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National Association of State PIRGs

October 31, 2001

via fax

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Chair
 Council on Environmental Quality
 Executive Office of the President
 17th and G Streets NW
 Washington, DC 20503
 202-456-6546 (fax)
 Attn: Task Force

Dear Chairperson:

I respectfully submit the following comments on the federal interagency energy task force (Task Force) that is to be established under Executive Order 13212 (Executive Order) as solicited by the Council on Environmental Quality (CEQ) (66 FR 43586-7). These comments are an addition to comments I submitted earlier.

Role and Mission of the Task Force:

As stated in the request for comments, the Task Force will have as its mission to "address impediments to federal agencies completion of decisions about energy-related projects". If the Task Force is to successfully meet this goal while "maintaining safety, public health, and environmental protections" the definition of "impediment" must be carefully considered and defined. Inefficiencies and lack of funding may be legitimately considered "impediments". Federal agencies actions are guided by National Environmental Protection Act (NEPA), the Clean Air Act (CAA), the Endangered Species Act (ESA), the Federal Land Policy and Management Act (FLPMA), the Administrative Procedure Act (APA) and other statutes that are designed to protect our environment and the public's health and safety. Agencies full and deliberate compliance with these laws cannot be considered an "impediment." The goals of Executive Order and operations of the Task Force can and must not supercede the laws that dictate the mission, requirements, and decision-making procedures of federal agencies. In the Federal Register notice, suggestions of decision-making processes which should be "improved or streamlined" are requested. Decision-making

procedures that are to be "improved and streamlined" cannot be circumvented or removed.

Recommendation: The Task Force must not consider existing statutory requirements designed to protect the public's interests to be impediments, but rather should work to ensure the full and deliberate compliance with such statutes.

Recommendation: The Task Force must not interfere with existing decision-making procedures of federal agencies as provided for by law.

Land Management and Energy Development:

The management of our public lands is one area where congress has provides a variety of legal requirements to guide agencies. Statutes such as the FLPMA and NFMA provide clear guidance as to the procedures and mission of agencies including the Bureau of Land Management (BLM) and the Forest Service with regards to land management. The mission of the Task force and the goals of the Executive Order cannot take precedence over this existing framework.

Particularly relevant to the mission of the Task Force is the way in which these statutes direct the agencies to balance multiple potential resource uses in their decision-making. With regards to BLM lands, the FLPMA makes clear that oil and gas drilling and other mineral development is only one of many values that are to be provided for and that mineral resources in no way take precedence over other values (43 USC § 1701). In fact, it might be argued that the FLPMA places mineral development second to ecological, environmental, recreational, and wildlife considerations. FLPMA's definition of multiple use recognizes that the most "judicious use" of the land may involve the use of some land "for less than all of the resources", and that consideration must be given "to the relative values of resources..." (43 USC § 1702 (c)). Our public lands are to be managed for a variety of uses and to be protected from degradations. There is some danger that the Task Force, with its clear focus on energy resources could come into conflict with these provisions.

Recommendation: The Task Force should clarify how its will balance its focus on energy development with the need of federal agencies to provide for multiple resource values.

It is clearly within the authority of the agency to preclude oil and gas drilling in areas where that would not be the best use of the land. The FLPMA, under Section 204, provides that an area may be withdrawn from mineral development when such development is incompatible with "maintain[ing] other public values in the area" (43 USC § 1702 (j)). Further, the FLPMA under Section 202 (e) authorizes the BLM to make land use planning decisions that exclude lands from discretionary actions such as mineral leasing (43 USC § 1712 (e)). The FLPMA, through withdrawals and through planning, has provided clear legal mechanisms by which lands shall be made unavailable for oil and gas leasing or other mineral development. Similar provisions to preclude energy development are also provided for under the Mineral Leasing Act. Also relevant to oil and gas leasing, the FLPMA provides that the unnecessary or undue degradation of lands be prevented (43 USC § 1732(b)). Clearly, it is the intent of congress that

some lands be closed to oil and gas development and that energy development be only one of many considerations that factor in to the management of our public lands.

Recommendation: In its efforts to expedite the production of energy, the Task Force must respect that some lands can and should not be open to energy development and should not treat denials of permits, withdrawals or exclusions as "impediments".

In addition to excluding or withdrawing an area from oil and gas leasing there is an additional legal framework that determines how decisions regarding energy development will be managed in an area open to oil and gas leasing. It is the current policy of the BLM to process all applications and requests from existing Federal oil and gas leases in a timely manner while ensuring compliance with NEPA and other laws, regulations, and policies. The BLM has the discretion to condition its approval of proposed actions with reasonable measures to reduce the effect of actions on resource values and uses, consistent with the lease rights granted (see 43 CFR 3101.1-2), including relocation, redesign, or delays in the proposed action. Again, the task Force, in its attempt to expedite energy development, must recognize the need for the agency to consider fully the impacts of such an action.

Recommendation: At times, agencies will come to the conclusion that relocation, redesign, and delay of energy related projects are necessary to meet existing legal requirements, the Task Force must defer to agencies in these matters. Conditions on energy projects, including delay, relocation, or redesign may be necessary and cannot be considered impediments.

A careful and deliberate land management planning process is provided for under the existing legal framework. For lands on which oil and gas leases have not been issued, leasing decisions are to be withheld pending completion of the planning decisions associated with an EA or EIS for an RMP amendment or revision that is being undertaken where oil and gas is the primary issue being considered. This policy applies even though lands may be open to oil and gas leasing under an existing RMP. The Task Force must respect this process; planning decisions require time and deliberation, and, they must include opportunity for public comment and consider a variety of alternatives, including alternatives that may not serve the mission of the Task Force or the goals of the Executive Order.

Recommendation: The goal of the Executive Order to expedite energy-related projects must be subordinate to the deliberate nature of the planning process. The planning process must proceed in compliance with legal requirements, including those that require public comment and that a variety of alternatives be considered.

Focus and Organization of the Task Force

The Task Force has as its focus projects that will "increase the production, transmission, and conservation of energy". Clearly, production and conservation present two very different approaches designed to address a perceived deficit in our nation's energy resources. Increased production takes a supply-side approach, while conservation represents a demand-side approach. As only one out of the eight functional categories in the proposed organization of the Task Force

focuses on conservation, it appears that addressing impediments to the conservation of energy will not be central to the Task Force's mission. If this emphasis does, in fact, represent the focus of the Task Force, we believe this would be fundamental mistake. The federal government has traditionally focused on the production of energy from fossil fuels, while measures to improve energy efficiency have been neglected. Each year, energy-related smog and soot causes millions of asthma attacks and shortens the lives of at least 60,000 Americans. In the U.S., 82 percent of global warming pollution comes from energy production, and 95 percent of radioactive waste comes from nuclear power plants. If the Task Force concentrates its focus on the Conservation of Energy category much good could be accomplished; the impediments to conservation are real and formidable.

We do need a long-term national energy policy, but more drilling is not the answer. Instead, increasing energy efficiency, and clean sources of renewable energy will help reduce our vulnerability to threats, create jobs, save consumers money, and reduce environmental pollution. These policies ensure reliable supply at stable prices produced with minimal harm to public health and the environment. Currently only 2% of our energy comes from clean, renewable power sources, but the potential power output of wind, solar, and geothermal resources in the United States is many times greater than our total electricity consumption. For example, the wind that blows in just four states—North Dakota, South Dakota, Kansas and Nebraska—is enough to meet the electricity needs of the entire country.

Increasing the amount of renewable energy used in the U.S. would help create a more resilient national energy system less vulnerable to disruption by human threats or natural disasters. By creating more geographically dispersed energy sources that are less dependent on large central energy plants, we would reduce the number and size of potentially vulnerable energy processing, storage and distribution facilities. In addition, increased energy efficiency would reduce our overall dependence on fossil fuels, including imported oil. For example, just requiring light trucks and SUVs to meet the same miles-per-gallon standard as cars, would save 1.5 million barrels of oil daily, 40% of projected Persian Gulf imports.

Yet the oil, coal and nuclear industries have received more than 80 percent of federal energy subsidies. These subsidies continue to give out-dated and inefficient technologies a competitive edge over cleaner, more reliable, more efficient policy options. Clearly, the impediments to renewable technologies are substantial. Were the Task Force to champion renewable technologies and efficiency it would have the opportunity to achieve a great deal of good for the American people. Increasing energy efficiency and a national renewable standard of 20% by 2020 could reduce global warming emissions by 40 percent, and smog and soot-forming pollution by more than 25 percent while saving consumers \$150 billion. Energy efficiency and renewable sources of energy also generate great benefits for our economy. It increases the efficiency of the economy as a whole, making the US more competitive around the globe. According to an analysis by the Wisconsin Energy Bureau, the use of renewable energy generates about three times as many jobs as an equivalent expenditure on oil. Investment in renewable energy and increased efficiency would create 700,000 jobs by 2010, and 1.3 million by 2020, according to a report by the Tellus Institute.

Recommendation: Addressing impediments to the conservation of energy should be the central focus of the Task Focus. A focus on energy conservation should be reflected in the organization and composition of the Task Force.

Recommendation: The Task Force should champion clean renewable technologies such as wind, solar, clean biomass, and geothermal.

Thank you for your consideration of these comments. If you have any question or need further clarification please do not hesitate to contact me.

Sincerely,



Matthew J. Hollamby
Environmental Advocate