD. Question 34 (c) explains what provisions RODs should contain pertaining to mitigation and monitoring, and question 34 (d) addresses the enforceability of a ROD.

NEPA Call-In also reviewed PBS P 1095.4B, "PBS Preparation of environmental assessments and environmental impact statements." Although ADM 1095.1E, "Environmental considerations in decisionmaking," canceled PBS P 1095.4B, this document may be used for guidance on an interim basis until a revised PBS order is issued, which has not yet been done. PBS P 1095.4B, Chapter six, "Public information and involvement," Part two, "Other public involvement" (enclosed) restates the above CEQ regulations as GSA guidance. In addition, it states that a notice of availability for the ROD must be made available in the following ways: (1) The notice of availability should be sent to persons and groups requesting it; (2) the notice of availability should be published in the Federal Register for actions of national concern; (3) the notice of availability should be published in local newspapers, newsletters, State clearinghouses, local media, etc. for actions of primarily local concern. PBS P 1095.4B also states additional

public notices beyond those specified above may be made at the discretion of the regions. Finally, the document states the ROD must be accompanied by a copy of the Final EIS.

NEPA Call-In then reviewed Chapter 7.15, "Record of Decision" (enclosed) of the final working draft of the PBS NEPA Desk Guide, dated April 2, 1997. This document also restates the CEQ regulations found in Title 40 CFR Part 1505.2. The draft Desk Guide suggests summarizing the contents of the EIS in the ROD. It also emphasizes that the ROD is not the actual decision document, but it documents what the decision was. Site selection documents and contracts are examples of actual GSA decision documents.

Finally, NEPA Call-In reviewed the draft PBS NEPA Desk Guide, Exhibit 7-4, (enclosed) "Format for Notice of Availability of EIS." This format may also be used for a ROD, since these two documents are required to be made publicly available in the same way.

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Sincerely,

(Original Signed)

NEPA Call-In Researcher