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Its Time for a State Environmental Policy Act

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SMALL SCHOOL.
BIG VALUE.

ITS TIME FOR A STATE ENVIRONMENTAL POLICY ACT

by Denise D. Fort, University of New Mexico

What single law should be the first step in protecting New Mexico's environment from the consequences of our cascading population? My nomination would go to a State Environmental Policy Act, commonly called a "state NEPA." These laws are on one level very simple, requiring only that state governments "stop and think" before taking actions with significant environmental costs. After twenty-five years of experience with the federal National Environmental Policy Act (NEPA), however, we know that a law that allows citizens input into governmental action has a profound effect on governmental action.

The consequences of New Mexico's *laissez faire* attitude towards development are becoming increasingly clear, to the detriment of both the environment and the people of the state. Key habitat is being subdivided, and access to public lands blocked.

The vistas for which New Mexico is so justly celebrated are marred by enormous billboards, such as those Sandoval County has permitted along I-25. Major industrial developers reveal the inadequacies of our economic development theories; local governments waive tax revenues to lure new businesses and then appeal to state government for money for schools and infrastructure. Despite all evidence to the contrary, we act as though water is ample and can be delivered to any site that developers choose to develop. Water policy is apparently no one's business; the state engineer's office disclaims any role beyond water administration. The consequences of groundwater mining are simply not on the radar screen, as they say in Washington, so we continue to recruit new industries and the new residents that they bring. Large scale resorts, shopping malls and subdivisions in rural areas are likely to be the next wave of intensive development. The environmental consequences of these developments are virtually unregulated, aside from the traditional health-based pollution statutes.

How could a state NEPA help? The federal NEPA was one of the earliest environmental statutes passed by Congress in the flurry of lawmaking that surrounded Earth Day, 1970. NEPA is commonly referred to as a procedural statute, but it was intended to do a great deal more. It is probable, however, that no member of Congress anticipated the revolutionary effect that it might have on how federal agencies conduct their business.

The essence of NEPA lies in the requirement that federal agencies fully consider the environmental conse-

quences of their actions. This consideration is to be documented in an environmental impact statement (EIS), in which alternatives are to be fully explored, opportunities given for public comment, and a rationale provided for the alternative that is selected. Environmentalists are all too aware that mere preparation of an EIS does not lead federal agencies to behave like the Sierra Club. Imagine, though, how these agencies would behave if they were not required to document their decision-making.

Environmental impact statements take time to prepare, and agencies have often been quite reluctant to take that time. The strongest remedy this has given environmental litigators is the ability to procure an injunction against further agency action until the EIS is properly prepared. There are numerous instances when bad projects simply died of their own weight during this process. NEPA provides a breathing space in which democratic processes can operate, and that alone may be enough to kill a bad project.

NEPA only applies to federal agency action. State and local government decision-making must be brought under a state NEPA if we are to have comparable control over actions of state and local government. State and city governments are often disinclined to consider environmental impacts, and, especially at the state level, reluctant to provide for public participation in their activities.

The sorts of state and local actions to which a state NEPA would apply would be development and permitting actions conducted by the jurisdiction. Municipal governments have become quite adept at NEPA avoidance. In Albuquerque, the city utilizes city money for environmentally destructive projects, such as the proposed Montano Bridge, reserving federal money for more benign highway projects. Funding decisions of the Interstate Stream Commission or decisions by the state engineer with a significant environmental effect - such as the decision to breach the dam on the Gallinas river - are other types of projects that would be brought under public review. Siting decisions for public projects would also be subject to review.

State NEPAs typically apply to permitting decisions of state agencies as well. For example, although a project might be privately funded, the decision to issue a discretionary permit to enable the project to go forward could

"It is the continuing responsibility of the Federal Government to use all practicable means...to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may- 1)fulfill the responsibilities of each generation as trustee of the environment for succeeding generations."

(from the National Environmental Policy Act, 42 U.S.C. s. 4331(b))

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require an EIS. In California, where a myriad of state statutes control development projects, a state Environmental Impact Report is required on many projects.

Interestingly, New Mexico once had a state NEPA, for just about one year. Steve Reynolds, former state engineer, has been credited with its repeal, along with the general opposition of the business community. Despite the formidable opposition that one can expect to reviving a similar law, the political prospects for this legislation are not necessarily as dire as one would think. Western states that are experiencing rapid growth are also encountering strong opposition to that growth. There is a cacophony of conflicting strains in our political speech now. The conventional wisdom is that New Mexico is in dire need of growth, meaning, evidently, more people and more jobs, of whatever sort. But the election of Debbie Jaramillo as Santa Fe's mayor indicates some recognition that growth can impose unwelcome costs on long-time residents.

At some point, we will realize that we are in a position to choose how and where growth occurs, and that if we fail to do so, we will lose those businesses and individuals

that are attracted by the state's natural beauty. Most elements of the business community are served by controlled growth, because visual pollution, expensive and inconsistent water supplies, failing infrastructure, and taxpayer revolts could quickly turn investments in New Mexico sour. This is particularly true of real estate interests.

A state NEPA will not solve all environmental problems that are associated with growth. It will give teeth to a requirement that our government think about the environmental consequences of what it is doing. In conjunction with other badly needed planning measures, it will open up to public scrutiny and participation the fashion in which growth is occurring in New Mexico.

This is not a time to raise new environmental initiatives at the national level. New Mexico will have to pass this law here, just as we need laws to address planning and the use of land. We are behind other states in this respect, because we did not enact these laws when most states did. Now that the state is one of the fastest growing in the nation and experiencing the consequences of uncontrolled growth throughout the state, we need to catch up. □