

Anybody's Welcome to CRITICIZE

STORY AND PHOTOS BY CEAL KLINGLER

During the last days of 1969, Congress passed a bill that paved the way for a singularly important and oddly indigestible genre of literature, the sort of stuff that might result if you taped shredded elementary school history books together with doctoral dissertations on wasp venom.

The world at large offers no adoring reviews or awards for this literature. The worst examples of it attract the most attention, whereas the best pass almost without comment. Libraries sometimes stock it—never bookstores—but you won't find it in front on the "new arrivals" shelf. Sometimes it takes years to arrive and is best consumed, like a ripe butternut squash, within thirty to sixty days of its publication date.

If you live here and breathe, drink water, or eat food, you might want to read it.

Call this unique form of writing "environmental literature," or maybe "government environmental literature"—documents written to meet requirements of the National Environmental Policy Act (NEPA) as well as those that meet state or local requirements passed in NEPA's wake, such as the California Environmental Quality Act (CEQA).

Government environmental literature incorporates two simple, revolutionary ideas. One: Decisions have consequences. Two: Look before you light the flame thrower.

NEPA requires federal agencies to consider potential environmental and societal consequences of their actions in advance. If those consequences might be "significant,"* the federal government must inform communities that might be affected, analyze potential significant effects in detail, consider alternatives—including not taking action—and allow the public to comment. Then the decision can move forward. The California Environmental Quality Act goes further: It requires state and local government agencies either to avoid significant impacts in decision-making or to create a plan to ameliorate those significant impacts, if "feasible."*

NEPA affects almost every action the federal government takes, from issuing mining permits to allowing corporations to build solar energy farms or to spray herbicides on public land. CEQA performs the same function at state and local levels in California. When government officials think a project might wreak significant damage, they're required to announce a proposed action to communities that might be affected and to allow opportunities for public comment. These opportunities arrive as short documents posted on government websites, in long environmental impact statements and reports, and in oblique references to other documents.

Therein lies a great privilege and liability for every one of us.

An anesthesiologist once told me his job involved hours of boredom interspersed with moments of great terror. Reading

government literature is like that, except thankfully without as much responsibility and unfortunately without as much control. Prose peppered with passive verbs regularly describes the potential for everything from mining on Conglomerate Mesa on the borders of Death Valley National Park to allowing geothermal exploration on more than 20,000 acres of federal land near Rose Valley, which has limited groundwater supplies.

Perhaps you love someone with asthma, and you worry that new water diversions will leave the Owens Valley awash in cadmium-laced crystals blown from drying alkali wetlands. Or perhaps you adore avocets; maybe you've heard about the 2020 reinterpretation of "unlawful to kill" in the 1918 Migratory Bird Treaty Act as now being lawful—even if tens of thousands of birds are killed—as long as no one says the purpose of the killing was to kill. (Yes, really.) Maybe you spent years of your life trying to protect a small, plump toad that lives in only one desert valley in the entire universe, and they're in danger of being mashed into toad jelly for new solar farms. Maybe the federal government plans to allow an oil pipeline to run through your water supply, even though such pipelines frequently leak.

There's a document for that decision—for now anyway—or there should be.

Sometimes the literature is coy. You have to hunt the relevant document down. It's not well-advertised, or it's only advertised in publications you don't read, or it's hiding in a raft of advertisements. The project summary—think of this as the plotline—might describe the proposed decision from an obdurately oblivious point of view. For instance, the authors who recently redefined "kill" in the Migratory Bird Act expressed concern about prosecuting someone who is innocently "driving a car" or "allowing a pet cat to roam outdoors" rather than noting that the change mainly indemnifies companies that kill thousands of migratory birds in spilled oil and waste ponds.

Sometimes the writing is hard to digest. While reading, I remember an affable cartoon rat's advice from an animated Pixar movie about food and cooking: "If you can sort of muscle your way past the gag reflex, all kinds of food possibilities open up." Once you've choked your way past the acronyms, the possibilities—bitter or sweet—settle in. Exploratory drilling for lithium in Panamint Valley will punch holes in desert wetlands and endanger mesquite groves that sustain silky flycatchers. Proponents of a pumped energy storage project—apparently unaware that water flows to the point of least resistance—proposed tunneling beneath Fish Slough Area of Critical Environmental Concern, a groundwater-dependent alkali slough.

Why comment at all? Why put yourself through what could be a lengthy and uncomfortable reading experience?

For me, it's clarifying to weigh my small discomfort against the places



ABOVE: Fish Slough Area of Critical Environmental Concern (alkali cordgrass in foreground).

UPPER RIGHT: Desert wetlands such as those in Panamint Valley and Fish Slough ACEC serve as vital rest stops for migratory birds and insects and as islands of biodiversity for rare or unique endemic insects. Below, an Owens Valley tiger beetle (*Cicindela tranquebarica inyo*) hunts at Fish Slough ACEC.



LOWER RIGHT: 24-hour mining operations disturb the nocturnal patterns of desert animals who can't forage during the day because of high temperatures. Below, a gravid female desert banded gecko hunts for insects.



I love, decide to read or not to read, and remember that all places—no matter who loves them or where—host plants and animals whose lives depend on those places.

Maybe you know something that project proponents don't. Maybe you know of an irreplaceable intermittent desert spring or waterway that would be left out of protections for "waters of the United States" under a new January 2020 decision. Maybe you've observed a unique species of butterfly, or a rare plant in the project area, organisms that biological consultants would miss if they surveyed at the wrong time of year or during a dry year. Maybe you want someone to care early in the process instead of after bulldozers or drilling rigs roll through.

Or perhaps you have something to say about new proposed revisions for NEPA, the ones that insist that "effects should not be considered significant if they are remote in time, geographically remote, or the result of a lengthy causal chain." Effects that last far into the future are usually more significant, not less. Close to half of "premature" air pollution deaths are due to pollution produced in a different state. Every breath in the desert depends, in some part, on the oceans, and we are—every single one of us—the result of a lengthy causal chain. Sometimes we have to remind decision-makers that one of NEPA's missions—for now or the future—is to "fulfill the responsibilities of each generation as trustee of the environment for succeeding generations."

Commenting on a document isn't supposed to be a vote; simply objecting won't prevent a project from going forward. Even useful comments and observations might be misunderstood or dismissed because they echo something someone else said first.

On the other hand, vote or not, sometimes a broad-reaching federal decision seems to ignore known scientific principles in favor of political donors, or a government official observes that a law is unpopular and needs to be clarified, or he or she says a project must be good because so few people commented early on. In cases like these, particularly when an important policy is being drawn and quartered—air pollution control laws, wetland protection laws, the Migratory Bird Treaty Act, or NEPA itself—it might help (maybe you, maybe the nation) to comment. The chances of making a difference are magnitudes greater if you comment than if you don't. It might help to say you, personally, care; that a project will have significant effects on you, personally; that someone or something or some place you love will be hurt. It might help to point out that every place we live in is a place someone else thinks doesn't matter; that this planet is the sum of all such places and more; that this sum of all livable places is the only planet any of us has ever had.

The upshot is that public participation laws like NEPA belong to all of us and serve us only if we use them. Comments don't always make a difference, but every once in a while the differences we make are vitally important. Therefore, sometimes I comment and hope for the best, and sometimes I don't.

Either way, I do try to consider consequences first. There's a tiny group of plump desert toads I visit each spring, and I'd like to be able to look them in the eyes, mostly without shame.

After all, everybody's a critic.

*The terms "significant" and "feasible" contain copious wiggle room.

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