Reclaiming NEPA's Potential

Can Collaborative Processes Improve Environmental Decision Making?

Report from a March 1999 workshop on the National Environmental Policy Act

Co-sponsored by
the O'Connor Center for the Rocky Mountain West
at The University of Montana
and
The Institute for Environment and Natural Resources
at The University of Wyoming.

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The University of Wyoming

March, 2000

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The workshop organizers gratefully acknowledge the participants for their commitment to the workshop's objectives and for their cooperative efforts in the preparation of this book. We are also deeply indebted to the management and staff of The Nature Place, Florissant, Colorado, for providing outstanding conference facilities and assistance for this workshop. Special thanks go to all of the staff of the IENR and CRMW for their enthusiastic, effective, and hard work in planning and implementing the workshop and this proceedings volume.

Foreword

March 30, 2000

The National Environmental Policy Act, passed in 1969, presents in clear and compelling language the central role of the environment in maintaining "the overall welfare and development of man." Yet it is increasingly evident that its implementation falls short of that goal. Although the law clearly has improved the environmental stewardship of the federal government by requiring federal agencies to notify the public and offer them the opportunity to comment on environmental decisions, the process has too often come to focus on procedural requirements rather than substantive outcomes.

We, the Board of the Institute for Environment and Natural Resources at the University of Wyoming and the Advisory Board of the O'Connor Center for the Rocky Mountain West at The University of Montana, are pleased that this summary of the workshop co-sponsored by our two centers on "Communication and Consensus: Strategies for Fulfilling the Nation's Environmental Policy" is being made available.

The specific goal of the workshop was to explore the potential role of collaborative problem solving processes in the implementation of the National Environmental Policy Act (NEPA). This report was drafted by people who have worked with NEPA on a daily basis and are familiar with its strengths and weaknesses. It makes a number of observations and recommendations which, when taken as a whole, can significantly improve the administration of this far-reaching law. This is important not just to streamline the functions of government, but to begin to reverse the downward spiral of trust among so many citizens who routinely express frustration with their government.

The workshop involved diverse interests engaging with each other in a collaborative process designed to further the national discussion and deliberation regarding NEPA—a cornerstone of U.S. environmental law. This workshop is a prime example of the type of activity that the Institute and the Center were created to foster. Exploration and promotion of the use of collaborative processes to address natural resource and environmental issues is a primary focus of the Institute and the Center, and, therefore, we are excited about the result of the deliberations of this workshop.

It is important to emphasize that the specific goal of the workshop was to facilitate interaction of diverse interests regarding the potential for improving NEPA through the use of collaborative processes. It was not to reach consensus on every aspect of this complex issue, but rather to gain insights and perspectives regarding the diversity of interests upon which recommendations might be crafted. That said, the workshop participants did reach general agreement on a number of fundamental points.

Conversely, on a number of other very important issues, there were differences between participants that are described in the text. This report is the work of those participants, and neither their agreements nor their continuing differences should be taken as reflecting the positions of either of our two boards, or of their individual members. We are, however, united in commending this report to you for your consideration and for any response you

might have to it. In fact, we see this report as a key means by which our two organizations can contribute to ongoing policy dialogue.

We believe, based on the results of the workshop, that there are a number of issues that will benefit from further national discussion. They include:

I. The role of national versus local interests in NEPA processes

With public lands issues, there is tension between the view that local residents have closer knowledge of and are more affected by these lands and therefore should play a larger role in making decisions affecting the local area, and the view that because these lands are owned by all the people in the country, they all should have equal say over their management. How can these two views best be reconciled?

II. Extent of decision-making authority for collaborative groups

Agencies have statutory responsibility for making public land decisions, yet many people are concerned that expending time and energy to participate in collaborative groups is not worth it unless the group is actually making the decision, or at least having a direct influence on the decision. Otherwise, people often feel their input is meaningless. There is a tendency to want to come up with an answer as to exactly how much authority groups should have, but clearly this question needs discussion.

III. Cooperating agency status for state and local governments

NEPA provides that state and local governments can sometimes be granted this status, but does not specify when that should happen. Does including state and local governments as cooperating agencies on NEPA processes lead to better integration of efforts and sharing of information? Or does it give undue weight or unfair advantage to viewpoints that are mainly focused on economic development issues? Again, we see this as an ongoing discussion which we hope this report can further.

Resolution of these issues, as well as more effective implementation of NEPA itself, is significantly hindered by the increasing lack of trust between the public and our governmental institutions. We are hopeful that increasing the effectiveness of communication through the use of collaborative problem-solving approaches can contribute to greater trust and better outcomes.

Our own discussion of these issues has shown us the benefit of diverse groups continuing to engage on these and other critical issues related to improving the NEPA process. We hope that this book, produced by a diverse group of stakeholders, can serve to stimulate such discussions among those concerned with these important issues.

We are hopeful that increasing the effectiveness of communication through the use of collaborative problem-solving approaches can contribute to greater trust and better outcomes.

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Executive Summary

This book presents the proceedings of a workshop entitled "Communication and Consensus: Strategies for Fulfilling the Nation's Environmental Policy."[1] The workshop, held from March 20-23, 1999, was co-hosted by the Institute for Environment and Natural Resources (IENR) at The University of Wyoming and the Center for the Rocky Mountain West (CRMW) at The University of Montana.

The President's Council on Environmental Quality had previously been commissioned both IENR and CRMW to pursue projects that could lead to improved implementation of the National Environmental Policy Act (NEPA). One key element in the IENR and CRMW efforts, and the main theme of the workshop, was to explore ways to incorporate collaborative decision-making approaches into the NEPA implementation framework currently used by federal agencies.

The workshop provided a structured forum for the exchange of ideas and debate on this theme. Thirty-six invited participants, representing varied perspectives, brought to the table their extensive experience with collaborative process and past and current NEPA practice.

Workshop discussion focused on four key issues: (1) NEPA implementation history and current NEPA issues; (2) existing models for using collaboration or otherwise improving public involvement under NEPA; (3) barriers to integrating collaboration models under NEPA; and (4) strategies for integrating consensus and collaboration models under NEPA.

Although there was general agreement on most of the issues considered at the workshop and presented in this proceedings book, unresolved differences of opinion emerged on a few key issues. We have attempted to fairly present these differences of opinion and provide accurate descriptions of the participants' diverse positions.

SUMMARY WORKSHOP OBSERVATIONS AND CONCLUSIONS

1.0 NEPA Review

The NEPA Review Workgroup discussed NEPA's origins and its implementation history, with a particular focus on NEPA Section 101's provisions for broad, comprehensive environmental protection. The group concluded that NEPA implementation over the past 30 years has generally gravitated toward a narrow, procedural interpretation of the original Congressional mandate. Workgroup discussion generated several other observations and conclusions.

- *Decisions and actions of the executive, legislative, and judicial branches of the federal government have shaped NEPA implementation and set guiding precedents, often emphasizing procedural compliance rather than comprehensive protection measures.*

- *Several "drivers of change" are currently influencing federal agencies' perception of NEPA compliance and implementation. Influencing factors include frequent litigation, shrinking resources, changing Congressional mandates, the devolution of decision*

The main theme of the workshop was to explore ways to incorporate collaborative decision-making approaches into the NEPA implementation framework.

making to state and local levels, and increased public interest in decision-making participation.

- *In response to EIS litigation, federal agencies have increasingly sought to produce "litigation-proof" documents. This defensive action tends to discourage experimental NEPA processes involving collaboration or larger scale analysis.*[2]

- *Recent efforts to change and improve NEPA implementation include legislation to limit the applicability of NEPA on specific federal projects; the 1997 CEQ NEPA effectiveness study; increased federal agency cooperation; a broader scope of environmental decision making; and Presidential use of NEPA as a grant of authority to preserve important aspects of our national heritage.*

- *Because NEPA's Section 101 goals have not been incorporated into strategies for solving larger interagency or intergovernmental issues, these issues have rarely been subjected to thorough public discussion and environmental analysis. There is an opportunity for federal agencies to involve the public and other affected agencies early in the NEPA process and for agencies to use the NEPA process for strategic planning in broad geographic and ecological regions.*

2.0 Collaborative Models

The Collaborative Models Workgroup initiated their discussion with a review of how opportunities for public participation have been incorporated into the NEPA process. Their review considered the evolution of public participation strategies, up to and including the recent advent of various forms of collaborative decision making.

The group's conclusions and observations include the following:

- *During the two decades following NEPA's passage, the public exercised their new right to participate in agency decision-making processes through public meetings and formal comment opportunities. Some people, dissatisfied with NEPA process outcomes, brought their concerns to the courts. In many instances, NEPA litigation successfully established agency accountability and responsi-*

Former Congressman Pat Williams, now a Senior Fellow at the O'Conner Center for the Rocky Mountain West, talks with Professor Lynton Caldwell, one of the principal authors of NEPA.

bility. However, litigation has also resulted, at times, in a perception of "decision-making gridlock."

- *The public began to call for greater public involvement in governance during the 1980s and 1990s. Collaborative approaches, some proposed, should be tested and considered for their potential to reduce the costs of decision making, better utilize local knowledge and scientific expertise, and air technical and value-oriented debates in coordinated decision processes.*

- *Over the past decade, individuals, agencies, and governments have experimented with collaboration, both within and outside the NEPA process. Many collaborative approaches are characterized by volunteerism, inclusiveness, direct face-to-face communication among parties, and flexible designs that respond to changing circumstances and incorporate newly interested players as a project develops. Some people undertaking new processes believe collaborative approaches offer significant potential benefits: to reduce costs of decision making and litigation; to better utilize local knowledge and scientific expertise; and to marry technical and value-oriented debates in coordinated decision processes.*

- *Other recent innovations include the reintroduction of market mechanisms into some forms of environmental management, the rapid proliferation of decision-making coalitions, and agency experimentation with greater public involvement in the NEPA process.*

- *The workgroup laid out the basic NEPA process steps and examined roles that the public usually plays in each step. Three main types of public participation and collaboration in NEPA projects were identified: (1) traditional public involvement, (2) agency-initiated collaboratives, and (3) collaboration initiated by other interested parties.*

Much remains to be learned about new approaches to public participation in decision making, particularly in NEPA-related decisions. The workgroup identified several important questions and concerns about infusing collaborative decision-making methods into NEPA: (1) To what extent can new collaborative processes supplement traditional decision-making methods? (2) Will these collaborative processes satisfy current democratic notions of full and balanced representation? and (3) What conditions are necessary for collaborative approaches to succeed and what conditions indicate that such approaches will not work? Chapter III includes a complete discussion of this group's conclusions and concerns.

3.0 Barriers and Strategies

At the beginning of the workshop, the Barriers Workgroup and the Strategies Workgroup discussed their respective issues independently. It soon became apparent that the two groups needed to coordinate their thinking.

Accordingly, the groups spent much of the last day at the workshop in joint session. The combined report of these two workgroups is presented in Chapter IV. The key observations and conclusions of the combined workgroups included the following:

- *In considering barriers to the use of collaborative decision making in NEPA implementation, participants identified four general categories: political, legal, administrative, and*

Collaborative approaches… should be tested and considered for their potential to reduce the costs of decision making, better utilize local knowledge and scientific expertise, and air technical and value-oriented debates in coordinated decision processes.

financial. They further identified specific critical barriers within these categories and directed strategies for overcoming these barriers. Each of the identified barriers and suggested strategies are listed and discussed in Chapter IV, and a summary listing is presented in Table IV-1.

- *Currently, the federal government does not provide effective leadership to encourage the use of more flexible applications of NEPA. Administrative and CEQ failure to promote the use of collaborative approaches to NEPA implementation has resulted in Congressional failure to provide financial support for collaborative initiatives.*

- *One of the critical barriers to supplementing the NEPA process with collaborative approaches is the lack of comprehensive documentation and analysis. Participants concluded that a series of pilot projects could test and demonstrate the effective use of collaboration. Pilot project evaluation and analysis could also fill existing knowledge gaps. These projects would use collaborative processes at the earliest stages of NEPA projects to foster community involvement, invite a diversity of views, and produce well-supported, environmentally-sound decisions. Although participants were not in agreement about how pilot projects should be promoted and implemented, there was strong support for further action on this suggestion.*

Endnotes

1 Although the workshop was convened under this title, the title of the proceedings document has been changed to more accurately reflect the direction of workshop discussions. The revised title is "Reclaiming NEPA's Potential: Can Collaborative Processes Improve Environmental Decision Making?"

2 CEQ, 1997a.

Acronyms and Initialisms

ADR	Alternative Dispute Resolution
BLM	Bureau of Land Management
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CRM	Coordinated Resource Management
EA	Environmental Assessment
EIS	Environmental Impact Statement
EQIA	Environmental Quality Improvement Act
FACA	Federal Advisory Committee Act
FONSI	Finding of No Significant Impact
GPRA	Government Performance and Results Act
ID	Interdisciplinary Team
NEPA	National Environmental Policy Act
OEQ	Office of Environmental Quality
ROD	Record of Decision
TEA-21	Transportation Equity Act for the 21st Century
USFS	United States Forest Service

Notes

Chapter I

Introduction

Harold Bergman, Daniel Kemmis

On January 1, 1970, President Nixon signed the National Environmental Policy Act (NEPA) into law. This landmark legislation provides the foundation for environmental protection in the United States. In three short pages, NEPA sets out a comprehensive national environmental policy directing federal agencies "…to use all practicable means…to create and maintain conditions under which man and nature can exist in productive harmony…."

Specifically, NEPA requires the federal government to establish and follow procedures to assess the environmental impacts of proposed major federal actions. (See Appendix A for a copy of the Act.) Over the past 30 years, NEPA has successfully required federal agencies to consider the environmental impacts of proposed actions and provided an important vehicle for public involvement in federal decision making.

On the occasion of the 25th anniversary of NEPA's passage, the President's Council on Environmental Quality (CEQ) set out to examine NEPA's effectiveness and to identify factors critical to the success of the NEPA process. CEQ released a report on its findings, *The National Environmental Policy Act: A Study of Its Effectiveness After Twenty-five Years,*[1] in January 1997. As an outgrowth of this study, CEQ launched a series of efforts to identify strategies that could make NEPA implementation more effective and fully realize NEPA's national environmental policy objectives.

As part of this effort, Kathleen McGinty, then Chair of CEQ, commissioned a set of NEPA-related activities by both the Institute for Environment and Natural Resources (IENR) at the University of Wyoming and the Center for the Rocky Mountain West (CRMW) at The University of Montana. Wyoming Governor Jim Geringer, Senator Max Baucus of Montana, and Senator Craig Thomas of Wyoming also added their endorsement of the NEPA-related work of IENR and CRMW.

IENR's and CRMW's independent examinations of NEPA's effectiveness generated two important observations. First, analysis revealed that the rules and procedures forming the framework for NEPA implementation often result in narrowly-defined decisions that do not adequately address environmental quality issues. Secondly, IENR and CRMW observed that NEPA decisions by federal agencies are frequently challenged through litigation. Although litigation is an important tool, it can lead to distrust and stalled decision-making processes.

In light of these observations, IENR and CRMW concluded that collaborative and consensus-based approaches for resolving environmental and natural resource management disputes could provide one vehicle for improving future NEPA implementation. To explore ideas about how this might be achieved, IENR and CRMW co-sponsored a workshop in March 1999 entitled "Communication and Consensus: Strategies for Fulfilling the Nation's Environmental Policy."[2]

In three short pages, NEPA sets out a comprehensive national environmental policy directing federal agencies "…to use all practicable means…to create and maintain conditions under which man and nature can exist in productive harmony…."

The chapters that follow summarize the discussion among workshop participants and constitute the workshop proceedings.

1.0 MEETING THE ORIGINAL PURPOSES OF NEPA: OLD VS. NEW APPROACHES

Thirty years ago, U.S. citizens and lawmakers began to pay considerably more attention to the environmental impacts of human activities. A series of statutes addressed this concern through legislative action: Congress acknowledged national environmental protection priorities in the National Environmental Policy Act, the Clean Water Act, the Clean Air Act, and Superfund legislation.

These legislative efforts empowered agencies and citizens to make great progress over the last three decades in their efforts to preserve and conserve natural resources. NEPA, particularly, has made agencies take a hard look at the potential environmental consequences of their actions and brought the public into the agency decision-making process like no other statute.[3] However, insight gained by years of practice and observation reveals some troubling patterns in NEPA's implementation.

NEPA has all too seldom been implemented in accordance with the intentions that motivated its drafters. Section 101 of NEPA, where the real spirit of the Act resides, calls for the nation to carefully protect its natural resources for future generations:

"The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in

View of Pike's Peak from the porch of The Nature Center near Florissant, Colorado, where the workshop was held.

cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans."

Section 102(1), following this comprehensive statement, reiterates Congress' intent to weave NEPA's visionary goals into all aspects of national policy and action: "Congress authorizes and directs that, to the fullest extent possible…the policies, regulations, and public laws of the United States shall be interpreted and administrated in accordance with the policies set forth in this Act." Section 102(2) goes on to establish NEPA's specific procedural requirements, primarily the preparation of environmental impact statements.

Although NEPA establishes an ambitious and far-reaching environmental mandate, over the past three decades NEPA implementation has focused almost exclusively on the procedural requirements in Section 102. The Section 101 vision, and the Section 102 mandate to integrate environmental protection measures into all federal actions, have received little attention. Agencies have become adept at preparing environmental assessments and environmental impact statements, but have not always been as successful at making environmental decisions that respect the substantive goals of NEPA.

The courts, the CEQ, federal agencies, and Presidential administrations have not found an effective way to link Sections 101 and 102 together to implement a comprehensive environmental policy for the nation, although the original mandate stated that "…it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources…" to meet NEPA's goals. NEPA's implementation, boiled down to the bare bones of the legislation, holds the document preparation process to be an end in itself, rather than a means to involve the public in making decisions that balance human needs with environmental protection.

During the past 25 years, however, new approaches to natural resource management decision making have also been emerging. Communities, governments, and other interests have begun to experiment with collaboration, consensus-building, and public dispute resolution, seeking new ways to bring diverse interests to agreement and build working relationships among stakeholders.

In some cases, these innovative approaches have been integrated into the NEPA process effectively. In many other cases, it has been a challenge to combine collaborative and consensus-building processes with the statutory, legally-defined NEPA process under Section 102.

It is clear that the traditional "rule-based," procedural approach in Section 102 of NEPA provides an important structure for NEPA implementation and offers a tested, mandated framework for basic public involvement processes. However, the traditional process often fails to effectively incorporate public opinion and adequately address critical environmental protection issues.

Agencies have become adept at preparing environmental assessments and environmental impact statements, but have not always been as successful at making environmental decisions that respect the substantive goals of NEPA.

The practice of collaborative, on-the-ground problem solving has developed to the point where it may, in fact, offer new hope for realizing the original intent of NEPA.

2.0 PURPOSE AND OBJECTIVES OF THE WORKSHOP

The purpose of the workshop was to bring practitioners together to explore the potential for collaborative approaches to improve the effectiveness of NEPA implementation. Participants tested the working hypothesis that stakeholder collaborative processes can help resolve environmental policy disputes that often arise in federal land and natural resource management decisions.

Workshop participants engaged in a thoughtful and wide-ranging discussion—one that this proceedings book will hopefully continue. Only through continued evaluation and careful analysis will it be possible to determine whether collaborative approaches will realize their potential to prevent litigious battles, protect the natural and human environment, and fulfill the vision for the National Environmental Policy Act.

With this purpose in mind, IENR and CRMW organized the NEPA workshop to meet the following specific objectives:

- *Review the successes and failures of NEPA implementation, particularly in relation to land and resource management issues in the western United States.*

- *Review collaborative and consensus-based models and methods as they have been applied to non-NEPA and NEPA issues. Identify barriers to the use of these models in NEPA implementation.*

- *Recommend implementation strategies for testing the use of collaboration and consensus models in actual NEPA projects. Aim to select and study candidate demonstration projects that will help address legislative and legal barriers and create new methods for judging the success or failure of outcomes.*

- *Transmit workshop conclusions and recommendations to legislative, agency, and public leaders and publish a workshop report for dissemination to CEQ, workshop funding sources, interested parties, and the public.*

3.0 CONTEXT OF WORKSHOP DISCUSSION

Early in the workshop participants discussed and generally agreed on several key points that provided a foundation for later discussions:

- *NEPA is basically sound; the Act itself does not need to be changed. Bringing together a group of interested parties to actively collaborate and assist in the NEPA process is not a panacea: it is a tool for selected, appropriate cases and is a supplement, not a replacement, to existing processes.*

- *NEPA and its implementing regulations provide a solid basis for incorporating more, and improved, options for citizen involvement in NEPA implementation. The Act's Title II authorizes agencies to "utilize, to the fullest extent possible, the services, facilities and information…of public and private agencies and organizations, and individuals…"*

- *Innovative approaches to public participation, alternative dispute resolution, and collaborative conservation have been tested on the ground and*

are continuing to evolve. As with all new processes, some of these innovations have been successful, while others have had ambiguous or unsatisfactory results.

- *Neither statutory mandates requiring collaborative processes, nor mandates on how such processes must work, should be convened under NEPA. Rather, the emphasis should be on seeking appropriate opportunities to encourage, fund, and enable these diverse processes, and on evaluating the results to improve future work.*

4.0 WORKSHOP ORGANIZATION AND AGENDA

The original concept for a co-sponsored IENR/CRMW workshop grew out of IENR Board discussions. After IENR and CRMW approved the concept and general plan for the project, a NEPA Workshop Steering Committee (consisting of Daniel Kemmis and Art Noonan from CRMW, Bob Cunningham from CEQ and later the USFS, Tom Jensen from Troutman Sanders LLP and the IENR Board, and Harold Bergman from IENR) worked together through 1998 to develop an agenda and to identify potential workshop participants.

The workshop (which ran from March 20 through 23, 1999 at The Nature Place near Florissant, Colorado) gathered together 36 invited participants. Participants represented a diversity of sectors and perspectives, including federal and state government agencies, natural resource industries, environmental interest groups, professional environmental and collaborative process consultants, and academics.

The assembled group offered individual and collective expertise in NEPA history, NEPA practice, and collaborative process. Prior to the workshop, participants were assigned, based on a distribution of experience and perspective, to one of four workgroups: (1) NEPA implementation history and current NEPA issues; (2) existing models for improving public involvement and collaboration under NEPA; (3) barriers to integrating collaboration models under NEPA; and (4) strategies for integrating collaboration models under NEPA.

The first full day of the workshop was devoted to a series of presentations on each of the four workgroup topics, conducted by participants with relevant experience and knowledge. Separate workgroup discussions and writing sessions filled the following two days, along with brief plenary sessions to hear workgroup progress reports. Discussion also took place during breaks and special information exchange sessions. In a final plenary session, each of the workgroups presented final reports and conclusions for general consideration and discussion.

At the close of the workshop, workgroup chairs and several participants stayed to write and edit initial drafts of the workgroup reports. Following the workshop, the participants (working through their workgroup chairs and with the assistance of IENR and CRMW staff) reviewed and revised all chapters of the workshop report. The results of the workgroup discussions are presented here in Chapters II-IV.

ENDNOTES

1 CEQ, 1997a.

2 Although the workshop was convened under this title, the title of the proceedings document has been changed to more accurately reflect the direction of workshop discussions. The revised title is "Reclaiming NEPA's Potential: Can Collaborative Processes Improve Environmental Decision Making?"

3 CEQ, 1997a.

The emphasis should be on seeking appropriate opportunities to encourage, fund, and enable these diverse processes, and on evaluating the results to improve future work.

Notes

Chapter II

NEPA Review

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Lynton Caldwell, Ray Clark, Andree DuVarney, Jim McElfish, Aloysius Hogan, Rhey Solomon, Jody Sutton

The legislation established a strong mechanism for protecting environmental quality and ensuring public participation. At times, however, NEPA's implementation has fallen short of its original goals.

1.0 INTRODUCTION

While Congressional intent in The National Environmental Policy Act (NEPA) Section 101 clearly calls for the nation to implement broad environmental protections, NEPA implementation over the past 30 years has generally gravitated toward a narrow, procedural interpretation of this mandate. This is not to say that NEPA has entirely failed to serve its intended purpose. The legislation established a strong mechanism for protecting environmental quality and ensuring public participation.

At times, however, NEPA's implementation has fallen short of its original goals. Federal agencies meet NEPA's procedural requirements to support their project-specific decision-making processes. Agencies rarely look beyond the particular to implement provisions for comprehensive protection.

An initial interpretation suggests that this procedural emphasis has resulted from the way individual federal agencies have interpreted the Act and related CEQ regulations. However, deeper analysis reveals the key roles the executive, legislative, and judicial branches of government have played in the evolutionary process which superseded Section 101's original goal—to protect the environment for future generations—in favor of the procedural requirements described in Section 102.

This chapter presents a 30-year history of NEPA. First, the chapter briefly reviews the guiding vision of Senator Henry Jackson and other NEPA drafters. The following section summarizes the relevant roles of the executive, legislative, and judicial branches of government and discusses how their cumulative interpretations have shaped NEPA implementation.

Several "drivers of change"—critical current issues which are causing federal agencies to re-think their NEPA implementation approaches—are then described, followed by analysis of a number of recent efforts to re-invent or re-energize NEPA. Finally, the chapter provides observations about the NEPA analysis process to set the stage for succeeding chapters.

2.0 LEGISLATIVE VISION FOR NEPA IN 1969

By the time Congress passed NEPA in 1969, public concern about the deteriorating quality of the nation's environment had been building for more than a decade. Beginning in 1959, with Montana Senator James Murray's bill to establish a high-level council on conservation and natural resources, each successive Congress considered legislation designed to reconcile and coordinate federal processes, policies, and actions relating to natural resources and the environment. None of these bills were enacted.

Lawmakers in the 90th and 91st Congresses introduced more than thirty bills to redirect federal action toward protection of environmental quality. In both the House and Senate, strong bipartisan leadership supported the declaration and

implementation of principles and goals to guide federal action on the nation's environmental future. During 1968 and 1969, members of both the House and Senate integrated their concepts and approaches into a bill sponsored by Senator Henry M. Jackson. Congress passed the bill as Public Law 91-190; President Richard M. Nixon signed it on January 1, 1970.

The Act clearly stated Congressional intent:

> *"…To declare a National policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality."*[1]

Lawmakers realized that the broad goals in Section 101 needed to be supported and reinforced with an "action forcing mechanism" that would have a tangible impact on agency action. Section 102 contains such a mechanism in the requirement that every federal action "significantly affecting the quality of the human environment" be preceded by the preparation of a "detailed statement" assessing a range of impacts, alternatives, costs, and benefits. Presumably, the NEPA drafters did not intend that this particular mechanism alone would accomplish the comprehensive goals outlined in Section 101.

They designed the procedural requirement as a means to an end. The fact that most agencies have come to view the procedural component as an end in itself can be traced back, in part, to the lack of additional binding mechanisms and directives in the original NEPA legislation. Some responsibility for the emphasis on procedure over vision, however, rests with each of the three branches of the federal government, as the next section demonstrates.

3.0 NEPA IMPLEMENTATION AND INTERPRETATION

This section explores how, over the past three decades, the executive, legislative, and judicial branches of government have used their powers (or, in some instances, refrained from using these powers) to influence NEPA interpretation, ultimately contributing to the formation of the existing, primarily procedural, process.

3.1 Executive Branch

The Role of the President: Because the 91st Congress believed environmental protection represented a broad national interest—no less than national economy and security—Congress placed the newly created Council on Environmental Quality (CEQ) in the Executive Office of the President (EOP). In 1937, Franklin Roosevelt's Administration had established the EOP at the recommendation of the President's Committee on Administrative Management.[2]

The Executive Office was intended to advise and assist the President in fulfillment of his managerial responsibilities. Its staff members, unlike the White House staff, were subject to Senate confirmation. The agencies comprising the EOP have varied somewhat over the years; however, all EOP agencies have had broad national responsibilities that transcend the circumscribed missions of cabinet level and independent agencies.

Title II of NEPA gave the CEQ extensive implementation responsibilities. Many of these responsibilities have never been executed; some, including research, have been transferred to the Environmental Protection Agency (EPA). No President has used the authorizations granted by NEPA to their full extent. Nor have the non-procedural mandates, as clearly outlined in Section 101 and Title II, been faithfully executed.

President Carter's Executive Order (EO) requiring CEQ to promulgate NEPA implementing regulations explicitly instructed CEQ to "issue regulations to Federal agencies for the implementation of the procedural provisions of the Act."[3] The EO is silent regarding Section 101 provisions. The absence of visible presidential support for a faithful interpretation of NEPA's intent has served to marginalize the substantive, visionary provisions of Section 101(b) and has contributed to the overwhelmingly procedural construction of NEPA.

The Role of CEQ: Congress established an Executive Branch structure within NEPA that divided implementation responsibilities for environmental policy between the CEQ and all other federal agencies. In addition to vesting CEQ with its national environmental policy role, NEPA granted CEQ broad responsibilities to monitor the national environment and to consider the effects of federal agencies' actions on the environment.

Concurrently, NEPA authorized CEQ to use the services of other agencies to the fullest extent possible. As a result, CEQ entered into an agreement with the EPA under which EPA assumed the initial responsibility for reviewing EIS adequacy.[4]

While individual agencies implement the NEPA process itself, CEQ promulgates the governing regulations. The current regulations, adopted in 1978 pursuant to President Carter's Executive Order, replaced prior NEPA guidelines issued by the CEQ. As noted above, by their own terms and in compliance with the 1978 Executive Order, CEQ regulations implement only NEPA Section 102(2).[5]

The regulations' purpose is "…to tell Federal agencies what they must do to comply with the procedures and achieve the goals of the Act."[6] In addition to rule-making, CEQ is also responsible for reviewing proposals referred to it by federal agencies, when these proposals have been declared environmentally unsatisfactory.[7]

CEQ regulations define the procedures agencies must follow to conduct an analysis of alternatives for a given project. Regulations also direct agencies to consider the environmental impacts of a proposed action. They indicate when an Environmental Impact Statement (EIS) is required and provide for the conduct of an Environmental Assessment (EA) when an agency is uncertain about the significance of potential environmental impact which may result from an agency action or decision.

An EA leads to one of two outcomes: the preparation of a full EIS or a "Finding of No Significant Impact" (FONSI). At the close of the EIS process, the agency prepares a "Record of Decision" (ROD) to document the decision. CEQ regulations also establish criteria for instances when an agency may "categorically exclude" certain types of routine actions from NEPA review because they do not—individually or cumulatively—have a significant effect on the human environment.

The absence of visible presidential support for a faithful interpretation of NEPA's intent has served to marginalize the substantive, visionary provisions of Section 101(b) and has contributed to the overwhelmingly procedural construction of NEPA.

Regulations establish procedures for involving federal, state, and local agencies "early in the NEPA process" and stipulate that agencies make diligent efforts to involve the public in NEPA implementation.[8] Public "scoping," which occurs whenever an agency decides to prepare an EIS, requires an "…early and open process for determining the scope of issues related to a proposed action."[9] Scoping must involve federal, state and local agencies, Indian tribes and other interested persons. Beyond the scoping process, the regulations set forth processes for public review and comment on the alternatives in the draft EIS.

CEQ regulations do not require multi-agency cooperation or public involvement in the actual preparation of EAs. EAs are also exempt from requirements for public scoping and public comment on draft decision documents. CEQ regulations are significantly less detailed for EAs altogether, as EAs were intended to be concise documents that "briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact."[10]

Outside the basic requirements, all federal agencies adopt their own procedures consistent with CEQ regulations. Regulations require federal agencies to use an interdisciplinary, science-based approach to analyze the environmental effects of their proposals, in consultation with other federal agencies having jurisdiction or expertise with respect to any potential environmental impact.

3.2 Legislative Branch

NEPA passage prompted several early lawsuits challenging the Act; as a result, legislators introduced legislation to repeal, weaken or limit the application of NEPA. None of the proposed bills passed. On April 3, 1970, the Environmental Quality Improvement Act (EQIA) created the Office of Environmental Quality (OEQ) to provide CEQ staff.

Congressional oversight (including jurisdictional responsibilities and appropriations levels) for CEQ and OEQ has been relatively inconsistent over the life of the Act. In the Senate, oversight jurisdiction shifted from the Senate Committee on the Interior to the present Committee on Environment and Public Works; in the House, the House Committee on Resources took on the oversight role formerly filled by the House of Representatives Committee on Merchant Marine and Fisheries.

CEQ legislative oversight is a critical and complex task, due to the huge range of issues in which CEQ is involved. Funding for CEQ and OEQ hovers at a relatively low and unstable level. While CEQ appropriations remain constant at an authorized $1 million per year, OEQ appropriations authorization expired over a decade ago; recent OEQ appropriations have varied in amount. For 1999, CEQ and OEQ were cumulatively funded at $2.75 million. The authorized number of staff has also fluctuated over the years, ranging from 70 full-time employees to virtually zero after the Clinton Administration's first term proposal to abolish the agency.[11]

Congressional action has influenced NEPA's implementation and effectiveness through several other vehicles:

1) *With some projects, Congress has stepped in to direct the outcome of a NEPA process by withholding funds or implementing other restrictive mechanisms.*

2) *Congressional action has been used to sidetrack the NEPA process by legislating new "solutions" or requiring agencies to adopt specific EIS alternatives. (e.g., Crown Butte Mine, Herger-Feinstein Quincy Library Group Act).*

3) *Legislation with a primary non-NEPA focus has contained provisions with direct relevance for NEPA implementation efforts.*

These actions have created, on the whole, an unpredictable and unstable environment for agencies engaged in NEPA implementation.

3.3 Judicial Branch

Since 1969, the courts have built up a body of highly developed case law surrounding specific NEPA provisions.[12] Much of this case law emerged from the courts prior to CEQ's issuance of the 1978 regulations. As a result, the current regulations reflect CEQ responses to judicial interpretations of NEPA in its earliest years, as well as President Carter's Executive Order emphasis on implementing the Section 102 procedural requirements of NEPA, rather than the national goals set forth in Section 101.

Cumulative court decisions have played a leading role in transforming NEPA into a procedural law primarily intended to mandate the preparation of environmental impact statements. The 1978 U.S. Supreme Court decision in the Vermont Yankee Nuclear Power Corporation v. NRDC case (435 U.S. 519) established the judicial precedent for this interpretation, which focuses on the procedural requirements of Sections 102(2)(C), (D), and (E)—sections which require agencies to "prepare a detailed statement" and "consider alternatives."[13]

According to judicial requirements, a preparing agency must "take a hard look" at the impacts of its actions, and not be "arbitrary and capricious" in its deliberations. Since 1978, the courts have declined to rule substantively on any other aspects of NEPA and have looked to CEQ as the primary interpreter of the statute.

The two most frequent complaints by NEPA litigants are (1) that an agency failed to prepare an EIS and (2) that EIS analysis was inadequate (see Figure II-1). Recently, many litigants have based their arguments on the assertion that agencies should have prepared a full EIS, instead of a simpler EA.[14] Judicial review has found individual agencies guilty of ignoring a range of CEQ regulations, including the requirements to "assess all reasonable alternatives" and consider the "full range of impacts."[15]

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Figure II-1

Causes of Action Filed Under NEPA in 1994

Inadequate Environmental Impact Statement	40
No Environmental Impact Statement	31
Inadequate Environmental Assessment	28
No Environmental Assessment	13
No Supplemental Environmental Impact Statement	7
Other	10
Total	**129**

The courts have generally enforced EIS public participation requirements, though improper public scoping has been established as an insufficient basis for judicial review when an agency can document the opportunity for meaningful public participation in Draft EIS comment. Lower courts have occasionally enforced precise Section 102 provisions, including 102(2)(E), which stipulates consideration of alternatives even where an EIS is not required. And while the courts have not enforced Section 102(1),

requiring that the policies and regulations and laws be administrated "in accordance with" the six substantive purposes of NEPA outlined in Section 101, they have not foreclosed the potential creation of administrative processes to secure such implementation.[16]

3.4 Agency Implementation of NEPA

Working within the context of the established regulatory framework and the substantial body of related case law, many federal agencies have come to view their NEPA obligation to be confined to the Section 102 requirement to prepare a "detailed statement." It is important to note that this requirement has had meaningful positive outcomes.

In many cases it has triggered significant improvements in environmental protection, while providing a mechanism to hold agencies accountable (through public process and litigation) for their actions and the related environmental impacts. It remains a key tool for safeguarding the nation's natural resources and public health.

Many hoped that NEPA would do more. Despite the intentions of the 91st Congress, Section 101's visionary goals for the protection of the nation's environment are neither integrated into nor integral to most agency decision-making processes.

Agency decision making under NEPA has generally been incremental: each specific action is considered independently, and the context in which an action occurs is often not clearly understood. For example, multiple agencies often conduct independent NEPA reviews within the same ecosystem.

As a result, issues that may require consideration of connected actions or cumulative effects (such as the migration patterns of large mammals) often are not addressed. Additionally, NEPA is not triggered until an agency advocates a specific proposal. Strategies for solving larger interagency or intergovernmental issues are seldom subjected to environmental analysis and public disclosure requirements.

In the past, agencies have been reluctant to engage in outside dialogue (either with the public or with other state, local, or federal agencies) before an action becomes a formal proposal, effectively limiting opportunities for early public and federal agency collaboration. Agencies do not commonly share information about their NEPA projects with other federal agencies and do not seek opportunities for agency collaboration on multiple related actions within a common geographical area. Redundant or conflicting actions can result.

Because of perceived litigation risks, agencies have been reluctant to experiment with new processes for collaboration and analysis. And, while CEQ regulations are substantially devoted to spelling out public participation and other procedures and requirements for EISs, in practice federal agencies have come to rely heavily on EAs, which do not require extensive scoping or public participation and can quickly lead to a FONSI. CEQ estimates that federal agencies prepare approximately 50,000 EAs each year; in contrast, agencies prepare several hundred full EISs.[17]

While the preponderance of EAs does not necessarily reveal a pattern of neglect on the part of the agencies, it does suggest that some projects may be undergoing insufficient analysis and public scrutiny. It seems likely that many agencies have come to view NEPA procedures (particularly public participation requirements) as procedural

Members of NEPA Review Work Group writing sections of their chapter.

hurdles to be overcome, rather than as strategic opportunities to improve their decision making.

Finally, agencies have paid little attention to CEQ regulations stating, "agencies may provide for monitoring to assure that their decisions are carried out, and should do so in important cases."[18] During NEPA processes, it is often apparent that follow-up monitoring or analysis will be required to assure the decision will not adversely impact the environment.

Even when the requirements for this monitoring are included as a part of the Record of Decision, agencies often do not have the resources or the direction to continue monitoring and provide results to the parties affected by the decision. The Forest Service has taken the lead in changing this state of affairs by adopting "adaptive management" approaches that involve the public in monitoring and information-gathering at all project stages.

4.0 DRIVERS OF CHANGE

Several evolving trends are affecting the way federal agencies view NEPA compliance. In response, agencies are slowly beginning to revise traditional procedures and explore new approaches. Many of these "drivers of change" are long-standing; others are relatively new developments only beginning to register as agents of change.

4.1 Litigation

Once the courts develop NEPA case law, agencies modify their NEPA processes, if needed, to comply with court findings on appropriate procedures.[19] In several cases, litigation has spurred critical improvements in agency decision making processes, with a resulting improvement in environmental quality.[20] However, a large body of case law reflects the courts' reluctance to second-guess agency decisions (for example, Vermont Yankee v. NRDC).

The 30-year NEPA implementation history has taught agencies minimally acceptable procedural standards.[21] Agency legal advisors have become arbiters who determine how much risk the agency may take within legally defensible parameters. Since litigation is costly and time consuming, there has been

Several evolving trends are affecting the way federal agencies view NEPA compliance. In response, agencies are slowly beginning to revise traditional procedures and explore new approaches.

a general agency preference for creating legally acceptable documents rather than engaging in experimental collaboration efforts, larger scale analysis, or proactive resolution of concerns.[22]

4.2 Shrinking Resources

Recent Presidential administrations have cut agency budgets and significantly reduced the federal workforce. At the same time, technology advances are providing the public with more information about how federal decisions affect complex local, regional, and national ecosystems. The cumulative effects of federal actions are also becoming more apparent, as research reveals how multiple, separate agency decisions compound impacts on regional environments.[23] Evaluation of this additional information requires detailed analysis by an already overburdened staff.

Although staff resources are increasingly limited, recently federal agencies have been presented with additional requirements to increase and improve staff performance. For example, the Government Performance and Results Act of 1993 (GPRA) requires federal agencies to become more creative in finding ways "to do more with less." CEQ is directing interagency task forces of environmental regulatory agencies to streamline environmental reviews and to ensure that reviews are completed simultaneous with the NEPA process.

Several workshop participants suggested that one result of this emphasis on economy and efficiency has been an increase in partnerships and collaborations between federal agencies and state, tribal and local governments and non-governmental organizations.[24] While these partnerships and collaborations can require more resources, particularly during the initial stages, some agencies see them as an opportunity to more fully integrate legislated mandates, such as GPRA and NEPA, into the decision-making process.

4.3 Increased Communication Technologies

Yet another driver affecting NEPA implementation is the increasing availability of data about resource and habitat conditions. New satellite and communication technology, for example, can now provide resource management agencies with "real-time data" that reflects current conditions on the ground (although critical gaps still exist for on-the-ground data that satellites can't provide).

In practical terms, the increasing volume of information means that agencies must process information more quickly to avoid repeated analysis of new information. As data become more sophisticated and more accessible, agencies risk being caught in an endless analysis loop. There is also a danger that agencies working with new information on current conditions may fail to account for the probability of change in environmental conditions over time.

In a related development, communications advances (in satellite technology, the internet, fax, and teleconferencing) have made instant information sharing and feedback a reality. Such opportunities offer challenges and cautions. New challenges to environmental analysis arise when agencies and the public must cope with information overload and seek assurance as to the quality of available information.

Although new technologies are proving to be valuable tools for cost-effective information transfer, total reliance on these tools could create information-poor segments of the

public, particularly among individuals without access to new technologies.

4.4 Implications of Population Growth and Relocation

Regionally and nationally, recent population shifts have placed greater demands on environmental resources and required the resolution of multiple competing claims to particular resources and areas. Some workshop participants observed that regional population growth (which often requires significant federal infrastructure development) is resulting in increased NEPA activity, especially in the West.

The traditional project-by-project NEPA approach does not easily accommodate a sharp increase in NEPA action (and thus an increase in the number of EAs and EISs) due to population pressures. This situation places an additional strain on the fixed or shrinking financial and staff resources available to the agencies responsible for compliance. Title II of NEPA, which calls for CEQ tracking of regional trends, was intended, in part, to mitigate the impact of growth. However, CEQ lacks the resources needed to carry out these long term monitoring requirements.

4.5 Congressional Mandates and Response to Constituents

Many Congressional mandates have specific NEPA implications. Recent legislation has typically focused on limiting the applicability of NEPA on specific federal projects. The Nuclear Waste Policy Act, which prohibits DOE from considering alternatives to the Yucca Mountain Site for disposal of high level nuclear waste, is an example of Congressional influence directly affecting the NEPA process.

These legislative mandates serve as drivers in changing the way affected agencies interpret and implement NEPA, and may predispose agencies to consider collaborative processes if they believe these processes could lead to more balanced, viable decisions.

Additionally, constituents concerned with the use of national resources (and the impact of federal agency decisions) encourage members of Congress to advance philosophies across a spectrum of preservation, conservation, or development interests. Preservation-oriented groups may request increased study of the effects of a proposed agency activity.

Others may push to alter the NEPA process to achieve cost-efficiency, time-efficiency, and outcome certainty, thus seeking to balance the benefits to nature against the relative costs to industry and government. As a driver of change, Congressional response to complex and often conflicting philosophies may result in legislative initiatives or environmental policy modification.

4.6 Globalization

Globalization of communications and commerce, which proceeds with unprecedented scope and rapidity, profoundly affects national and world policies—particularly policies addressing environmental impacts and issues.

NEPA speaks to the relevance of international issues and activities in Section 102(2)(F), which requires all federal agencies to "recognize the worldwide and long-range character of environmental problems," and to engage in international cooperation "in anticipating and preventing a decline in the quality of" the world environment. However, courts have generally not required an EA/EIS analysis of U.S. actions abroad.

Legislative mandates serve as drivers in changing the way affected agencies interpret and implement NEPA, and may predispose agencies to consider collaborative processes if they believe these processes could lead to more balanced, viable decisions.

In 1979, President Carter issued Executive Order No. 12114 (based on NEPA) to require environmental impact assessments for certain types of international actions. However, the Executive Order did not mandate compliance with NEPA and CEQ public participation regulations. Executive Order 12114 also failed to provide a basis for judicial review of the actions or assessments.

One case brought under NEPA itself, however, concerned the special case of Antarctica, an area where there is no direct issue of conflicting sovereignty.[25] The court held that NEPA does apply outside the U.S. when final decisions are made in the U.S.

At 1972 and 1992 United Nations conferences, nations adopted comprehensive, transnational environmental policy agendas. Many international treaties to which the United States is a party have, in effect, become national law.[26] Establishment of the World Trade Organization (WTO) and the North American Free Trade Agreement (NAFTA) continues to have significant implications for United States environmental policy administration of (e.g., the tuna-dolphin issue).

Twenty-five countries, acknowledging the transboundary context of environmental issues, signed the Convention on Environmental Impact Assessment of 1991. European nations are now seriously considering the adoption of a similar agreement. Alongside this international effort, NEPA's purpose implies U.S. support for international cooperative efforts "to prevent or eliminate damage to the environment and biosphere." This provision will surely continue to engage future national and international dialogue, especially as the American public pushes for more access to decision-making processes.

4.7 Continuing Advances in Science

Increasingly, ecosystem science presents compelling evidence that NEPA analysis must look beyond direct, on-site impacts of an action. Regional, and sometimes national, impacts must also be considered in the NEPA process. Agency decisions need to take into account how complex regional ecological relationships register cumulative impacts from multiple projects.

For example, the reintroduction of endangered species to public lands presented agencies with a strong reminder that wildlife species (e.g., grizzly bears and wolves) do not recognize arbitrary management and analysis boundaries. Efforts to address water quality issues have generated similar conclusions. Agencies and others recognize that water quality and quantity issues can not be resolved without broadening the impact analysis scope to include entire watersheds. In the NEPA context, this emerging awareness encourages agencies to extend their analysis beyond EA and EIS project boundaries.

Another factor supporting agency use of a broader unit of analysis is the recent recognition of the critical link between federal lands and adjacent private lands. Actions taken on federal lands often impact neighboring private lands; likewise, private landowners' management decisions may significantly impact nearby federal lands.

Efforts underway in the Columbia River Basin, the Great Lakes, and the Chesapeake Bay offer examples of how federal, state, local and tribal agencies have increased collaboration and generated sound policy decisions by working outside their normal boundaries to solve regional environmental problems. NEPA Section 101(a) explicitly supports this

cooperation among federal agencies and "…state and local governments, and other concerned public and private organizations…."

4.8 Devolution of Decision Making to State and Local Levels

In the 1980s, state and local governments began to take on authority and decision-making roles formerly vested in the federal government. This devolution has led to greater local control in agency decisions related to local projects.[27] However, this shift in control may be associated with the loss of a coherent regional or national perspective.

In a classic double bind, projects which provide economic benefits to a local area (through increased resource extraction activity) often negatively impact the regional or national environment (with effects including loss of habitat for migrating species, downstream water loss, and air pollution issues). Conversely, regional or national environmental protection initiatives may limit opportunities and options at a state and local level.

Recently, some discussion has focused on whether the federal government should grant state and local governments greater control over federal land management decisions.[28] While proponents believe this approach would provide local governments greater control over the use of local resources, others fear that such a situation would limit regional and national input into analysis of the costs and benefits of a given decision. Moreover, some feel local governments may be more susceptible to influence by natural resource development interests promising community economic benefits.

4.9 Public Desire for Increased Participation

Over the past decade, the public's desire to influence decision outcomes at all levels of government has dramatically increased. While CEQ regulations have always required agencies to solicit comment from local and national interests, the level of response from both sectors has risen significantly in recent years.[29]

It is difficult to define why this spike in public interest and participation has occurred; possible explanations include public mistrust of government decisions, the desire to protect privately held resources, and heightened competition among resource-use interests. Many members of today's public are well informed, highly educated and actively engaged in environmental issues.[30]

Recent experience illustrates how agencies are encountering increasing pressure to develop approaches which meet the public's desire to be involved in decision making. At all steps in the NEPA process—through preliminary scoping, scoping, development of alternatives, and effects analysis—agencies are being asked to develop interactive strategies. Many people are also proposing public involvement in post-decision activities, including implementation and monitoring.

In response to public interest and pressure, federal agencies have dedicated greater resources toward public involvement in the NEPA process. In some cases, collaborative approaches are creating new methods for involving people with diverse viewpoints and addressing their concerns surrounding natural resource decision making.

Agencies are encountering increasing pressure to develop approaches which meet the public's desire to be involved in decision making. At all steps in the NEPA process—through preliminary scoping, scoping, development of alternatives, and effects analysis—agencies are being asked to develop interactive strategies.

5.0 RECENT EFFORTS TO REENERGIZE THE NEPA PROCESS

Many would agree that the implementation process outlined in NEPA Section 102 has failed to substantively meet the goals of the Act. Although Congress, federal agencies, states, the public and some 80 foreign governments have recognized and embraced the basic tenets of environmental protection set out in NEPA, it is often difficult to create processes that turn intention into action. In recent years, several attempts have been made to assess the NEPA process; these assessment efforts have generated a number of suggestions for improving the process' effectiveness. In addition, specific legislative actions and agency initiatives have attempted to refine detailed aspects of the Section 102 procedures.

5.1 Recent Legislation

Although the last legislative change to NEPA occurred in 1975, in 1998 the proliferation of NEPA disputes over the use of environmental resources prompted Congress to enact legislation authorizing the U.S. Institute for Environmental Conflict Resolution, associated with the Udall Center in Arizona, to help moderate NEPA disputes.[31] In addition, the 1998 Transportation Equity Act for the 21st Century (TEA-21) specifies that the NEPA process be streamlined by conducting all environmental reviews for a project concurrently, where practicable, within set time periods.

5.2 CEQ Effectiveness Study

In 1995, CEQ undertook a study and evaluation of NEPA to determine ways the statute could be better implemented. The study assessed the NEPA process in light of its cost effectiveness, its overall efficiency, and its ability to meet the original intent of the statute. Subsequently, the study catalyzed many agencies to initiate revision of their NEPA procedures. It also launched a CEQ-led NEPA reinvention effort. In the 1997 study report, the CEQ set out the goals for the reinvention effort (see Figure II-2).[32]

Figure II-2

Recommendations from CEQ's 1997 NEPA Effectiveness Study

- *Find ways to better incorporate NEPA's goals into internal planning processes.*
- *Take into account the views of surrounding communities and other interested members of the public.*
- *Develop collaborative processes with other federal agencies to share information and integrate planning responsibilities.*
- *Focus knowledge and values from a variety of sources on a specific place.*
- *Incorporate science-based and flexible management approaches.*

5.3 Increased Federal Agency Cooperation and Collaboration

Federal agencies involved in the NEPA process have, until recently, demonstrated minimal cooperation with other federal agencies. With the current emphasis on downsizing and limited budgets, agencies are recognizing the value of sharing resources and data. Interagency cooperation in the preparation of EAs and EISs has increased significantly. To collaborate successfully on NEPA efforts, agencies must agree

to work together early in the NEPA process and continue this relationship throughout the life of a project.

These collaborative efforts are beginning to extend from federal agencies to state, local and tribal governments. Agency collaborations with state, local, and tribal entities present an entirely new set of questions that do not arise in exclusively interagency collaborations. Ultimately, it appears that these new collaborative approaches could lead to more efficient NEPA processes.

They may also demonstrate credibility with interested public participants, who look to the agencies to provide leadership and a unified approach to NEPA. However, interagency (and inter-governmental) collaboration in the NEPA process presents unique challenges. For example, workshop participants observed, in some instances collaborative efforts may complicate the fixing of accountability for government action.

5.4 Broadening the Scope of Environmental Decision Making

Recent advances in science have illuminated a number of environmental issues that require broader geographical and temporal scales of analysis. Because of improved data on population dynamics, federal projects to restore spotted owl populations in the Pacific Northwest and protect salmon populations in the Columbia River Basin are both now viewed as regional, rather than local, projects.

Broader analyses have the potential to more effectively address strategic environmental planning and decision-making at the regional level. They also, however, raise questions about the depth of analysis needed to support sound decisions and the extent to which federal, state, and local agencies must coordinate, cooperate and collaborate to reach successful outcomes.

5.5 Using NEPA as a Grant of Authority

NEPA contains numerous executive branch mandates that are rarely applied. Recently President Clinton used Section 101(b)(4) as his authority to develop the American Heritage Rivers Initiative. This section requires the federal government to "…preserve important historic, cultural, and natural aspects of our National heritage, and maintain, wherever possible, an environment which supports diversity, and a variety of individual choice."

Additional opportunity to use NEPA as a grant of authority for executive branch action lies in NEPA Section 105, which makes the law's goal supplemental to the laws of every federal agency. Many agencies are only beginning to recognize their responsibilities to the environment, the economy, the public, and future generations.

5.6 Using NEPA as a Tool for Integrating Other Requirements

Decreased federal funding, an increasing need for greater depth and breadth of analysis, and an increased demand for coordination and collaboration have caused agencies to rely on NEPA as a process for integrating the decision making, permitting, and approvals process among various federal and state agencies. No other statute has served this vital function. Additionally, because CEQ regulations contain numerous, specific, integration requirements (which are often not followed), greater adherence to CEQ regulations may eventually lead to better decisions.[33]

5.7 Agency Innovation and the Public Involvement Process

Some agencies are responding to the call to "reinvent government" by creating innovative systems and strategies with their institutional structure. In one such example, in 1996 the U.S. Forest Service created an "Enterprise Team" to analyze public comment received during the various stages of the NEPA process.

This team now contracts with federal agencies at all levels to provide summary documents of public comment, public involvement process coordination, project-specific websites, and consultation on public involvement processes. Agencies using the team's services have reported a reduction in costs, improved agency responsiveness (to FOIA requests and appeals), and a decrease in the amount of time necessary to complete the NEPA process effectively.[34]

6.0 OBSERVATIONS

A review of NEPA's implementation history leads to several observations and conclusions. Clearly, NEPA has not been fully implemented in accordance with the intent of its drafters. The courts, CEQ, federal agencies, the legislative branch, and the executive branch have failed to link NEPA Sections 101 and 102 together to implement a truly comprehensive environmental policy for the nation.[35] Certain "drivers of change" are forcing an evolution in the way both the federal government and the American public view NEPA. These developments are setting the stage for efforts to revitalize the NEPA process with renewed attention to Section 101 goals.

ENDNOTES

1 NEPA, Purpose, Section 2.
2 The Brownlow Committee of 1937.
3 Section 2(g) of EO 11514, as amended by EO 11991. Emphasis added.
4 EPA responsibility for EIS review stems from a provision in Section 309 Clean Air Act (42 USC 7609). See Appendix A for relevant Section 309 text.
5 40 CFR 1500-1508.
6 40 CFR 1500.1.
7 40 CFR 1504.
8 40 CFR 1501.6 and 40 CFR 1506.6(a).
9 40 CFR 1501.
10 40 CFR 1508.9(a).
11 In 1993, Clinton bypassed the CEQ and created the Office on Environmental Policy (OEP), appointing Kathleen McGinty as chair. When he subsequently failed in his attempt to abolish CEQ, he merged the OEP and the CEQ. McGinty became the CEQ Chair, and proceeded to revitalize the department. This effort culminated in the NEPA effectiveness study which, ultimately, led to the work of CRMW and IENR and this proceedings document.
12 Relevant cases include NRDC v. Morton (458 F.2d 827; D.C. Cir. 1972) Calvert Cliffs Coordinating Committee v. United States Atomic Energy Commission (449 F.2d 1109, D.C. Cir 1971) , Vermont Yankee v. NRDC (435 U.S. 519; 1978) and Robertson v. Methow Valley Citizens Council (490 U.S. 332; 1988). See Cohen and Miller, 1997; Sheldon, 1990; and Weiland, 1997 for more details.
13 See Caldwell, 1998, page 32, "Critics of NEPA have found its substantive provisions nonjustifiable, and by implication not positive law. The courts have refrained generally from overturning administrative decisions that could be interpreted as incompatible with the substantive portions of NEPA."
14 France, 1990.
15 Murchison, 1984.
16 See Leucke, 1993, for a review of NEPA litigation history and the evolution of the agency planning process.
17 CEQ, 1997b.
18 40 CFR 1505.3.
19 Clark, 1997.
20 Sheldon, 1990.
21 Twelker, 1990.

22 Current statistical information on NEPA litigation (including plaintiffs, causes of action, injunctions, and agency distribution of cases) is available in CEQ annual reports at www.whitehouse.gov/CEQ/.
23 CEQ, 1997a.
24 See CEQ, 1997a, page 22, for more information on increased collaboration resulting from efficiency initiatives.
25 Environmental Defense Fund v. Massey, 986F. 2d 528 D.C. Cir. 1993.
26 Susskind, 1994.
27 For example, Representative Barbara Cubin (R-WY) introduced a bill, currently in committee, entitled "The Federal Oil and Gas Lease Management Improvement Act of 1999" (H.R. 1985) that would allow a state's oil and gas conservation commission to take over post-lease issuance duties from the BLM on federal leases within the state.
28 Kemmis, 1998; Williams, 1998.
29 Michael Schlafmann, of the USFS Content Analysis Enterprise Team, observes that, although it is difficult to draw conclusions about comparative response rates for widely varied projects, individual federal land management projects appear to be generating more public comment than they have in the past. For example, over 500,000 separate comments were received during the scoping phase of the recent Forest Service roadless initiative.
30 National Science Foundation studies suggest a negative factor associated with increased public participation, in that there is a deficiency among the American public as to their ability to understand and interpret scientific evidence.
31 The Environmental Policy and Conflict Resolution Act of 1998 (Public Law 105-156).
32 CEQ, 1997a.
33 See, e.g., 40 CFR 1500.2(c); 1500.4(k); 1501.2; 1505.25.
34 More information about this enterprise team is available from program coordinator Jody Sutton at (801) 534-1942.
35 Clark, 1997; Weiland, 1997; Caldwell, 1998.

Notes

Chapter III

Existing Models for Improving Public Involvement and Collaboration under NEPA

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Collaborations can be understood as "coalitions of the unalike." These coalitions emphasize stakeholder inclusiveness, volunteerism, flexibility, and direct communication.

1.0 INTRODUCTION

Current attempts to examine the role of public participation in environmental decision-making processes are best considered in a historical context. This chapter begins with working definitions of key terms, and goes on to orient the reader with a partial history of public decision-making trends over the past century. Tables and text provide a description of how the NEPA process traditionally incorporates public participation.

The chapter then summarizes existing models for incorporating collaboration and consensus building into the NEPA decision-making process and provides brief case studies to illustrate each model.

2.0 DEFINITION OF TERMS

"Collaboration," "consensus," and even "public involvement" can be complicated terms to define. For the purposes of this discussion, we offer working definitions that reflect a general agreement and understanding among workshop participants. Within the discussion, these terms are used to support and supplement each other; collaboration, consensus, and public involvement are often combined in complex forms to create innovative approaches.

Collaboration: Collaboration, as it relates to public decision-making processes, involves face-to-face problem solving among diverse stakeholders. Don Snow, of the Northern Lights Institute in Missoula, Montana, suggests that collaborations can be understood as "coalitions of the unalike."[1] These coalitions emphasize stakeholder inclusiveness, volunteerism, flexibility, and direct communication.

Collaborations take on a variety of forms and seek diverse outcomes, depending on the composition of the group and the task at hand. In some cases, a lead agency asks other parties to join in its decision-making process in a way that exceeds minimal compliance with NEPA statutory requirements and implementing regulations. Participating parties may include tribal, state, or local governments; other federal agencies; and business, industry, environmental, and community interests.

In other cases, an existing collaborative group approaches the lead agency with a proposal for joint work. Depending on the situation, the same players may switch from leading to supporting roles in the process. Although many collaborations seek to involve the public in a decision-making capacity, several of the examples in this chapter illus-

Only recently have collaborative approaches to natural resource and environmental management been widely considered and tested. Contemporary advocates herald collaborative decision-making approaches as the embodiment of "democratic" decision making.

trate inter-agency collaborative models that do not expand public involvement roles.

Consensus: According to Matthew McKinney of the Montana Consensus Council, consensus building is best understood as a particular form of collaborative problem solving. However, whereas collaborative processes may or may not be designed to reach agreement or resolve a dispute, consensus processes are designed to seek agreement among all the people interested in or affected by a particular issue or situation.

Consensus processes seek unanimous agreement, in contrast to processes where a decision is reached through voting or is made unilaterally by a government agency or judicial body. McKinney also asserts that "…it is important to acknowledge the difference between a consensus process and a consensus outcome. It is possible, and quite common, to convene a group people with diverse viewpoints to seek consensus and not arrive at a consensus outcome. In other words…consensus processes do not always result in consensus outcomes."[2]

Public Involvement: Public involvement refers to any process designed to (1) inform and educate the public; and (2) seek input and advice from the public. Agencies define public involvement as any activity that solicits opinion from individuals or interests outside the agency bureaucracy. Under this definition, "the public" is a broad term encompassing a multiplicity of interests: local citizens, industry, advocacy groups, chambers of commerce, and any other non-agency voice.

Traditionally, public involvement in agency decision making processes has taken place through two vehicles: public hearings and public comment letters. These traditional approaches are rapidly giving way to, or at least being supplemented by, new models, as we discuss in detail in the following chapters. It is important to note that, while an effort to improve public involvement opportunities often assumes some element of increased collaboration, collaborative approaches (especially interagency collaborations) do not necessarily expand public involvement opportunities.

3.0 HISTORICAL TRENDS IN GOVERNANCE AND DECISION MAKING

Over the past century, the U.S. has experienced a series of changes in democratic theory and practice. To some extent, these changes reflect shifting power relationships among government, private interests, and citizens. At several stages in the past one hundred years, collaborative and grassroots democratic decision-making efforts have been valued, and, to varying degrees, applied.

At other times, inclusive, collaborative approaches have been discredited and superseded.[3] Only recently have collaborative approaches to natural resource and environmental management been widely considered and tested. Contemporary advocates herald collaborative decision-making approaches as the embodiment of "democratic" decision making.

The following section briefly examines the 20th century history of federalism and collaborative decision-making processes.[4] Discussion tracks various prevailing sentiments about the nature of good public policy making and focuses on two issues with particular relevance to NEPA decision-making processes: the merits of technocratic versus citizen decision makers; and, the dif-

ference between regulatory and collaborative management approaches. We use four eras to define the evolution of practice and ideas: (1) The Progressive Era, (2) The Second Republic, (3) The Environmental Movement, and (4) The Current Situation.

3.1 The Progressive Era and the "Second Republic."

The Progressive Era (circa 1890-1920) generated a key concept that has shaped a century of policy and action: a technical elite, working primarily with federal bureaucracies, should be responsible for the majority of natural resource management decisions. Lawmakers of this era established the Forest Service, the Bureau of Reclamation, and the National Park Service.

In many ways, the culture of these agencies today retains the progressive's faith in technical decision making.[5] The Progressive Era also fostered a widespread distrust of market mechanisms (prompted largely by public perception of monopoly excesses), which established the groundwork for the creation of environmental programs based on regulatory, rather than market-based, incentives. These ideas retained their influence into the Depression Era, and were expressed further in following decades.

By the time the nation fully emerged from economic depression and the Second World War, the onset of the so-called "Second Republic"[6] had forever changed the face of American democracy. This form of democracy (still largely in effect) advances public policy-making through "pluralism," a system in which government is both participant and ringmaster in a field of competing interest groups.

Several critical factors associated with pluralist systems—the strategic advantage afforded to narrow economic interests, the corresponding subordination of parties seeking broad public benefits (such as environmental protection), and the frequent co-optation of scientific decision makers by interest groups—often lead to natural resource vulnerability and degradation. Both the Progressive Era and the Second Republic were characterized by very substantial public investment programs that did not necessarily serve a broad range of interests.

3.2 The Environmental Movement

The environmental movement began—and Congress passed NEPA—against this political and social backdrop. Environmentalism focused on the failure of technocratic and pluralist governance to adequately address environmental values and social equity. Other social movements (e.g., civil rights, pacifism/anti-war, and women's liberation) presented similar critiques.

People perceived that economic value, not natural science, often influenced natural resources decisions. Public pressure instigated many reform attempts to reduce the combined influence of technical decision makers and economic interests. Strong regulatory regimes and provisions for citizen lawsuits institutionalized responses to the concerns of environmentalists and others. Ultimately, the era established greater public control over public policy-making and succeeded at changing decision-making processes to improve agency accountability and responsiveness.

In the 1970s, agencies tested and refined their NEPA "public participation" methods and settled on a standard format: formal public hearings supplemented by written pub-

lic comment. Some people were not satisfied with these limited opportunities to influence decision outcomes. Others, after gauging the new balance of power in the 60s and 70s, were frustrated that NEPA processes offered interests no opportunity to initiate or accomplish action on their own. NEPA legislation did, however, empower people to block specific agency actions.

Over the past few decades, NEPA litigation steered many decisions through long, confrontational, narrowly-defined debates.[7] In several cases, litigation proved to be the only available tool to secure adequate environmental protection and appropriate agency action. Despite its utility, the use of this power has also, at times, led to an unintended outcome of increased public involvement in agency processes: stalled (or slowed) decision outcomes and polarized political climates.

One other unanticipated outcome of the environmental era reforms has been the relegation of science to a secondary role as a result of efforts to rein in the technical bureaucracy. "Science" has become a political tool, differentially invoked for and against environmental protection measures. For example, regulated industries often present their own findings, which they claim are based on "sound science," and so call into question the accuracy and credibility of scientific findings from agencies, academics, and environmental groups.

3.3 The Current Situation

By the 1980s and 1990s, some reformers realized the need for new models that would help agencies and the public make decisions more pragmatically and efficiently. Some critics (including industry lobbyists) presented forceful complaints about the time and cost associated with the NEPA process.

Among citizens and environmental interests, inadequate opportunities to participate in environmental decisions fostered frustration. People blamed polarization and impasse on a range of causes: fragmented agency thinking; the high costs of formal decision-making processes; the subordination of local communities to national interest groups; limitations in the public involvement processes; and, the subordination of science to special interests and law.

In response to the perceived flaws in the system of governance, people experimented with strategies to revitalize decision making. A growing number of people began to see a new form of public participation—collaboration—as one possible fix for the perceived flaws in the system. Across the country, people revived the ideals of Jeffersonian, direct democracy, arguably gaining more popularity for these ideas now than in Jefferson's day.

Although collaboration took hold as a viable concept in the 1980s, a 1973 collaborative effort established the first model for facilitating agreement among diverse stakeholders in an environmental dispute. In this instance, Governor Daniel Evans of Washington invited Gerald Cormick and Jane McCarthy of the Ford Foundation to help mediate a dispute over a proposed dam on the Snoqualmie River.

By the end of 1974, an agreement was signed which relocated the dam, proposed establishing a coordinating council for the basin, and suggested other flood control and land use measures. The dam was not built, but the council existed for ten years and many of the land use measures were implemented.[8] Since this watershed issue and resolution,

collaborations have varied widely in topics, goals, membership, and development.

Over the past two decades, people initiated thousands of creative efforts to improve public participation in decision making, both within the NEPA process and in other environmental decision-making processes. Coalitions, such as western watershed groups and forestry partnerships, proliferated and sparked new efforts.[9]

Dissatisfaction with the traditional NEPA process stimulated agency employees to invent more effective ways to include interested people. Innovative mediation strategies, such as alternative dispute resolution (ADR) and negotiated rulemaking, have also been tested and applied with greater frequency.

People seek opportunities for collaboration across the full scope of environmental issues and types of decisions (e.g., rulemaking, policies, plans, permits, enforcement actions). In some cases, people aim only to frame issues and understand one another's perspectives; in other cases, they seek agreement and action. Collaboration develops at all stages in the evolution of an issue: as a problem emerges, after positions are polarized, during debate about alternative solutions, and after litigation has begun.

Initiatives also vary in the composition of the collaborative groups that form. Many involve multiple cooperating agencies; others include governmental, private, and public interest or citizen groups. In all of these initiatives, it is important to recognize the distinction between efforts that involve multiple agencies in collaboration and use traditional public involvement strategies on one hand, and efforts, on the other hand, that are explicitly focused on including the public as an integral voice at the decision-making table.

Several policy changes encouraged this experimentation. In the 1990 Negotiated Rulemaking Act, Congress authorized and codified the use of multiparty negotiation in promulgating federal regulations. (Recent analysis has called into question the value of the formal use of negotiated rulemaking for federal agencies.)[10]

In the Alternative Dispute Resolution Act(s) of 1996 and 1998 Congress clarified and authorized federal agency use of alternative dispute resolution processes.[11] The ADR Act also required each federal agency to designate a specialist to evaluate appropriate uses of ADR tools in that agency's scope of activities. Twenty-nine states voluntarily established offices to foster collaborative problem solving or dispute resolution processes in public decisions.[12]

Other changes in environmental regulation occurred in response to public dissatisfaction, concurrent with the development of new collaborative, participatory approaches. Experiments in reform reintroduced market mechanisms into environmental management (e.g., western water markets, pollution trading). In some arenas, people suggested that the traditional preference for regulatory controls (sticks) should shift to a focus on voluntary action and incentives (carrots).

Public opinion polls, however, have continued to demonstrate the public's strong support of regulatory action to protect the environment. It is unclear how public preference for strong regulatory controls is related to recent efforts to establish voluntary, collaborative decision-making processes.

Since the mid-1980s, innovative processes for addressing and resolv-

Over the past two decades, people initiated thousands of creative efforts to improve public participation in decision making, both within the NEPA process and in other environmental decision-making processes. Coalitions, such as western watershed groups and forestry partnerships, proliferated and sparked new efforts.

Participants at work in the afternoon sunshine.

ing differences have increased in variety and frequency.[13] People undertaking these new processes believe collaborative approaches offer significant potential benefits: to reduce costs of decision making and litigation; to better utilize local knowledge and scientific expertise; and to marry technical and value-oriented debates in coordinated decision processes.

In many cases, stakeholders who find themselves locked in stalled processes (due to litigation or seemingly irreconcilable differences) have turned to collaboration as a opportunity for resolution and change. As collaborative approaches evolve, new technologies such as the internet provide improved access to information and ideas, which prepares the ground for meaningful collaboration.

3.4 Today's Questions

New approaches to public decision making and the NEPA process grow out of a rich history, a history that can help us frame questions to move these approaches forward. Place-based problem-solving through watershed conservation districts extends back at least six decades; Coordinated Resource Management (CRM) processes have a four decade history; and, tools such as ADR and many market-based approaches have been prominent institutional features for a quarter of a century.

The context has changed, but many of the issues raised are not new or novel to this era. What is new is the particular current combination of strategies for changing the way we make public decisions. As we consider incorporating collaboration and place-based decision making into the NEPA model, several questions arise.

- *To what extent can these new "alternative" processes supplement or improve on traditional decision-making mechanisms (including regulation and litigation)?*

- *To what extent do collaborative processes provide a fair distribution of power and satisfy current democratic notions of full and balanced representation (especially compared to other processes for making public decisions and resolving public disputes)?*

- *What conditions seem necessary for more collaborative approaches to succeed, and what conditions typically indicate that such approaches won't work?*

- *How efficient are collaborative processes, and can their implementation be improved to balance opportunities for representative democratic participation with the need for expedient decision making?*

- *How can technical expertise be best utilized in this form of decision making?*

- *Are collaborative and consensus approaches more or less likely than other decision-making approaches to lead to decisions and actions that fulfill the intent of NEPA Section 101 goals?*

- *How should decision makers fix accountability for a decision outcome when collaborative processes involve multiple cooperating agencies and diverse interest groups?*

- *Do consensus-building efforts place limitations on effective policy design?*

Clearly, these questions have no right or wrong answers. But such questions should help guide future efforts to test, document, and evaluate collaborative approaches. Nested within these questions are key issues some people have presented as justification for cautious appraisal and selective implementation of collaborative processes.

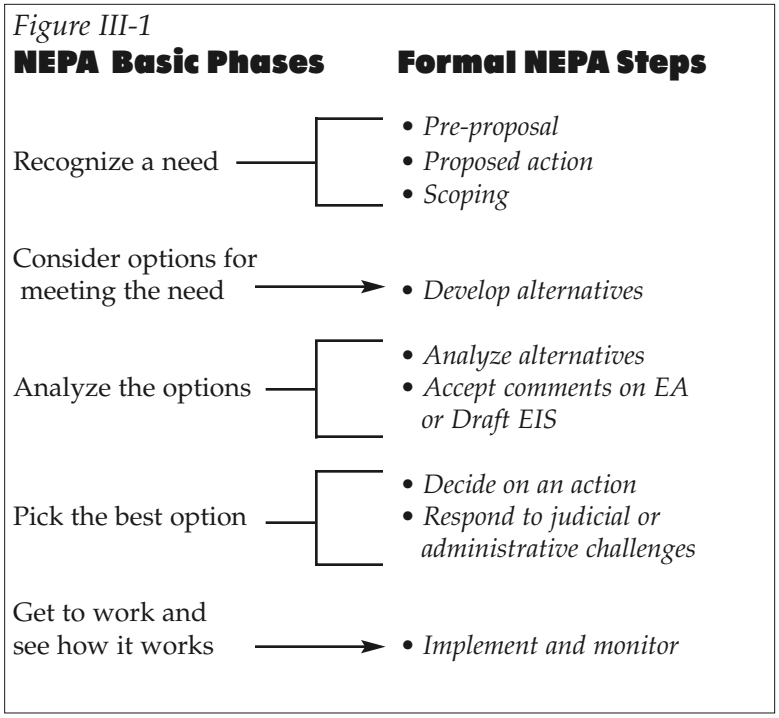
A concerted effort to seek answers to these questions, through practice, observation, and improvement, may eventually lead to a system that better matches government and NEPA decision-making processes with the public's expectation for true democratic participation.

4.0 BASIC NEPA PROCESS STEPS

If we are going to explore how collaborative approaches can be integrated into the NEPA process, we need to understand the framework we are working within. To this end, this section describes the steps in a generic NEPA process. Most federal agencies prepare environmental impact statements (EISs) following the common steps listed below.

Formally, CEQ regulations define the NEPA process as "all measures necessary for compliance with the requirements of Section 2 and Title I of NEPA." The steps described below can be grouped into basic

Figure III-1



decision-making phases, illustrated in Figure III-1.

- ***Pre-Proposal Stage:*** *Agencies consider and discuss a project for a period of time (from a few weeks to a few years) before formally proposing to carry it out. Agencies may conduct basic inventory work and mapping at this stage. Other interested parties may be asked to advise or assist.*

- ***Proposed Action:*** *Agencies issue a proposal to authorize, recommend, or implement an action to meet a specific purpose and need. An action can include, "new and continuing activities, new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals." (40 CFR 1508.18).*

- ***Scoping:*** *An open public process determines the extent of the issues to be addressed and identifies the significant issues related to a proposed action.*

- ***Develop Alternatives:*** *Agencies are responsible for drafting alternatives that address the issues identified in the scoping period; meet the purpose and need of the proposed action; and specify activities that may produce important environmental changes.*

- ***Analyze Alternatives:*** *The lead agency, cooperating agencies, project proponents, or an environmental consultant conduct environmental analysis and the Draft EIS is released.*

- ***Comment Period:*** *The public and interested parties comment on the DEIS in a minimum 45-day comment period.*

- ***Record of Decision:*** *The lead agency responds to comments made on the Draft EIS (usually in the appendix of the Final EIS) and selects the preferred alternative. The agency signs off on the Final EIS and files it with CEQ. The lead agency issues a Record of Decision (ROD) stating the decisions it has made, including the alternative of choice and any plans it has to minimize the impact on the environment.*

- ***Judicial or Administrative Challenges:*** *The Forest Service, the BLM, and several other agencies provide for formal appeals of their decisions. This action precedes any lawsuit. Other agencies do not provide for appeals and so are liable for citizen suits immediately upon issuing a decision.*

- ***Implementation and Monitoring:*** *During and after implementation, agencies are responsible for monitoring the impacts of their actions. (This step rarely takes place in a formal way.)*

5.0 NEPA PUBLIC INVOLVEMENT IMPLEMENTATION TYPES

Within the basic framework for the NEPA process, many variations on collaborative approaches are possible. Workshop participants concluded that NEPA processes currently are carried out within one of three fairly distinct public involvement approaches, or "types:" Traditional Public Involvement, Agency-initiated Collaboration, and Collaboration Initiated by Others. See Table III-1, below, for an introduction to the three types.

The basic types are discussed in the following sections, with some additional breakdown into subtypes. Case study examples of all types and sub-types are mentioned in the text and included in detail in Appendix B. Table III-2, immediately following this section, compares the three types by describing how

the public is involved at each basic step in the NEPA process.

This detailed review of activities and actions at each step in the NEPA process reveals the strengths and weaknesses of each different type. A third illustration of collaborative approaches as they relate to NEPA process steps is provided in Appendix C, "NEPA and Federal Land Planning: A Checklist of Collaborative Strategies."

5.1 Type 1: Traditional Public Involvement

Traditional public involvement has two sub-types. Type 1A is "off the shelf" NEPA. A federal agency initiates and leads the process, involving the public in the scoping stage and during the comment period for a draft EIS. The public may or may not be involved in judicial or administrative challenges after a decision has been made.

Table III-1. **Comparison of NEPA Implementation Steps for Different Process Types**

	Type 1: Traditional Public Involvement		*Type 2: Agency-initiated Collaboration*		*Type 3: Collaboration Initiated by Others*
Main Actors ***NEPA Steps***	*A. Lead Agency*	*B. Lead Agency with Innovations*	*A. Inter-agency*	*B. Multi-stakeholder*	*Citizens, industry, other interested parties*
Pre-Proposal Stage	Agency chooses site for action.	Using field trips and slide shows, agency tests public opinion about needs for action.	May be some interagency collaboration or discussion.	May be some agency/multi-stakeholder collaboration or discussion.	May be some collaboration or discussion between group and agency.
Proposed Action	Agency frames a proposal.	Agency seeks out community leaders to hold living room discussions.	Cooperating agency status is conferred upon willing agencies with project-related expertise or jurisdiction. An MOU or other cooperative agreement is negotiated.	Agency frames proposal with input from multi-stakeholder group.	Agency frames proposal after discussion with collaborative group.
Scoping	Agency publicizes its proposal and the public submits written comments.	Agency begins publishing a newsletter or website and accepts written comments.	Scoping is conducted jointly by cooperating agencies.	Agency, multiple agencies, and/or project proponent convenes multiparty group to assist. Group may be chartered to reach consensus on set of alternatives for analysis or simply asked to serve as sounding board for the NEPA analysis.	Collaborative group jointly crafts one or more alternatives to submit to the agency for their analysis. Group may or may not define themselves as inclusive, consensus-seeking group. Group may or may not explicitly include agency perspectives in their deliberations.

Table III-1. Cont'd

	Type 1: Traditional Public Involvement		***Type 2: Agency-initiated Collaboration***		***Type 3: Collaboration Initiated by Others***
Main Actors ***NEPA Steps***	*A. Lead Agency*	*B. Lead Agency with Innovations*	*A. Inter-agency*	*B. Multi-stakeholder*	*Citizens, industry, other interested parties*
Develop Alternatives	Agency develops variations on its proposal, referring to scoping comments.	Agency publishes preliminary alternatives and maps on internet. Uses feedback to finalize alternatives.	Agencies cooperatively develop set of alternatives.	Agency works with multi-stakeholder group to generate alternatives.	Collaborative group jointly crafts one or more alternatives to offer the agency.
Analyze Alternatives	Agency documents its analysis.	Agency holds educational seminars.	Agencies cooperatively analyze alternatives.	Agency works with multi-stakeholder group to analyze alternatives.	Agency works with collaborative group to analyze alternatives.
Public Comment on Draft EIS	Agency accepts public comments in writing and /or at public hearings.	Agency holds open house, accepts written, verbal, and internet comments.	Agencies accept public comments in writing and/or at public meetings	Agency accepts public comments in writing and/or at public meetings.	Agency accepts public comments in writing and/or at public meetings.
Record of Decision	Agency considers comments and makes decision.	Deciding official publicizes possible changes, gathers feedback, and makes a decision.	Lead agency considers comments and makes decision.	Agency considers comments and makes decision; may be in consultation with multi-stakeholder group.	Agency considers comments and makes a decision; may be in consultation with collaborative group.
Administrative or Judicial Challenges	Public may or may not seek recourse to the decision.	Deciding official convenes another open house to discuss claims of an appeal or intent to sue.	Public may or may not seek recourse to the decision.	Public may or may not seek recourse to the decision.	Public may or may not seek recourse to the decision.
Post-Decision Implementation and Monitoring	Agency is responsible.	Agency is responsible.	Lead agency is responsible.	Multi-stakeholder group may be charged with monitoring implementation of decision.	Collaborative or other interest group may take on task on monitoring implementation of decision over time – formally or informally.

Table III-1. Cont'd

	Type 1: Traditional Public Involvement		***Type 2: Agency-initiated Collaboration***		***Type 3: Collaboration Initiated by Others***
Main Actors ***NEPA Steps***	*A. Lead Agency*	*B. Lead Agency with Innovations*	*A. Inter-agency*	*B. Multi-stakeholder*	*Citizens, industry, other interested parties*
Strengths	Clarity and predictability regarding decision-making steps, schedule, and opportunities for people to influence outcome. *May* be most efficient in terms of time, staff work, and agency expense, especially for non-controversial actions.	Clarity and predictability regarding decision-making steps and schedule. Enhanced opportunities for people to participate and influence outcome. May reduce administrative or legal challenges.	Opportunities for joint fact-finding, joint generation of alternatives, and package deals (putting together a set of options that meet the key interests of all agency players). Potential to strengthen agency working relationships for future work.	Opportunities for joint fact-finding, joint generation of alternatives, and package deals (putting together a set of options that meet the key interests of agencies and multi-stakeholder group). Outcomes tend to be more durable if jointly invented and negotiated.	Opportunities for joint fact-finding, joint generation of alternatives, and package deals (putting together a set of options that meet the key interests of all participants). Can provide a practical means for manageable number of key parties to come together and jointly craft alternatives and generate options that may not have been thought of by agency. Outcomes tend to be more durable if jointly invented and negotiated.
Weaknesses	Information flows tend to be one way and typically in written form, thus limiting the opportunities for dialogue and mutual learning. If stakeholders don't see evidence their comments were addressed, they may challenge the process and/or the decision.	Likely to take additional time and expense.	Likely to take additional time and expense to conduct. Past problems with working relationships, power/jurisdiction struggles, and other issues can lead to impasse and delay.	Process take substantial time and commitment to structure and facilitate appropriately. Without purposeful shuttle diplomacy and caucus work between meetings, some parties may not participate in good faith and may discredit or mischaracterize the process.	Without explicit pre-commitment by (or linkage to) agency decision makers, group product may not be used or considered. Group unassisted by trusted facilitator or less concerned with inclusiveness could result in less stable outcome.

The five-year process for the Routt National Forest Plan Revision provides an example for this standard approach (see Case 1 in Appendix B).

Type 1B might be called "innovative" NEPA. A federal agency initiates and leads the process. Employees introduce innovations to the "off the shelf" process to improve the process and increase public involvement through whatever means they have at their disposal. Practitioners incorporate innovative public involvement tools and techniques into all stages of the NEPA implementation, to improve both agency and public deliberation and decision making. Examples of the tools include the following:

- *Newsletters*
- *Field trips*
- *Open Interdisciplinary Team meetings*
- *Work groups (usually over a period of time, often involved in identifying alternatives)*
- *Roundtables (usually one-time gatherings during scoping or DEIS comment)*
- *Project websites (may include web publishing of all drafts and relevant documents)*
- *Internet communication (on-line comment, disk comments)*
- *Geographic Information System mapping (improves alternatives analysis/public information)*
- *Situation assessments*[14]

These tools and techniques help open up the NEPA process, making it more transparent for the public and improving the exchange of information between agencies and the public. For example, in the EIS process for the Yosemite Valley Plan, the National Park Service created a project website and experimented with other interactive opportunities for public education and involvement (see Case 2 in Appendix B).

5.2 Type 2: Agency-initiated Collaboration

Lead agencies occasionally initiate collaboration among agency partners or, to varying degrees, with other interested parties. In Type 2A, several agencies participate in an interagency process. In one recent example, the National Park Service, in their winter use plan EIS for Yellowstone and Grand Teton National Parks, invited states, counties, and other agencies to participate in the process as cooperating agencies (Case 3, Appendix B). Some would argue that this type is not a true "collaboration," since the public is involved at the traditional steps in the NEPA process, and few opportunities for additional involvement are created.

If agencies initiate a collaborative, multi-stakeholder process (Type 2B), the public may or may not be involved in additional steps beyond the traditional opportunities for involvement. Most often, however, agencies who initiate such processes build in extensive opportunities for community involvement at all levels, including the pre-proposal and proposed action stages, during development of alternatives, and in post-decision implementation and monitoring.

The San Juan National Forest conducted an expanded public involvement process for a forest plan revision (Case 4, Appendix B). The Sierra Nevada Framework Project

(Case 5, Appendix B), in which 10 national forests in two states collaborated to draft a single region-wide EIS, is another example of this form of collaboration. The Forest Plan Amendment EIS, which is nested within the Sierra Nevada Framework, contains three alternatives that were drafted and proposed by special interest and industry groups, in consultation with the Forest Service.

Table III-2. **Public Involvement in the NEPA Process**

	Type 1: Traditional Public Involvement		*Type 2: Agency-initiated Collaboration*		*Type 3: Collaboration Initiated by Others*	*Type 4: "Democratic Forum"*
Main Actors ***NEPA Steps***	*A. Lead Agency*	*B. Lead agency with innovations*	*A. Inter-agency*	*B. Multi-stakeholder*	*Citizens, industry, other interested parties*	*Agency and all interested parties*
Pre-Proposal Stage						
Proposed Action						
Scoping						
Develop Alternatives						
Analyze Alternatives						
Public Comments on draft EIS						
Record of Decision						
Administrative or Judicial Challenges						
Post-Decision Implementation and Monitoring						

Note: The above table examines the degree of public involvement within each of the common "types." Black lines indicate steps in which the public is definitely involved. Gray lines indicate steps in which the public may or may not participate. The broken line under Type 4 indicates a process that has not been tested.

Sometimes agencies will create formal multi-stakeholder groups with clear roles and responsibilities in the NEPA process. The Governance Committee of the Platte River Endangered Species Partnership brings together public, private, and citizen interest groups to implement a cooperative agreement (Case 6, Appendix B).

In the example of the Hanford Future Site Uses Working Group (Case 7, Appendix B), an interagency organizing committee convened a multi-party consensus building process to shape discussion around the Hanford Remedial Action DEIS. The resulting working group, including representatives from tribes, agencies, citizen groups, government, and environmental groups, eventually formed an advisory board to guide the process to completion. The Puget Sound Electric Reliability Plan is an early and innovative example of the collaborative process in public decision-making (Case 8, Appendix B).

5.3 Type 3: Collaboration Initiated by Others

In Type 3, members of the public initiate a collaborative approach for a NEPA process. In these cases, the public is involved in both pre-proposal and proposed action stages, and may or may not be involved in additional stages after that. The key distinction between Type 3 and Type 2B is that in Type 3 examples the agencies are usually not directly involved in the initial stages of the process, when a need is established and an action is proposed. In the cases of the Grizzly Bear Citizen Management Proposal, Flathead Common Ground, and the Quincy Library Group, (Cases 9, 10, and 11, Appendix B), groups of citizens and local interests initiated planning that led to NEPA process implementation.

5.4 Type 4: Democratic Forum

The final type involves a scenario in which the lead agency shares decision-making responsibility with one or more collaborators. This hypothetical "democratic forum" is included in Table III-2 as Type 4 to show how it might compare to existing models. Experimentation with a scenario like the democratic forum is discussed in Chapter IV. This approach has not been tested extensively, and may not be viable because of legal and other barriers.

5.5 Conclusion

Nothing in our description of various collaboration and public involvement models is meant to identify a single "best" approach. NEPA projects display a bewildering variety of site specific elements, differences in social circumstances, and disparate levels of public interest. The variety in possible approaches reflects the diversity and the specificity of the projects they are addressing. In a given NEPA process, these types and their embedded approaches may be selectively or organically combined into new forms.

ENDNOTES

1 Snow, 1999.
2 McKinney, 1997.
3 For additional citations on issues of governance, democracy, and collaborative processes see Kenney, 1999a.
4 For an in-depth historical analysis, see McKinney, 1999.
5 For discussion of the persistence of progressive ideas, see Nelson, 1997.
6 Lowi, 1979.
7 Statistical information on NEPA litigation history is available on the CEQ website at www.whitehouse.gov/CEQ/.
8 Bingham, 1984.
9 For the history of the western watersheds movement, see Kenney, 1999a; McKinney, 1999.
10 Coglianese, 1997; 1999.
11 Public Law 104-320, the Administrative Dispute Resolution Act of 1996, amends the Administrative Dispute Resolution Act (ADRA) and other Federal law with regard to alternative means of dispute resolution (ADR) in the administrative process. Public Law 105-315 is the Alternative Dispute Resolution Act of 1998.
12 Purdy, 1988.
13 For more discussion on modern trends in favor of collaborative processes, see Kenney and Lord, 1999.
14 A Situation Assessment consists of interviews with key interested parties prior to beginning a collaborative process. Often an impartial facilitator conducts the interviews or, in some cases, agency personnel. The goal of a Situation Assessment is to develop a common understanding of the range of concerns surrounding an issue, and to suggest an approach for resolving the issue that will help satisfy the needs and interests of all interested parties. Assessing the situation allows people to better understand the issues and the substance of any disagreements or conflicts. It also sheds light on areas of agreement and opportunities to improve the situation.

Notes

Chapter IV

Barriers to Integrating Collaborative Decision Making into NEPA and Strategies for Overcoming Barriers

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1.0 INTRODUCTION

In the "Barriers" and "Strategies" workgroups participants examined strategies for integrating collaborative processes into existing NEPA implementation efforts. While participants agreed as to the general desirability of new approaches, workshop discussion revealed several critical differences among participants concerning appropriate reform and implementation steps. This chapter attempts to capture the diversity of opinion at the workshop.

Participants generally acknowledged that collaborative processes can build relationships, foster a common understanding of the issues and each other's viewpoints, and narrow the range of misunderstanding and disagreement. However, participants also cautioned against the impulse to view collaboration as an end in itself.

They observed that these processes are valuable to the extent that they contribute to truly better NEPA decisions--decisions that fully and honestly disclose the full range of impacts from a project or proposal (including direct, indirect, and cumulative impacts); that contain enforceable mitigation measures to minimize effects to the extent possible; and that achieve the substantive goals of NEPA set out in Section 101.1

Workshop participants discussed in detail the current barriers to effective integration of collaborative approaches into the NEPA process. The four main categories of barriers identified by workshop participants —political, legal, administrative and financial—are presented in Table IV-1 along with potential strategies for overcoming each barrier.

The context for the Barriers and Strategies discussion was a general awareness that innovative collaborative and other public involvement strategies represent only a portion of the many possible tactics for revitalizing and improving the NEPA process (one other tactic being stricter enforcement of existing CEQ regulations).

Additionally, participants acknowledged the potential legitimacy of some of the critiques of collaborative processes (see Chapter III,

Participants generally acknowledged that collaborative processes can build relationships, foster a common understanding of the issues and each other's viewpoints, and narrow the range of misunderstanding and disagreement. However, participants also cautioned against the impulse to view collaboration as an end in itself.

Table IV-1 **Summary of Barriers and Strategies**

Political Barriers and Strategies	*Administrative Barriers and Strategies*	*Legal Barriers and Strategies*	*Financial Barriers and Strategies*
1. Lack of Presidential and CEQ leadership. • *Strategy: Gain leadership from the White House, CEQ, and agency heads.* • *Strategy: Explore potential use of Western Governors' Association Enlibra Principles.* **2. Lack of leadership within federal, state, and local agencies.** • *Strategy: Learn from and build on existing programs.* • *Strategy: Educate and train current managers.* • *Strategy: Educate next generation of managers.* **3. Reluctance to engage state, local, and tribal governments.** • *Strategy: Encourage agencies to initiate cooperating agency agreements* • *Strategy: Encourage agencies to initiate cooperation without cooperating agency status.* **4. Perceived lack of integrity in collaborative approaches** • *Strategy: Train agency managers and citizens.* • *Strategy: Ensure participant understanding of process.* • *Strategy: Promote communication among parties and honest exchange of information.*	**1. NEPA not used strategically and initial planning aspect neglected.** • *Strategy: Recognize and reward managers who strive to meet Section 101 goals.* • *Strategy: Highlight and build on approaches that use NEPA strategically.* **2. Lack of clear procedures for use of collaborative approaches in NEPA processes.** • *Strategy: Train agency managers to identify appropriate applications.* **3. Lack of internal agency incentives to be innovative.** • *Strategy: Provide incentives and rewards.* **4. Lack of genuine public involvement strategies.** • *Strategy: Seek CEQ guidance on opportunities for public participation.* • *Strategy: Use technology to facilitate communication.* **5. Confusion among agencies.** • *Strategy: Improve integration of agency analysis.* • *Strategy: Provide interagency training.* • *Strategy: Inventory agency assessments, plans, and NEPA analyses.*	**1. Perceived conflict with the Federal Advisory Committee Act.** • *Strategy: Clarify FACA role.* **2. Uncertainty about legal authority for making federal agency decisions.** • *Strategy: Explore options for giving consensus-based recommendations special status.*	**1. Lack of agency resources to carry out innovative NEPA implementation.** • *Strategy: Provide more financial support at all levels.* **2. Lack of resources to enable equal participation in collaborative groups.** • *Strategy: Structure processes to facilitate participation.*

Section 3.4) and asserted that further research, evaluation, and experimentation should look to shape these processes into effective, equitable, and accessible forms.

In the eyes of some participants, one of the most critical barriers to effective integration of collaborative, participatory approaches is a general lack of accessible documentation and objective analysis concerning collaborative processes. Despite 25 years of experience with collaboration and consensus approaches, it is often difficult to find answers to pressing questions. And although several researchers have initiated critical evaluations of collaborative processes, and others have provided implementation guidebooks, the body of research does not yet adequately address many key concerns.[2]

Additional research needs to explore untested hypotheses and look at existing case studies, while seeking (1) to identify factors that contribute to success or failure and (2) to provide guidance into which NEPA processes would benefit from increased integration of collaboration, and which would not.

Relevant research would also assist reform efforts to draft explicit strategies for supplementing the NEPA process with collaborative processes and incorporating Section 101 goals. Many of the proposed strategies suggested below would benefit greatly from additional information and analysis. The final section in this chapter considers a proposed strategy for addressing this "knowledge gap."

2.0 POLITICAL BARRIERS AND STRATEGIES

Workshop participants defined two kinds of political barriers: the absence of strong leadership promoting collaboration and consensus building within NEPA processes; and, negative perceptions about collaboration and consensus building's potential to achieve satisfactory outcomes for all concerned.

2.1 Political Barrier #1: Lack of leadership commitment to the use of collaborative, consensus-based approaches within NEPA

"Collaboration and consensus-building are just the latest buzzwords."

Currently there is a lack of commitment from the President, Congress or department secretaries to encourage the use of collaborative processes, probably due to a general lack of awareness about the potential value of using collaboration within NEPA decision making. Administrative and CEQ failure to promote the use of collaborative approaches has resulted in Congressional reluctance to provide financial support for collaborative initiatives.

Politicians, administrators and the public are all ill informed about the successes and failures of collaboration and consensus building. Workshop participants articulated the need to provide leaders with all of the available information about collaborative processes, and to build support through understanding.

2.1.1 Strategy: Gain leadership from the White House, CEQ, and agency heads.

Participants favored building internal agency and administrative support that will lead, eventually, to visible leadership actions: an Executive Order encouraging the use of collaborative approaches in the agencies; additional CEQ guidance to the agencies; and directives from senior agency managers encouraging the use of collaborative

In the eyes of some participants, one of the most critical barriers to effective integration of collaborative, participatory approaches is a general lack of accessible documentation and objective analysis concerning collaborative processes. Despite 25 years of experience with collaboration and consensus approaches, it is often difficult to find answers to pressing questions.

approaches in preparing EISs or EAs.

2.1.2 Strategy: Explore the potential for promotion of the Western Governors' Association (WGA) "Enlibra" Principles for Environmental Management.

WGA developed the Enlibra principles, which are based on actual experiences across the West, in response to increased complexity, interest, and controversy surrounding natural resource management decisions. The Western governors sought new ways to vest citizens with policies that would protect the West's heritage and maintain the region's extraordinary quality of life.

By implementing these principles, the WGA is striving to reduce polarization and litigation by finding unifying, citizen and government-supported solutions. The principles hold that collaborative approaches "often result in greater satisfaction with outcomes, broader public support, and lasting productive working relationships among parties."3

Several workshop participants promoted the Enlibra principles as a useful tool for encouraging leadership support of collaborative processes in NEPA and other settings. The principles create a useful framework for environmental decision making and encourage the use of collaboration and consensus building as key elements of a comprehensive process. Other workshop participants expressed some concern that application of Enlibra's "National Standards - neighborhood solutions" approach may have problematic outcomes. Local solutions are sometimes influenced by narrow economic interests, they noted, which may lead to the under-representation of both resource protection concerns and the broader concerns of national constituencies (though it could be argued that these interests were represented in the development of the governing national standard in any decision involving U.S. environmental law). Individual groups or agencies may possess more influence over decisions than others, thus creating an uneven "playing field," although the principles are explicit in calling for "balanced, open and inclusive processes."

Furthermore, states publicly embracing the principles have been inconsistent in their application according to the views of some workshop participants. Further research, evaluation, and evolution may address outstanding concerns about equal and fair representation in the Enlibra process and in other collaborative decision processes.

2.2 Political Barrier #2: Lack of leadership within federal, state, and local agencies

"We don't have time to do it right, but we have time to do it twice."

In recent years, practitioners have learned, through trial and error, some successful methods and strategies to involve the public in collaborative natural resource decision making. Federal agencies have rarely taken advantage of this knowledge in their NEPA implementation processes. (Although use of new approaches has flourished and become more rigorous, this information is not always accessible to agencies.)

Many agencies continue to view NEPA as an administrative obstacle, instead of a planning tool that can improve the quality of decisions and enhance public support. Continued development of collaborative approaches depends, to a large extent, on agency managers' under-

standing of and support for these innovations.

Currently, agencies may even (intentionally or inadvertently) discourage employee use of collaborative approaches. Agencies often base employee performance on the amount of time it takes to reach a satisfactory decision. Collaboration suffers from this approach because it tends to be more time consuming up front.

Many employees feel rushed to complete NEPA processes in accordance with inflexible targets or timelines. They often feel that there isn't enough time to do good collaborative work, but, by necessity, there is always time to complete appeals and litigation reports.

As one workshop participant with extensive experience in the environmental sector put it, "The cynical motto in my agency was—We don't have time to do it right, but we have time to do it twice." Agencies need to realize that collaborative approaches may ultimately result in more durable (and thus, in the long run, less time-consuming) decisions than those generated through more traditional processes

2.2.1 Strategy: Learn from and build on existing programs.

Several existing agency programs and mandates provide potential models for building agency support and initiative. In 1997, the Chief of the U.S. Forest Service (USFS) released a Collaborative Stewardship mandate.4

In accordance with this mandate, Region 10 of the USFS (Alaska) has convened many Collaborative Stewardship workshops and community meetings. (The USFS has not yet implemented the Collaborative Stewardship mandate throughout the national forest system.) Region 10's recently instituted Alternative Dispute Resolution program hopes to solve natural resource disputes early in the process and decrease appeals and litigation frequency.

A 1998 Memorandum of Understanding among the Montana Consensus Council, USFS Region 1, and the BLM commits the agencies to "design and facilitate public involvement, dispute resolution, collaborative problem solving, and consensus building processes that involve multiple stakeholders."[5]

Programs such as these (which would benefit from further evaluation and support) can provide key lessons for other agencies to learn from and apply.

2.2.2 Strategy: Ensure that agency personnel are well informed about collaborative approaches and trained (1) to identify which processes would benefit from improved public involvement and (2) in the key elements to successful collaboration and consensus building.

Agency managers and personnel should have access to detailed information about how collaborative approaches are currently being applied. Agency managers who understand the "promises and the pitfalls" of collaborative approaches will be more willing to apply these approaches with their own jurisdictions.

They should be aware of the benefits of including all interested parties early in the process and the importance of dealing directly with perceived power imbalances. See Section 2.4.1 for more discussion of training and education strategies.

2.2.3 Strategy: Educate the next generation of agency managers.

There is a demonstrated need for more training in public involvement and dispute resolution for natural

Continued development of collaborative approaches depends, to a large extent, on agency managers' understanding of and support for these innovations.

resource professionals.[6] Universities, especially federal land-grant institutions, should develop faculty expertise and coursework to train students in collaborative problem solving, informed decision making, interdisciplinary teamwork, and communication.

2.3 Political Barrier #3: Reluctance to engage state, local, and tribal governments in NEPA processes.

"How can we collaborate if we don't know how to cooperate?"

Although CEQ regulations contain detailed provisions for coordination and collaboration with state, local, and tribal governments, agency NEPA processes often fail to offer these entities meaningful opportunities for involvement. Some workshop participants suggested that this situation could be addressed if agencies invited state, local, and tribal governments to participate as cooperating agencies.

Other participants articulated specific concerns with expanded use of cooperating agency agreements. All the benefits of cooperation and coordination, they asserted, can be achieved without conferring cooperating agency status to additional parties. The discussion below presents two different strategies for engaging state, local, and tribal governments in NEPA processes.

2.3.1 Strategy: Encourage federal agencies to invite qualified state, local and tribal governments to be cooperating agencies in NEPA processes.

Under CEQ regulations, a cooperating agency is defined as any agency that has jurisdiction (by law or special expertise) for proposals covered by NEPA.[7] Federal, state, local, or tribal governments may propose cooperating agency status. The lead federal agency makes the final designation decision on a case-by-case basis. Cooperating agencies may engage in a variety of tasks throughout the NEPA process: assist the lead federal agency in EA or EIS development; participate in public scoping; develop information and analyses in which they have special expertise; contribute staff and resource support; and share information and data. Cooperating agencies do not gain new authority; the lead federal agency retains authority for the final decision.

Many state, local and tribal government entities would like federal agencies to include them frequently as cooperating agencies during NEPA processes. Proponents of cooperating agency arrangements asserted that formal cooperation increases NEPA process effectiveness, promotes coordination among all levels of government, and eliminates duplication between federal, state, and local procedures.

Workshop participants who supported cooperating agency status offered several examples of working initiatives and agreements. The BLM recently released a memo encouraging agency staff to offer cooperating agency status to state, local and tribal governments when they meet the criteria for such status (jurisdiction by law or special expertise). Since the workshop, the CEQ has released a similar memo encouraging the designation of non-federal agencies as cooperating agencies.

The Directors of the Bureau of Land Management (BLM) and National Park Service, and the Chief of the Forest Service embraced closer cooperation with all levels of government in their letter of September 2, 1998 to the Western Governors' Association, in which agencies clari-

fied cooperating agency status through a series of questions and answers.[8]

The State of Wyoming currently has cooperating agency status with several agencies: the Medicine Bow National Forest, for the Forest Plan revision; the National Park Service, on the Yellowstone National Park Winter Use EIS; and with the BLM on the Wyodak Coal Bed Methane EIS and the Pinedale Anticline Natural Gas Exploration and Development EIS. The Governor's Natural Resource Sub-Cabinet reviews cooperating agency opportunities and makes recommendations to him based on the scope of the proposed action and what expertise the state might be able to lend to the analysis.

In some instances, state agencies participate on Interdisciplinary (ID) Teams. Although cooperating agency arrangements are fairly new, state participation on the ID Team has been an efficient method of coordination and communication between state and federal agencies.

In preparing the Management Plan EIS for the Grand Staircase/Ecalante National Monument, the BLM requested and welcomed ID team members provided by the Governor of Utah. USFS regulations do not provide for representatives of non-federal agencies to be formal members of ID teams; however, coordination and active participation with ID teams is common.

2.3.2 Strategy: Encourage federal agencies to invite qualified state and local governments to cooperate in NEPA processes without cooperating agency status.

Several workshop participants asserted that local and state governments can achieve active and meaningful participation in NEPA processes without cooperating agency status. CEQ regulations contain detailed provisions addressing the role of state and local agencies.[9] These provisions, when followed, provide the benefits of greater cooperation and coordination without creating some of the difficulties associated with cooperating agency status.

Some participants felt, for example, that local and state governments may be inappropriately influenced by industry interests. In these instances, granting cooperating agency status could give one interest a decision-making role not afforded to average citizens, or even large groups of citizens represented by non-governmental organizations. Other participants cited examples of cooperating agencies selectively sharing information with a certain group of constituents. Alternative strategies, participants suggested, can effectively and equitably integrate state and local entities into improved NEPA implementation processes.

2.4 Political Barrier #4: Perceived lack of integrity in collaborative approaches

"Why should we bother participating? No one listens anyway."

People (not only the general public, but also agency staff) are often unwilling to implement or participate in collaboration and consensus approaches because they don't have faith that participation will lead to meaningful, fair outcomes. In many communities, people perceive that collaborative approaches to NEPA implementation lack integrity, and so withhold their trust and participation. Such perceptions are often grounded in valid concerns, though many of these concerns can be addressed with improved imple-

Although CEQ regulations contain detailed provisions for coordination and collaboration with state, local, and tribal governments, agency NEPA processes often fail to offer these entities meaningful opportunities for involvement.

mentation processes and increased public education efforts.

Collaborative approaches lack integrity when all interested parties (stakeholders) are not adequately included in the group processes. When an excluded group airs its grievances through other means (such as appeals or litigation), the controversy undermines successful implementation of collaborative group decisions. Or, if members of a collaborative group have uneven power in the process (e.g., lack of resources leading to uneven information distribution and meeting attendance), "weaker" members may not want to participate for fear of being overwhelmed.

Lack of trust can result when members of a collaborative group have certain expectations for how their input will be used in reaching a final decision. When those expectations are not met, members may feel that agencies predetermined the decision outcome and initiated collaboration "for show" to placate public concerns.

Lack of trust can also result when information is not shared in a timely manner. Several workshop participants expressed a concern that, in some instances, certain data may be withheld during the public comment period on a NEPA document, and then later brought forward as the basis for an appeal of the final decision.

Confusion and concern also arise when collaboration and consensus approaches expose an imbalance or conflict between local and national interests. The "communities" involved in collaborative problem solving can be either "communities of place" or "communities of interest;" both have valid concerns and need to be represented. Local stakeholder concerns are often very different from national stakeholder concerns (e.g., concerns for local economic prosperity compared to concerns over the national significance of an environmental resource).

The environmental community has argued that local collaborations can sometimes exclude national environmental concerns that are less organized and less well represented in rural areas, and that local collaborations are sometimes deliberately used to achieve this end. On the other hand, local collaborative groups have found that the national environmental agenda often overrides local solutions and preferences.

In more ad hoc collaborative procedures, questions (legal and otherwise) may arise regarding the fairness and legitimacy of processes that deviate from the rigidly defined and judicially tested procedures associated with typical NEPA processes. Practitioners and proponents of innovative collaborative processes need to provide adequate information to reassure the public and agencies as to the integrity and the utility of untraditional or innovative approaches.

2.4.1 Strategy: Provide guidance and training to agency managers and citizens about the use of collaborative processes in the NEPA context.

Training for agency personnel and citizens (about what to expect from a collaborative approach and the key elements of successful collaboration and consensus building) could help overcome many trust and integrity issues. Practitioners and others could hold joint training sessions for government and non-government individuals and interests.

These sessions could include representatives from several different agencies, which may help address

the lack of agreement among agencies about when and how they should use collaborative processes. Training sessions could also focus on bringing together people who have the potential to initiate future collaborations around common concerns.

People would walk away from the training with a shared set of skills, new working relationships, and deepened respect and trust for each other. Some specific ideas about training are included below. (See Appendix C for information on a relevant BLM training course.)

- *Train people how to be good collaborators as individuals and how to work together effectively.*
- *Train people to recognize when enhanced collaboration is likely to result in more durable decisions and outcomes.*
- *Provide information about how to evaluate different kinds of collaborative processes and apply them appropriately to different situations.*
- *Emphasize the use of collaboration at the pre-scoping and scoping stages.*
- *Provide local or regional training opportunities and offer access through "distance learning" to encourage as much participation as possible.*
- *Consider providing a stipend to cover travel expenses and meals.*
- *Offer participants the opportunity to contribute to the training agenda: let them identify their needs.*
- *When possible, contract training with a non-governmental source to remove concerns about governmental control of the process. Alternatively, consider a team made up of non-government and government trainers.*
- *When possible, select trainers from the training area who are familiar with the special nuances, relationships, issues, and history of the participating parties. (This may not be appropriate or acceptable in some situations. In these cases, participants may be more comfortable with an outside party who has no prior knowledge.)*
- *Open training to all, but seek out key individuals in the community who have demonstrated an interest in constructive, creative problem solving.*
- *Consider offering a series of training sessions: one to get folks started, another to check in and offer troubleshooting skills.*

2.4.2 Strategy: Ensure that participants in a collaborative effort have a clear understanding from the beginning about how the group's decision will be used.

Agencies should review expectations at the outset of the collaborative process to establish a mutual understanding of the group's role in the NEPA process. Existing CEQ regulations provide for and promote public involvement, but responsibility for the actual decision on a federal action lies with the lead federal agency.[10]

Agencies could document agreement in a Memorandum of Understanding (MOU) form that details how an agency will use the group's final decision outcome. In other cases, the group should understand from the beginning that their role is advisory only, and they will have no formal influence on the decision. CEQ regulations (and specific regulations for each agencies' decision making process) need to provide

Practitioners and proponents of innovative collaborative processes need to provide adequate information to reassure the public and agencies as to the integrity and the utility of untraditional or innovative approaches.

Workshop participants discuss strategies.

guidance and direction specifying a clear understanding and agreement between agencies and the collaborative NEPA public participation groups.

Agencies may also need to be clear about what course of action they are likely to adopt in the absence of a consensus emerging from a collaborative group. Often this can have a catalyzing effect on the group's work.

2.4.3 Strategy: Promote an honest exchange of information and quality communication among collaborative group members.

Good communication has been one of the keys to successful collaborative efforts. Convenors of collaborative processes should ensure that everyone has access to the same information at the same time. Processes should be designed to guard against the introduction of new information as a basis for appealing a decision. If participants knowingly withhold information for appeals purposes, they erode the trust relationships in a collaborative NEPA process.

3.0 ADMINISTRATIVE BARRIERS AND STRATEGIES

Several administrative barriers block the effective integration of collaborative approaches into the NEPA process. Such barriers include conditions that operate (and could be solved) within the agency administrative structure. Administrative barriers also include the factors leading to agency confusion about when to use collaboration and consensus-building approaches and how to implement collaboration effectively.

3.1 Administrative Barrier #1: NEPA not used strategically and the initial planning aspect of NEPA neglected.

> *"NEPA was intended to produce good decisions, not just good paperwork."*

Currently, agencies are not effectively using Section 101's provisions to apply NEPA processes to policy-level decision making (and the President has not stepped forward to require agencies to do so). Section 101's legislative intent was to amend the legal mandates of any federal agency charged with making deci-

sions (or providing funding for actions) that affect the natural environment. While the Act's intent was clear, land management agencies have seldom treated this section as a substantive duty in their management planning and decision making.

Project-level NEPA public involvement processes often become an ineffective proxy for debate on broad agency policy direction. Because the public is not involved at an earlier strategic level, people use project comment periods as an opportunity to express their opinions on broader scale policy issues.

For example, a proposed natural gas well undergoing assessment may become the focus for general disagreement about national energy policy. However, little can be done to incorporate concerns about energy policy in the consideration of a single gas well, causing frustration for the public, who believe there is no avenue for their grievances. The NEPA process is not frequently implemented at the earlier strategic level when, for example, goals for energy policy could be decided upon in an appropriate forum.

CEQ actually requires the use of NEPA for programmatic planning efforts, but this is rarely done. Agencies and others often express differences of opinion concerning the level of action that should trigger NEPA. Many feel that agencies could avoid conflict at the project level if they sought public involvement in policy development and encouraged collaboration at the programmatic and policy level.

One of the issues related to collaboration at the project or small scale level is concern about balancing local and national interests. Without a clear national strategy and declared policy priorities (or compliance with the policy priorities set out in NEPA), this is a reasonable concern on the part of field managers. Once clear direction and firm priorities are established nationally and regionally, localized collaborative processes may be freer to design actions and practices that fit the unique qualities of people, place, and environment, while simultaneously contributing to the broader goals reflected in Section 101.

The Committee of Scientists' Report, *Sustaining the People's Lands: Recommendations for Stewardship of the National Forests and Grasslands into the Next Century*, makes a related argument, stating that interagency, inter-government collaboration needs to occur primarily at the "large landscape scale."11 This interagency collaboration and strategic goal-setting would break from tradition.

Typically agency rules focus inwardly on decision making and provide few avenues for interagency or inter-government collaboration. Even where clear requirements exist, (as in the case of the National Forest Management Act regulations, which require the Forest Service to coordinate with local government planning efforts), NEPA's policy principles and procedural steps are seldom utilized as mechanisms for collaboration.

3.1.1 Strategy: Recognize and reward managers who strive to meet NEPA Section 101 goals.

In an effort to qualitatively evaluate and reward Section 101 NEPA compliance, agencies could be ranked under the Government Performance Results Act with regard to their achievement of NEPA Section 101 goals.

3.1.2 Strategy: Highlight and build on attempts to use the NEPA process strategically.

NEPA implementation can be viewed as a three-stage process involving preplanning, decision enactment, and follow-up monitoring. The Forest Service 1900-1 forest planning training course uses a triangle diagram to demonstrate these three stages, as displayed in Figure IV-1. Agencies are intended to give these three parts equal emphasis, but currently the preplanning aspect of NEPA is often neglected. Agencies believe that they are "doing NEPA," but they are not realizing its full purpose or potential. Appropriate preplanning should include the public as early as possible and should comprise the initial stage of a collaborative approach.[12]

Figure IV-1

Innovative approaches to collaboration in the NEPA process occur at several planning scales. Large programmatic plans (such as a Forest Plan) identify areas or zones where certain types of activities may take place (much like a city zoning map). The issues and concerns at the programmatic level tend to be broad, policy issues.

These plans do not usually say when and where individual activities will take place; instead they set a desired condition for each zone's future. Some forests, such as the Tongass National Forest in Alaska, are huge (17 million acres), and the associated issues are correspondingly vast in scope. In these cases, it is often beneficial to conduct mid-level planning for a smaller area (e.g., watershed, island, or district), identifying issues at that scale before initiating the NEPA process for a project which takes place at an even smaller scale.

For example, the Stikine Area of the Tongass National Forest did an "island-wide" analysis for Mitkoff Island. They identified all the resources and potential uses, solicited extensive public input on desired projects for the island, identified background data (e.g., hunting patterns, recreation use), and came up with an island plan. The plan clearly stated that although project funding was not guaranteed, as funding became available the agency would bring projects forward.

Because the team dealt with public issues at this non-NEPA, midlevel, virtually all the projects that have been brought forward have already been bought into by the public, so there is little conflict at the NEPA stage. Even though this approach demonstrates a very successful way to "do NEPA," most units just don't feel they have time to do this extra step.

Region 10 of the USFS is striving to make this the norm, rather than the exception. This is an example of the kind of planning that could be considered a Section 101 step and implemented under current CEQ regulations.

Another Forest Service NEPA process provides a useful strategic model. In 1979, the Lolo National Forest developed a strategic policy in their Draft Forest Plan (anticipating effects from a multi-agency, interstate, high capacity power line

siting process led by Bonneville Power Corporation). The Forest Plan policy held that any new high capacity power line should be located so as to minimize the social effects on people and scenery.

In the course of a collaborative process, the strategic policy in the Lolo Forest Plan became a guiding policy which resulted in a very different siting decision than the expected one (which would have simply added another line to the Interstate 90 corridor). In this way, a multi-agency decision-making process was able to use a place-specific strategic decision as a guide to decision making at a regional scale; they incorporated the original decision into the common policy framework and shared procedural process for decision making.

3.2 Administrative Barrier #2: Lack of clear decision-making procedure concerning when to use collaborative approaches within NEPA processes.

"We can't do that."

Collaboration and consensus building are not panaceas, and are only appropriate in certain situations. Some of the "ingredients for success" include (1) the presence of a significant issue to negotiate and (2) some incentive or perceived opportunity for the stakeholders.13 In some instances involving routine or minor issues, a collaborative NEPA process may well not be necessary.

In other instances, such as one in which extenuating circumstances make it difficult to achieve parity at the collaborative "table," collaborative approaches may intensify already contentious situations. However, collaboration at the strategic level is often critical.

For the most part, agency staff are not trained to recognize when collaborative approaches can be used effectively. Managers who are unfamiliar with collaborative processes may be reluctant to try new approaches, out of fear that they will start too late (or too soon) or concern that they will appear to be forcing collaboration on an unwilling community.

3.2.1 Strategy: Provide training to help agency personnel identify appropriate applications of collaborative approaches.

Agency managers need to be trained in the critical skills necessary to help them identify when to apply collaborative approaches within a NEPA process. Managers should be able to conduct a realistic assessment of the conditions necessary for effective collaboration. Ideally, a flexible set of "collaboration criteria" would guide agency managers in their decisions.

The BLM and the Sonoran Institute currently have a long-term agreement on "community-based planning." One of the first products of this agreement is a handbook to help local managers recognize opportunities for collaboration and implement appropriate steps in a collaborative process. This handbook (and associated trainings) could easily by shared with other agencies.

Such a training could be integrated with other training opportunities discussed in Section 2.4.1. Training, however, is not enough. There must be a clear commitment on the part of agencies to undertake collaboration in public decision making. Efforts should seek to enhance both the "will" and the "skill" of public officials to engage in dialogue.14

Collaboration and consensus building are not panaceas, and are only appropriate in certain situations. Some of the "ingredients for success" include (1) the presence of a significant issue to negotiate and (2) some incentive or perceived opportunity for the stakeholders.

3.3 Administrative Barrier #3: Lack of internal agency incentives to improve NEPA implementation.

"If I use innovations like collaboration, I'll get poor job evaluations."

This administrative barrier, while similar to political barrier two, concerns the absence of internal agency incentives to support staff who use collaborative approaches effectively. The current agency reward system recognizes people who can complete projects quickly; people who may need additional time to implement a comprehensive, collaborative strategy are not similarly acknowledged.

Innovative agency staff may resolve conflict before it escalates, diffuse highly confrontational situations, and avoid appeals and litigation. However, in most agency staff evaluation structures, there is no measure by which to judge the value of these kinds of innovations.

3.3.1 Strategy: Recognize, reward, and provide incentives to managers and all participants who promote effective collaborative process or otherwise improve the quality of decision making.

Agency incentives and staff performance standards should be restructured to support and encourage effective innovation. Just as there are numerous collaborative problem-solving types, there are many creative ways to reward, recognize and provide incentives to individuals and groups involved in these processes. The following highlights several ideas.

- *Introduce performance standards that evaluate agency staff in their implementation of collaborative approaches.*
- *Recognize people and groups with awards for innovative, constructive collaborative efforts. Consider providing grants or funding to continue award-winning efforts.*
- *Use local, regional and state media sources to document and recognize successful collaborative efforts.*
- *Invite individuals and group representatives to workshops, conferences, and other forums to talk about their efforts and experiences in collaboration.*

Agencies can initiate other programs to facilitate collaborative practice and support staff initiative. The Alaska region of the Forest Service recently instituted an Alternative Dispute Resolution (ADR) program that encourages the use of ADR techniques to resolve conflicts before decisions are made. Professional, neutral third parties are now available to facilitate or mediate disputes. Agency staff also work with outside professional contractors and internal trained facilitators.

3.4 Administrative Barrier #4: Lack of genuine public involvement strategies.

"Why are you asking us? You've already made your decision."

As noted earlier, citizens who feel they have not been meaningfully involved through traditional NEPA public involvement efforts may be unwilling to commit to a more intensive, collaborative form of participation. Agency public involvement efforts are often compromised by poor planning, unequal access to resources, outdated methods, and inadequate funding. In rare cases, superiors may even instruct agency staff members to ensure a predetermined outcome that fits with the overall agency plan.

Many agencies continue to use the same old scoping and public involvement techniques, even though they may have been ineffective in the past. Traditional public involvement opportunities can inadvertently inhibit full and diverse participation. For example, meetings during business hours effectively exclude people with daytime jobs; public meetings and hearings rarely offer child care; large public hearings discourage many people and may be easily manipulated by others.

Although some agencies are implementing creative public involvement strategies, most have been slow to embrace new technology and non-traditional approaches to public involvement. The public can be overwhelmed by demands for their participation, and agencies are not always prepared to solicit input effectively and respectfully.

3.4.1 Strategy: Seek CEQ guidance about how agencies can offer more meaningful opportunities for public participation in the NEPA process.

Creative, effective public involvement strategies do exist. If the CEQ compiled a record of current innovations, this record could be made available to agencies as guidance and inspiration. Agencies may begin to seek public involvement earlier in the NEPA process (as recommended in CFR 1501.2) and, in some cases, encourage state agency and public representation on Interdisciplinary Teams.

In practical terms, agencies can help the public plan their participation by providing schedules of upcoming projects well in advance. For example, the Forest Service provides a quarterly schedule of proposed actions for each forest and includes a checklist for mailings. Chapter III, Section 5.1 details other practical strategies for improving public involvement.

3.4.2 Strategy: Facilitate communication through more effective use of technology.

Agencies can involve previously underrepresented people through a creative use of media and electronic technology, including cable television presentations, free video loans (summarizing meetings, proposals, and information), and internet outreach. The Army Corps of Engineers is particularly adept at using technology in their public involvement efforts.

Federal agencies also have access to the contract services of an enterprise team within the Forest Service, which provides agencies with the resources to use internet technology and innovative public involvement approaches in their NEPA processes.

3.5 Administrative Barrier #5: Confusion among agencies.

"The left hand doesn't know what the right hand is doing."

Each federal agency has different priorities and regulations for NEPA implementation. This situation often results in the duplication of efforts (in report and document preparation) and increased confusion for NEPA process participants. For example, the Forest Service conducts elaborate NEPA processes for relatively small projects that many other agencies would categorically exclude.

In a more extreme example, the Coast Guard regulations require EA or EIS preparation for all projects, even if they occur on Forest Service land. In one case, the Coast Guard conducted public involvement and drafted a complete project docu-

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ment before approaching the Forest Service for a permit.

Unfortunately, the process had to be started again from the beginning because the analysis document was not up to Forest Service standards. If the Forest Service had been approached in the beginning, the two agencies could have cooperated on a single document.

3.5.1 Strategy: Improve integration of agency analysis.

Agencies, with CEQ's assistance, should make every effort to integrate their analysis and management efforts. In watershed planning, for example, several agencies may pool their efforts on a programmatic EIS for the federal presence in the watershed. (This level of collaboration will only be appropriate when there is a watershed-level proposed action.) At the very least, development and use of shared data sets and indicators would improve agency coordination. Studies used in a NEPA process, such as socioeconomic analyses, can be extremely useful to other agencies and offices in the region.

3.5.2 Strategy: Implement interagency training on variations in NEPA procedures.

Interagency training should be designed to help managers understand how their NEPA projects and processes could be integrated with the actions and regulations of other agencies. Ideally this training would be conducted at multiple locations to facilitate the consideration of site-specific issues.

Training could also review NEPA's declared policies and specific agency obligations under the Act. In the past, the BLM, the Forest Service and the Natural Resources Conservation Service have broadcast NEPA training to field offices throughout the nation. Interagency training could be promoted at the BLM National Training Center and through the Forest Service "NEPA 101 Course."15

3.5.3 Strategy: Inventory agency assessments, plans, and NEPA analyses.

With the widespread use of Geographic Information Systems (GIS), it is now possible for agencies to create a common database. Shared information in a database system would include regional resource assessment findings, land use planning decisions, and project-specific NEPA analyses.

Such a database would encourage tiering from existing, larger-scale NEPA analyses. In the long run, it would expose potential conflicts between plans and gaps in assessment and analysis. To ensure maximum usefulness, the common base should include the broad range of federal agencies, states and local governments with a region.

Accepted inventories by non-government groups, such as the Nature Conservancy, would also make an important contribution. It may be possible for states to host the database information on state-wide GIS systems. For example, Utah's Automated Geographic Reference System is the host for all the geographic information BLM used in preparing the EIS for its Management Plan for the Grand Staircase-Escalante National Monument.

4.0 LEGAL BARRIERS AND STRATEGIES

4.1 Legal Barrier #1: Lack of clarity about when the Federal Advisory Committee Act does and does not apply to collaborative processes.

There is widespread confusion about the Federal Advisory Committee Act (FACA) and its potential impact on public or group involvement. FACA's original objectives actually mirror many objectives of collaboration, including open, fair, and balanced representation. However, agency managers often assume that FACA either prevents or inhibits collaborative efforts when, in fact, this is rarely the case. Such confusion can inhibit agencies from using advisory groups and involving the public.

Because of such fears, the USFS and BLM have withdrawn from collaborative efforts such as the Applegate Partnership of Oregon, which was set up to manage the Applegate watershed. Several workshop participants argued that agency managers have actually used concerns about FACA as an easy excuse not to do collaborative work.

4.1.2 Strategy: Address Federal Advisory Committee Act (FACA) issues.

FACA presents both a perceived and a real barrier to collaborative processes. FACA requirements apply to advisory groups "utilized by" or "established by" a federal agency. Court decisions indicate that factors affecting whether a group meets either of these criteria include whether an agency (1) originated the proposal to create the group, (2) appoints members to the group, (3) sets the group's agenda, or (4) provides funding to the group.

Generally, community-based collaborative groups fall outside of FACA because a federal agency does not exercise extensive control over the group.[16] Even if an agency plays a part in establishing a group, FACA does not necessarily apply.

Congress or the General Services Administration should clarify the terms "utilized by" or "established by" so that the worthwhile purposes of FACA can be retained while reducing confusion and removing perceived barriers. CEQ should play a role in bringing consistency to the application of FACA among agencies. And, the issue of "ceilings" on the number of committees that can be chartered under FACA should be revisited.

4.2 Legal Barrier #2: Conflict between fixed agency accountability for decision making and the desire to share control in collaborative groups.

"Who can make the final decision?"

Ultimately, the lead agency in a NEPA process is responsible for the outcome of a NEPA process and legally accountable for the decision's impact. This legal necessity creates confusion when collaborative groups wish to share the responsibility for choosing alternatives and making final decisions. A collaborative group is most effective when it knows its decision will have a meaningful impact.

Courts have interpreted the "Appointments Clause" of the U.S. Constitution to hold that federal agencies must not relinquish control of decision making to another party. Where a collaborative group is supposed to have decision-making authority, CEQ does not have the authority to assure that the group's decisions are implemented. This issue requires considerably more research.

4.2.1 Strategy: Give greater weight to consensus-based recommendations from collaborative groups.

Although agencies cannot technically share decision-making authority, they can look favorably upon, or

Ultimately, the lead agency in a NEPA process is responsible for the outcome of a NEPA process and legally accountable for the decision's impact. This legal necessity creates confusion when collaborative groups wish to share the responsibility for choosing alternatives and making final decisions.

give preference to, recommendations made by a group that has reached consensus (although this may be difficult to judge, and problematic in cases where the composition of the collaborative group does not represent all interests).

In some instances, agency representatives could be part of the group making the consensus-based recommendations. As a basic step, agencies need to clarify their legal requirements and establish consistent processes for using input and decisions from collaborative groups. This clarity would reassure collaborators and build a base for successful collaboration.

5.0 FINANCIAL BARRIERS AND STRATEGIES

5.1 Financial Barrier #1: Lack of agency resources to carry out innovative NEPA implementation.

"We're expected to do more with less."

Recent agency budget cutbacks have resulted in the loss of talented, experienced NEPA practitioners. Staff that remain struggle to handle the increased workload, low morale, and low creativity reserves. Agencies desperately need experienced facilitators to oversee successful collaboration. They also require access to the latest scientific information and to technical consultants who can demystify science and policy for collaborative groups.

The lack of financial resources inhibits use of the latest technology and slows the adoption of creative NEPA implementation approaches. Insufficient resources can also force agencies to contract out for NEPA document preparation. In accordance with CEQ regulations, EISs must either be prepared by the lead agency, by a cooperating agency, or by a contractor selected by the applicant (contractors must execute a conflict of interest disclosure statement). However, because of the close relationship between contractors and the applicant, and the fact that the applicant is paying for the analysis, conflict of interest (biased or incomplete disclosure of impacts) is still very much a concern. The public is often unwilling to put in time and effort on a process that may be biased or flawed.

5.1.1. Strategy: Provide more money and resources at all levels to ensure quality NEPA processes and to support collaborative approaches.

Agencies need significant resources to enable them to use creative, project-specific approaches to collaboration. There may be some opportunities for reallocation of existing federal agency budgets. Under existing statutory authority, agencies could also enhance their efforts to recover the costs of NEPA compliance from applicants.[17] Workshop participants suggested several potential sources of funding:

The National Fish and Wildlife Foundation; other private foundations; mitigation funds; state funds;[18] appropriations for pilot projects; in kind support from state mediation offices; better use of existing collaboration training; and recovery of costs for private actions on federal lands.[19] With adequate funding, agencies could also consider a resource pool to support participation (Canada and the U.S. Forest Service provide models for providing participant support) and funds to support the use of professional facilitation.

5.2 Financial Barrier #2: Lack of resources to enable equal participation within collaborative groups.

"How do we get everyone to the table?"

Collaborative efforts often require considerable time, effort and commitment from the participants. Some stakeholders have a difficult time finding the funds and the trained people they need to participate effectively. Non-industry and non-government groups, in particular, often lack the resources to participate on an equal footing with other groups.

Financial resources are also required to allow collaborative groups sufficient time to absorb relevant information and come to a decision. Usually agencies have no financial resources (and no administrative procedures to allocate resources) available to assist groups and ensure equal participation in a collaborative process.

Environmental and other interest groups perceive that this lack of financial resources provides industry with an inappropriate advantage in collaborative processes. These stakeholders feel that industry often looks on collaboration as an easy way to influence the decision-making process and achieve their predetermined objectives.

Therefore, environmental groups sometimes have little faith in the integrity of collaborative and consensus-building processes. If a group feels that it has a better chance of achieving its goals through appeals or litigation, there is no incentive to participate in a collaborative process.

5.2.1 Strategy: Require agencies to structure processes so that all interested parties can participate on an equal basis.

If all stakeholders participate on equal terms, they are more willing to seek understanding and agreement. Some of the strategies for implementing this are noted below:

- *Choose meeting locations and times that are conducive and convenient to citizen participation.*
- *Assist in obtaining money to cover participant expenses, such as travel and child-care.*
- *Provide participants with food if meeting times coincides with meal times .*
- *Provide in-kind services such as copy services, computer services, fax machine use, paper, and flip charts to maintain good communication.*
- *Provide an impartial facilitator to help maintain balance among the group members.*
- *Arrange with universities to provide student assistants to groups.*
- *Provide technical assistance, such as map work, GIS, and internet access.*

There must be an adequate pool of money for agencies to draw on when they implement these strategies and facilitate inclusive processes. If agencies are required to implement strategies without a dedicated funding source, high costs may create a disincentive to using collaborative approaches.

While some of the tension between the old statutory framework and the new methods of collaboration can be addressed in the ways recommended above, some of that tension is simply not yet ripe for resolution without further debate and the gathering of more information.

6.0 PILOT PROJECTS

While some of the tension between the old statutory framework and the new methods of collaboration can be addressed in the ways recommended above, some of that tension is simply not yet ripe for resolution without further debate and the gathering of more information. To that end, workshop participants discussed the use of pilot projects as a way to test strategies and gather needed information.

Workshop participants drafted pilot project legislation that directs the chair of the CEQ to "encourage and support innovative collaborative efforts between and among federal agencies, states, Indian tribes, regional and local governments, and the public to implement and advance the purposes of NEPA."

At the workshop, there was strong, but not universal, support for pilot project legislation that would establish opportunities to test and evaluate collaborative solutions. This draft legislation has subsequently been advanced as a project of IENR and CRMW.[20] Working drafts of the proposed legislation have already benefited from workshop participants' constructive criticism.

The pilot project proposal, as outlined in the draft legislation, emphasizes the selection of innovative pilot projects that test the possibilities and limits of collaboration. Workshop participants suggested that one possible use of the pilot projects would be to explore to what extent decision-making authority can be vested within collaborative groups.

Participants also recommended that a pilot project program select and support emerging or established collaborative groups. In addition to the draft legislation, participants suggested that organizations such as the Western Governors' Association should be encouraged to undertake similar pilot programs in cooperation with local governments, federal agencies, and citizen groups.

Other, non-legislative approaches to pilot project implementation include a possible Executive Order encouraging pilot projects and appropriations bill language that provides individual agencies with funds for pilots.

Some workshop participants, while not opposed to the pilot project idea in principle, raised concerns that pilot project legislation might weaken NEPA's effectiveness as an environmental protection tool.

Others emphasized that, since by their very nature successful collaborative processes depend on the active participation of diverse groups, pilots projects should be implemented from "the ground up," not "the top down."

6.1 Pilot Project Goals

Systematic Research and Evaluation: Pilot projects, many participants observed, would offer a critical opportunity for systematic research and learning about the use of collaborative public participation approaches in NEPA processes. Prior to pilot project selection, independent researchers should compile and evaluate previously completed collaborative efforts.

This analysis would help frame the questions to be answered in the pilot project program. Throughout the duration of pilot projects, a well-funded evaluation and research component should focus scientific and other forms of inquiry to identify cases where collaboration does and does not work.

Information from these projects would help fill knowledge gaps and

infuse lessons learned into future collaborations.

Eventually, these findings and lessons would be applied in agencies' core programs and their standard NEPA implementation procedures. Agency decision makers would benefit from this experimentation by learning when and where collaboration can most effectively be used to improve NEPA processes.

The following list addresses some of the specific issues and topics that could be explored through pilot projects:

a) *effective strategies for balancing the need for both local and national participation;*

b) *implementation approaches to ensure equal power and influence among representatives of various views;*

c) *cost analysis of collaborative versus traditional approaches, including (when possible) extended costs from litigation and decision impacts.*

Improved Relationships: In addition to advancing the public debate and understanding about collaboration, the pilot project strategy could also improve the relationship between Congress and the agencies charged with implementing NEPA. Congress would become a partner, along with the agencies, in learning how NEPA implementation can be improved.

Experience has shown that inclusive collaborative processes can help restore trust among citizens in governmental and business institutions. In the case of NEPA, these processes hold the potential to improve the relationship among federal agencies, states, localities, businesses and citizens instead of eroding trust and polarizing various groups, as has often been the case in the past.

Fulfilling Section 101 Goals: Pilot project selection and evaluation should include a mechanism for reinserting the substantive Section 101(b) policy provisions (and the incompletely realized Section 102 requirements) back into NEPA implementation. Each pilot collaborative group should ask and answer a set of questions based on NEPA's broad, environmental protection objectives.

Groups' answers could be evaluated at several stages: upon applying for pilot project status, in the middle of the NEPA process, upon completion of the process, and in a series of post-decision evaluations that monitor action impacts and levels of success. Sample guiding questions might include:

- *Does this decision "create and maintain conditions under which man and nature can exist in productive harmony"?*

- *Does this process "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decision making which may have an impact on man's environment"?*

- *With this action, do we "fulfill the responsibilities of each generation as trustee of the environment for future generations"?*

- *With this action, do we "enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources"?*

Pilot projects should be required to prove, to the extent possible, that their approaches generate satisfactory answers to the guiding questions. Ultimately, these pilots could produce a set of practical criteria to

Agencies should make a genuine attempt to make the NEPA process an integrated, decision-crafting effort, rather than a means to reaching a pre-determined end. NEPA provides substantial unrealized opportunities to integrate effective public involvement and collaborative decision making.

implement the broad intent of NEPA's as yet unfulfilled goals. In this way, pilot projects could demonstrate how agency managers can most effectively use collaborative approaches to fulfill the goals of NEPA Section 101.

7.0 CONCLUSION

A few broad changes are needed to move NEPA processes into a new, more inclusive, responsive phase. Some of these changes are underway; others will require extensive research and modeling. On the procedural side, federal agencies that implement NEPA must involve the public and other affected agencies early and often.

Agencies should make a genuine attempt to make the NEPA process an integrated, decision-crafting effort, rather than a means to reaching a pre-determined end. NEPA provides substantial unrealized opportunities to integrate effective public involvement and collaborative decision making.

Consideration must also be given to strategic planning for broad geographic and ecological regions. Project by project planning for specific sites fails to properly identify regional and compound impacts. If collaborative, broad-scale NEPA implementation is going to be successful, agencies must be encouraged to move beyond defensive, "risk-averse" approaches. Federal leaders and lawmakers must value the larger goals of Section 101 and provide agencies with the freedom to experiment with new methods and processes.

NEPA's existing implementation protocol is the result of an accretion of influences over the last 30 years. Current proposals for change address several key problems in the NEPA process as it now stands, while recognizing that change will necessarily be an organic, gradual process. Increased public collaboration and participation will most likely be key components of any NEPA revitalization effort, and it is critical that decision makers understand how to use new approaches effectively and selectively.

ENDNOTES

1 According to research completed for CRMW's Western Charter project, community-based collaborative groups, in their mission statements and guiding principles, tend to express shared values in key areas: sustainability, equity, social diversity, economic diversity, and biodiversity. These shared values may predispose collaborative groups to reach outcomes that are consistent with Section 101 goals.

2 Researchers and practitioners have provided a strong base for future research efforts. Key sources in the literature of collaboration and consensus include, McKinney, 1998 and Susskind and Cruikshank, 1987.

3 Visit the WGA website at www.westgov.org for a full description and listing of the Enlibra principles.

4 Mike Dombeck released the mandate on January 6, 1997 in a speech titled "Sustaining the Health of the Land Through Collaborative Stewardship." The text of the speech can be viewed at www.fs.fed.us/intro/speech.

5 Included in Appendix C.

6 See Harmon, McKinney, and Burchfield, 1999.

7 40 CFR 1501.6.

8 Both the CEQ memo and the BLM/NPS/USFS memo are included in Appendix C.

9 See, e.g. 40CFR1503, role of clearing houses, and 1506.2, directing federal agencies to cooperate with state and local governments.

10 40 CFR 1500-1508.

11 Committee of Scientists, 1999.

12 See "NEPA and Federal Land Planning: A Checklist of Collaborative Strategies" in Appendix C.

13 Snow, 1999.

14 Yankelovich, 1999.

15 Joe Carbone, USFS NEPA Coordinator, can provide additional information about NEPA and National Forest Management

Act training for agency staff. NEPA Coordinator, Ecosystem Management Coordination Staff, PO Box 96090, Washington, DC, 20090-6090. (202) 205-0884, www.fs.fed.us/eco/eco-watch.

16 Rieke, 1997.

17 Existing statutory authority for this strategy, 1952 Independent Offices Appropriation Act, as amended, 31 USC 9701. BLM is also authorized under the Federal Land Policy Management Act to charge applicants for a broad range of services, including the costs of preparing environmental documents.

18 Oregon, Washington, and California already provide some funding for watershed councils.

19 The Forest Service has a pilot project to funnel such funds directly to the affected national forest

20 For information about the draft legislation, contact Rich Innes at (202) 354-6457.

Notes

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Appendix A
NEPA

The National Environmental Policy Act of 1969, as amended

(Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

Purpose

Sec. 2 [42 USC § 4321].
The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I
CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101 [42 USC § 4331].

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consist with other essential considerations of national policy, 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;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102 [42 USC § 4332].

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall

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VII

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on —

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.
(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;
(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;
(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;
(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and
assist the Council on Environmental Quality established by title II of this Act.
VIII

Sec. 103 [42 USC § 4333].

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104 [42 USC § 4334].

Nothing in section 102 [42 USC § 4332] or 103 [42 USC § 4333] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105 [42 USC § 4335]

The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II
COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201 [42 USC § 4341].

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban an rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect

on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202 [42 USC § 4342].

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203 [42 USC § 4343].

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).
(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

Sec. 204 [42 USC § 4344].

9.

It shall be the duty and function of the Council —

1. to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC § 4341] of this title;
2. to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;
3. to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;
4. to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;
5. to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;
6. to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;
7. to report at least once each year to the President on the state and condition of the environment; and
8. to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

9.

Sec. 205 [42 USC § 4345].

10.

In exercising its powers, functions, and duties under this Act, the Council shall(

1. consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and
2. utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206 [42 USC § 4346].

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates [5 USC § 5313]. The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates [5 USC § 5315].

Sec. 207 [42 USC § 4346a].

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

Sec. 208 [42 USC § 4346b].

The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

Sec. 209 [42 USC § 4347].

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.
The Environmental Quality Improvement Act, as amended (Pub. L. No. 91- 224, Title II, April 3, 1970; Pub. L. No. 97-258, September 13, 1982; and Pub. L. No. 98-581, October 30, 1984.
42 USC § 4372.

(a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this chapter referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.
(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.
(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions ;under this chapter and Public Law 91-190, except that he may employ no more than ten specialists and other experts without regard to the

provisions of Title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of Title 5.

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by —

1. providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91- 190;
2. assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;
3. reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;
4. promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;
5. assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;
6. assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government;
7. collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.

42 USC § 4373. Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

42 USC § 4374. There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91- 190:

(a) $2,126,000 for the fiscal year ending September 30, 1979.
(b) $3,000,000 for the fiscal years ending September 30, 1980, and September 30, 1981.
(c) $44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.
(d) $480,000 for each of the fiscal years ending September 30, 1985 and 1986.

42 USC § 4375.

(a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the "Fund") to receive advance payments from other agencies or accounts that may be used solely to finance —

1. study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and
2. Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.

(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

Section 309 - Clean Air Act (excerpt)

(a) The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this Act or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which Section 102(2)(C) of Public Law 91-190[*] applies, and (3) proposed regulations published by any department or agency of the Federal government. Such written comment shall be made public at the conclusion of any such review.

(b) In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare to environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality.

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Type 1A (Traditional Public Involvement)

Case 1: Routt National Forest Forest Plan Revision

Location: The Routt National Forest is located in north central Colorado, encompassing an area of 1,126,346 acres.

Objective: Revision of the Forest Plan, a plan which manages the forest resources. According to National Forest Management Act, all national forests are required to revise their forest plans every 10-15 years in order to keep current with changes in social interests, scientific data, and environmental concerns.

What Triggered NEPA: The Council on Environmental Quality requires federal agencies to comply with NEPA in decision-making processes such as Forest Plan revisions.

Duration: 1993 - 1998

Results/Status: *1993:* The Routt National Forest published its Notice of Intent for the Forest Plan revision process and completed the Analysis of Management Situation.

1996: The Draft Environmental Impact Statement was published in February, officially beginning the 60 day scoping period.

1998: The Final Environmental Impact Statement was published in February, officially beginning the 90 day scoping period.

1998: The Record of Decision was published.

Parties:
Routt National Forest Interested Citizens

Contact:
Hahns Peak/Bears Ears Ranger District
925 Weiss Drive
Steamboat Springs, CO 80487-9315
(970) 870-1870
www.fs.fed.us/outernet/mrnf/mbrwelcome.htm

Type 1b (Traditional, Lead Agency w/Innovations)

Case 2: Yosemite Valley Plan

Location: Yosemite National Park is located in west-central California in the Sierra Nevada Mountains.

Objective: To develop a plan for new and replacement housing for employees who provide resource and facility protection and visitor services in Yosemite Valley. The plan developed will reflect the purposes of Yosemite National Park as stated in the 1980 General Management Plan.

What Triggered NEPA: The development and implementation of a Yosemite Valley Housing Plan is considered a major federal action, triggering compliance with NEPA.

Duration: 1989 - present

Results/Status: *1989:* The National Park Service (NPS) published the Notice of Intent in February along with a letter to solicit comments and issues to be addressed in the EIS.

1990: The NPS reopened the scoping period in March to solicit comments that would include housing needs for all employees working within the Yosemite Valley.

1992: The Draft Environmental Impact Statement (EIS) was released in August by the NPS. Scoping comments on this draft were accepted through September.

1993: The NPS announced an addendum to the Draft EIS in October investigating two new alternatives derived as a result of the previous scoping process. The NPS reopened the scoping period to receive comments on the addendum.

1998: In December, the NPS, decided to combine the Draft Yosemite Valley Housing Plan EIS with three other draft plans (Draft Yosemite Valley Implementation Plan/EIS, Yosemite Lodge Development Concept Plan/EA, and the Yosemite Falls Facilities Design Project) to develop one comprehensive plan called the Yosemite Valley Plan. The NPS announces that the integrated plan will include new information developed through subsequent environmental studies and modified alternatives or mitigation strategies developed from public comments.

1999: The scoping period for the Draft Yosemite Valley Plan closed in February. Public activities during the scoping and comment period include interpretive programs and ranger-led tours of the areas that could be affected by the four alternatives; open houses and workshops in Yosemite Valley, the San Joaquin Valley, the San Francisco Bay Area, the Los Angeles area, and the Eastern Sierra region; and information on the NPS Planning Website.

2000: A draft EIS of the Yosemite Valley Plan is scheduled to be released this spring. The Final EIS Yosemite Valley Plan is scheduled to be published late this year.

Parties:
Yosemite National Park
Interested Citizens

Contact:
Yosemite National Park
P.O. Box 577
Yosemite, CA 95389
(209) 372-0200
www.nps.gov/yose/planning.htm

Type 2a (Agency-initiated Collaboratives, Inter-agency)

Case 3: Winter Visitor Use Management

Location: Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway are located in the northwest corner of Wyoming, extending into southwestern Montana and southeastern Idaho.

Objective: Development of a Winter Use Plan for the Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway.

What Triggered NEPA: A settlement agreement requiring the National Park Service to prepare a new winter use plan and a corresponding Environmental Impact Statement.

Duration: 1997- present

Results/Status: *1997:* As the result of a lawsuit filed by Fund for Animals against the National Park Service, the National Park Service was required to prepare a new winter use plan and Environmental Impact Statement.

1997: The National Park Service invited the National Forest Service, the states of Wyoming, Idaho and Montana, the Wyoming Counties of Teton and Park, Idaho County Fremont, and the Montana Counties of Gallatin and Park to act as cooperating agencies.

1998: A 90-day public scoping period began on the new winter use plan. During this scoping period 16 public meetings were held in major US cities (Salt Lake City, Minneapolis, Denver, and Washington D.C.). Over 15,000 comments were received identifying the following issues: visitor use, wildlife use of groomed surfaces, wildlife displacement, air quality, snowmobile sound, impacts on local economies, and health and human safety.

1999: The Draft Environmental Impact Statement was released and comment closed on December 15, 1999.

Parties:

Grand Teton National Park	U.S. Forest Service
Yellowstone National Park	State of Wyoming
State of Montana	State of Idaho
Gallatin County, MT	Park County, MT
Park County, WY	Teton County, WY
Fremont County, ID	

Contact

Yellowstone National Park
P.O. Box 168
Yellowstone National Park, WY 82190-0168
(307) 344-7381
www.nps.gov/planning/yell/winteruse

Type 2b (Agency-initiated Collaboratives, Multi-stakeholder)

Case 4: San Juan National Forest Initiative

Location: San Juan National Forest (SJNF) is located in southwestern Colorado. The SJNF includes three ranger districts, Colombine, Mancos-Dolores, and Pagosa, encompassing an area of almost 200,000 acres.

Objective: Revision of the Forest Plan, a plan which manages the forest resources. According to the National Forest Management Act, all national forests are required to revise their forest plans every 10-15 years in order to keep current with changes in social interests, scientific data, and environmental concerns.

What Triggered NEPA: The Council on Environmental Quality requires federal agencies to comply with NEPA in decision-making processes such as Forest Plan Revisions.

Duration: 1995- present

Results/Status: *1995:* The USFS, through advertisements in print and broadcast media and mailings, asked local and regional citizens to join community groups in order to enhance public input regarding the forest plan revision. In addition, the USFS, in partnership with the Office of Community Development, held open houses providing more information on the community stewardship approach to forest management.

1996: Three Community Study Groups (one for each district) met with the USFS personnel and the Office of Community Development to discuss and clarify issues important to their district.

1997: To allow for more detailed discussions with the public on specific issues, the USFS and the Office of Community Development began announcing a more in-depth study to follow the community study groups. This phase included six topical working groups: wildlife, timber management and fire, travel management and recreation, special management areas, special water concerns, and range and riparian areas.

1999: The USFS completed the Analysis of Management Situation (AMS) and released a notice of intent to complete a Draft Environmental Impact Statement.

2000: Scoping for the DEIS closed in January. The DEIS is due out in spring 2001.

Parties:
SJNF Forest Service Personnel
Office of Community Development, Fort Lewis College
Interested private citizens

Contact:
Jim Powers
Forest Planner
SJNF 701 Camino del Rio,
Durango, CO 81301
970-385-1212
www.fs.fed.us/r2/sanjuan

Type 2b (Agency-initiated Collaboratives, Multi-stakeholder)

Case 5: Sierra Nevada Framework

Location: The framework includes the Sequoia, Sierra, Stanislaus, Eldorado, Inyo, Tahoe, Plumas, Lassen, and Modoc National Forests, and the Lake Tahoe Basin Management Unit in California. In addition, Region 5 (PSW) is working with personnel from the Humboldt-Toiyabe NF in Region 4 to ensure coordination and compatibility of management across administrative boundaries.

Objective: To incorporate the latest scientific information into the management of the Sierra Nevada national forests through broad public and intergovernmental participation in natural resource planning.

What Triggered NEPA: The U.S. Forest Service began developing a long-term management plan for the declining California Spotted Owl habitat and other issues with a scheduled release of a draft EIS in 1996. However, with the release of new scientific information in the Sierra Nevada Eco-system Project (SNEP) report and a review by an empanelled Federal Advisory Committee (FAC), the revised draft EIS was considered inadequate in its current form as either an owl or ecosystem management planning document.

Therefore in January 1998, in response to the FAC report and other information, the Forest Service and the PSW Research Station initiated a collaborative effort to incorporate new information into management of Sierra Nevada national forests. This effort, known as the Sierra Nevada Framework for Conservation and Collaboration, incorporates the latest scientific information into national forest management through broad public and intergovernmental participation in natural resource planning.

The Sierra Nevada Forest Plan Amendment Environmental Impact Statement (EIS) is one of several activities included in the Sierra Nevada Framework for Conservation and Collaboration. Related efforts are exploring better ways of working together on near-term projects and longer-term programs with an emphasis on improved relationships and procedures to encourage better collaboration.

One such effort is the work of Forest Service personnel and staff from some of the 35 state and federal agencies, and representatives of county government who are members of the California Biodiversity Council. This interagency group is providing advice and ideas on resource management and on improving public involvement and interagency coordination throughout the Sierra Nevada.

Duration: 1998 – present

Results/Status:
1998: The Forest Service involved interested public in the process to update forest plans before developing a proposed action and initiating a NEPA planning process. A website included an electronic forum for public input. Between August 1998 and January 1999, over 60 public meetings and workshops were held across California, involving some 1,500 people. About 3,300 people sent in comments. Special efforts were made to involve American Indian tribes in a government-to-government relationship, including consultation and tribal summits. Ideas from these various workshops and other activities helped the Forest Service develop a proposed action for updating forest plans, and is influencing the development of the alternatives and the draft EIS.

Contact:
USDS Forest Service
Sierra Nevada
Framework Project
801 I Street
Sacramento, CA
95814
Tel: 916-492-7554
www.r5.fs.fed.us

1999: The Draft Environmental Impact Statement was released in early summer beginning a 90 day public comment period. The Final Environmental Impact Statement and Record of Decision are scheduled for completion in winter of 2000.

Parties:

Sequoia National Forest
Stanislaus National Forest
Inyo National Forest
Plumas National Forest
Modoc National Forest
County Governments
Humboldt -Toiyabe National Forest
Sequoia/Kings Canyon National Park
Sierra National Forest
Eldorado National Forest
Tahoe National Forest
Lassen National Forest
California Biodiversity Council
Tribal Communities
Yosemite National Park

Type 2b (Agency-initiated Collaboratives, Multi-stakeholder)

Case 6: Platte River Endangered Species Partnership

Location: The Central Platte River Valley in Nebraska.

Objective:
1. To develop and implement a "recovery implementation program" to improve and conserve habitat for four threatened and endangered species that use the Platte River in Nebraska: the whooping crane, piping plover, least tern, and pallid sturgeon.
2. To enable existing and new water uses in the Platte River Basin to proceed without additional actions required (beyond the Program) for the four species under the Endangered Species Act (ESA).

What Triggered NEPA: The evaluation of possible impacts to the environment occurring as the result of the Recovery Implementation Program.

Duration: 1997- present

Results/Status: *1997:* A Cooperative Agreement was signed by the Governors of Wyoming, Colorado, and Nebraska, and the Department of Interior to address endangered species issues affecting the Platte River Basin.

1998: Public scoping meetings began allowing the public to make comments on the Platte River Programmatic Environmental Impact Statement. A total of 11 meetings were held (3 in Colorado and in Wyoming and 5 in Nebraska) beginning in February and ending in April.

1999: A Governance Committee is formed with members from the three states, water users, environmental groups, and two federal agencies. This group is charged with implementing the Cooperative Agreement. The final summary of scoping input for the Platte River Programmatic Environmental Impact Statement is released in August.

2000: Over the next 3 years, an evaluation will be conducted of the impacts of the proposed Program and a range of alternatives. At that point, the parties intend that a final Program will be selected and they will enter into an agreement for its implementation.

Parties:

Department of Interior
State of Nebraska
Wyoming Water Uses
The Platte River Trust
Nebraska Water Uses, Inc.
U.S. Fish and Wildlife Service
Environmental Defense Fund
State of Wyoming
State of Colorado
National Audubon Society
Bureau of Reclamation
Colorado Water Users
BLM, Great Plains

Contact:
Platte River EIS Office
PO Box 250007 Mail code PL – 100,
Denver, CO 80225-0007
(303) 445-2096
www.platteriver.org

Type 2b (Agency-initiated Collaboratives, Multi-stakeholder)

Case 7: Hanford Future Site Uses Working Group

Location: The Hanford Nuclear Reservation is located in southeast Washington State along the Columbia River.

Objective: Development of an array of future land use scenarios and to assess their implications for cleanup of the 560 square mile nuclear reservation.

What Triggered NEPA: The need to develop a range of reasonable alternatives to accomplish the scope of the Hartford Cleanup Tri-Party Agreement.

Duration: 1992 - present

Results/Status: *1990:* An organizing committee (with representatives from the US DOE; US EPA; Washington State Department of Ecology; National Park Service; State of Oregon; and county, local, and tribal governments) authorized the three parties to the 30-year cleanup plan (DOE, EPA, and Ecology) to select an independent facilitator to guide a multiparty consensus building process as part of scoping the Hanford Remedial Action Environmental Impact Statement.

1992: The Hanford working group was convened for a series of 9 monthly meetings to build a common base of information and to oversee the production of new area maps. The group's report, "The Future of Hanford: Uses and Cleanup" outlined the group's final recommendations on potential future site use options and corresponding cleanup scenarios for the six major geographic areas that comprise the site. Nine consensus recommendations related to the site's cleanup and potential future uses have since proven useful for a numerous other planning efforts. The group's report was submitted to the DOE as a formal scoping comment for the Hanford Remedial Action Environmental Impact Statement (HRA-EIS).

1994: The Hanford Advisory Board (HAB) was established as an independent, non-partisan, and broadly representative body consisting of a balanced mix of the diverse interests that are affected by Hanford cleanup issues. The primary mission of the Board is to provide informed recommendations and advice to relevant federal agencies on selected major policy issues related to the cleanup of the Hanford site. The HAB endorsed and adopted the consensus recommendations in "The Future of Hanford."

1996: A draft HRA-EIS was released and the DOE decided to expand the land use planning initiative into a Comprehensive Land Use Plan (CLUP).

1999: Revised Draft HRA-EIS and CLUP are released in April. The Final EIS is released in September.

Parties:

US Department of Energy
US Environmental Protection Agency
State of Washington
Tribal governments
Local governments (counties and cities)
US Department of Interior
State of Oregon
Environmental Groups
Citizen Interest Groups

Contact:

US DOE, Richland Operations Office
Office of External Affairs
P.O. Box 550, A7-75
Richland, Washington 99352
(509) 376-7501
www.hanford.gov

Type 2b (Agency-initiated Collaboratives, Multi-stakeholder)

Case 8: Puget Sound Electric Reliability Plan

Location: Puget Sound area of western Washington.

Objective: Build agreement on a set of alternatives to address growing winter peak power demands in the Puget Sound area.

What Triggered NEPA: Bonneville Power Administration(BPA) initiated the NEPA process to consider alternatives, ranging from increasing conservation to building new transmission systems. BPA was the lead agency, working cooperatively with four local utilities.

Duration: 1991-1992

Results/Status: 30 participants came together as a Sounding Board representing state and local government; environmental, energy, and civic interests; and consumer interests (including residential, business, and industry). Although the multiparty group was not charged with reaching consensus, consensus did emerge on a preferred alternative other than the one originally envisioned by the utilities.

This alternative was implemented and the Sounding Board received the BPA Administrator's Award for Exceptional Public Service because of the integrity and usefulness of the collaborative process, and broader public involvement that occurred as a companion result.

Parties:

Bonneville Power Administration
Local Utilities
State and Local Governments
Consumer Interests
Environmental Interests

Contact:
Nea Carroll,
Triangle Associates
(206) 583-0655

Type 3 (Collaboratives Initiated by Others)

Case 9: Grizzly Bear Citizen Management Proposal

Location: Selway-Bitterroot Mountains of Idaho and Montana. Experimental area where bears would be released includes 5,785 square miles of designated wilderness and 25,140 square miles of public lands in central Idaho and western Montana within which the bears may be expected to roam.

Objective: A citizen-driven grizzly bear re-introduction process which would transfer significant responsibility for developing plans and policies to manage bears in the Experimental area, where grizzly occupation is to be "accommodated" with human uses. If implemented, the Secretary of Interior would appoint a 15-member Citizen Management Committee including seven individuals recommended by the governor of Idaho, five by the governor of Montana, one by the Nez Perce Tribe, one from the US Forest Service, and one from US Fish & Wildlife Service (USFWS). Among state-recommended members must be a representative each from Idaho and Montana's fish and wildlife agencies.

What Triggered NEPA: In 1993 the USFWS proposed an action to re-introduce grizzlies to the area, which triggered NEPA review. The US Fish & Wildlife Service listed the grizzly as a threatened species under the Endangered Species Act in 1975 and released a recovery plan for the species in 1982. After a series of habitat studies the FWS identified the Selway-Bitterroot ecosystem as the only one of six potential recovery areas not already occupied by grizzlies.

Duration: 1993 - present

Results/Status: *1994:* A coalition of environmental, timber, and labor interests began exploring alternatives to the agency-driven reintroduction process.

1997: FWS released a Draft EIS showing coalition-developed alternative as the preferred alternative.

2000: Final EIS and Record of Decision expected to be released in spring of this year.

Parties:
Defenders of Wildlife
Intermountain Forestry Association
National Wildlife Federation
Resource Organization on Timber Supply
Three Rivers Timber Mill

Contact:
Tom France
Counsel
National Wildlife Federation
(406) 721-6705
http://www.nwf.org/grizzly/bitterro.html

Type 3 (Collaboratives Initiated by Others)

Case 10: Flathead Common Ground

Location: Flathead National Forest, located in northwestern Montana, under the western scarp of the Continental Divide, south of Glacier National Park.

Objective: The group's three objectives are to: 1) improve wildlife security through road closures; 2) protect and restore watershed and fisheries resources; and 3) implement innovative vegetation management techniques. The aim is to meet these objectives by finding common ground with the timber industry, motorized recreation interests and the conservation community, thereby reducing implementation time and increasing broad support for large-scale land management planning.

What Triggered NEPA:
1994: The US Fish and Wildlife Service notified the Flathead National Forest that existing road densities violated Section 9 of the Endangered Species Act (ESA). Road densities were so high, the agency argued, that grizzly bears were being "taken" in the legal sense of the word under ESA. In response, the parties to Flathead Common Ground began figuring out a way to reduce road densities acceptably. This effort prompted the Flathead National Forest to begin a management action, which in turn triggered NEPA.

Duration: 1994 - present

Results/Status: *1997:* Flathead Common Ground submitted a set of recommendations that were revised and included as Alternative 4 in the Paint Emery Resource Management Project Environmental Assessment. The initial project focused on two grizzly bear management sub-units east of the Hungry Horse Reservoir.

1999: Comment period closed on March 16 and the deciding official expected to make a decision in early spring. Currently the group is finalizing a second set of recommendations, dubbed "Flathead Common Ground II," which will appear when the Flathead Forest produces an Environmental Assessment on the Big Creek Area.

Parties: The following groups attended at least one meeting. Not all of these groups approved of or participated in decisions. Some individuals participated as well.

Montanans for Multiple Use
Weyerhaeuser Corporation
Flathead National Forest
Flathead Wildlife
Economic Policy Center
Intermountain Forest Industry Assn.
Coalition for Canyon Preservation
Montana Wilderness Association
Swan View Coalition
Trout Unlimited
Office of Senator Conrad Burns
Flathead Audubon
Artemis Common Ground
Stoltze Land and Lumber Co.
Plum Creek Timber Co.
Montana Fish, Wildlife, & Parks
Defenders of Wildlife
Great Bear Foundation
National Wildlife Federation
Montana Logging Association

Contact:
Greg Schildwachter, Ph.D.
Intermountain Forest Industry Assn.
200 E. Pine
Missoula, MT 59802
406-542-1220
greg@ifia.com

Type 3 (Collaboratives Initiated by Others)

Case 11: Quincy Library Group

Location: Three northeastern California national forests (Lassen, Plumas, and parts of Tahoe, an area encompassing 2.5 million acres). The collaborative group met in the town of Quincy's library and took on the name "Quincy Library Group (QLG)."

Objective: The Quincy Library Group approaches the inter-dependent goals of forest health and community stability from different angles, because it believes that sustainable resource management must have a sound technical foundation, a broad political base, and strong local participation.

What Triggered NEPA: Amendments to the Quincy Library Group Forest Recovery and Economic Stability Act of 1997 (H.R. 858) to require NEPA review.

Duration: 1992-present

Results/Status: *1993:* QLG completed 5-year interim forest management plan for the Feather River Watershed, called the "Community Stability Proposal."

1994: QLG took proposal to DC and presented it to USFS Chief, Congressional delegates, and the Undersecretary of Agriculture. USFS allocated $1 million to implement the plan and US Secretary of Agriculture pledged an additional $4.7 million for programs such as fuel reduction and watershed restoration.

1997: Frustrated by perceived lack of progress by the USFS, QLG lobbied US Congressman Wally Herger (R-CA) to introduce the proposal as a bill (H.R. 858) to congress. The bill was passed by the House after it was brought under compliance with NEPA and the National Forest Management Act (NFMA).

1998: The bill was passed by the Senate as part of the Omnibus Appropriations Bill, becoming the Herger-Feinstein Quincy Library Group Forest Recovery Act of 1998.

1999: The USFS completed a Draft Environmental Impact Statement and closed comment on the DEIS in August. The FEIS was released in late August. QLG appealed the Record of Decision. Although QLG supported the FEIS choice of alternative 2, it opposed the inclusion of mitigation measures for spotted owl habitat. QLG stated that the mitigation would prevent implementation of the Pilot Project as intended by Congress and as described in the FEIS.

Parties: 175 participants, including 30 core members representing the following interests:

Plumas County
Univ. of California—Cooperative Extension
Western Council of Industrial Workers
Sierra County School Board
California Sport Fishing Protection Alliance
Sierra County Conservation Club II
Roney Land & Cattle Company
Calif. Women in Timber, Quincy Chapter
Pew Logging and Lumber Company
Sierra Pacific Industries
Burney Forest Products
Lassen County
Siskiyou Plumas Lumber
Friends of Plumas Wilderness
Collins Pine Company
Sierra County
Mitchell Family Logging
Clover Logging

Contact:
www.qlg.org

Notes

Appendix C
Supporting Documents

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Item #1

Community-Based Partnerships and Ecosystems for a Healthy Environment

Course No. 1730-31, Bureau of Land Management National Training Center

9828 N. 31st Ave., Phoenix, AZ 85051

Contact 602-906-5669 or email partner@tc.blm.gov

This course is currently being presented to citizens' groups, local government officials, land management agencies, and industry personnel across the country. It is a three-day course with several instructors. It is available to anyone, and the presenters will travel to the site location. Current tuition is $800.

The presenters make it very clear that this is not the new "flavor of the month" government program. This workshop is a grass-roots effort to encourage agency personnel to learn about their "new role at the community level." The workshop helps agency personnel (and citizens) gain the knowledge and tools to use collaborative processes to make land management decisions. It is not a top-down approach. In fact it was stated that with regard to using community based partnerships: "The ingenuity and creativity of people on all sides is being released towards finding new solutions. The change may be a fundamental shift in society itself. A shift led not by government, but one which government must redesign itself around."

Objectives:

1. Recognize opportunities for partnerships.
2. Formulate a shared vision for citizens and government working together.
3. Develop an effective partnering process.
4. Discover how to cultivate, motivate and sustain partnering relationships.
5. Participate in the partnering process by:
   - Understanding community structure and dynamics
   - Determining who is affected by an issue and how to include them
   - Understanding behavior relative to partnering -
   - Building capacity at the community level

Desired Outcomes of Course:

1. Shift responsibility for land stewardship back to people and industry and out of the hands of the government.
2. More effectively implement land stewardship efforts through people's ethics rather than through government enforcement.
3. Expand land stewardship ethics through all of nature and to whole natural systems.

The desired outcomes are meant to help achieve a move towards achieving the ideal state of "productive harmony" as defined in NEPA.

The course was designed and developed cooperatively By: BLM, USDA Forest Service, US Fish and Wildlife Service, National Park Service, The Nature Conservancy, Natural Resources Conservation Service, and San Bernardino National Forest Association.

Item #2

NEPA and Federal Land Planning: A Checklist of Collaborative Strategies

Key Project Steps	Collaborative Possibilities
Project Conception	❑ Consult an experienced facilitator, mediator, or consensus-builder to help determine what type of collaboration may be appropriate ❑ If some type of collaboration may be appropriate, include resources (time, money, and staff) in your project plan and budgets
Pre-project Analysis	❑ Use an impartial third party to assess the issue, situation, or conflict ❑ Identify parties, issues, and options on how to proceed
Develop Proposed Action	❑ Consult stakeholders — citizens and other officials — in developing a proposed action; seek agreement on proposed action ❑ Interview parties one-on-one; convene stakeholder groups; convene a broad-based, multi-party group ❑ Foster mutual education through joint fact finding and exchanging information
Scoping	❑ Consider different processes for gathering public input and advice (public meetings, open houses, surveys, stakeholder meetings, study circles, etc.) ❑ Use impartial facilitator to convene and manage large, controversial public meetings
Validate the Issues	❑ Based on the public input and advice, consult stakeholders to foster a common understanding of the NEPA significant issues
Develop Alternatives	❑ Convene a working group of stakeholders to develop alternatives ❑ Encourage citizens and other stakeholders to develop their own alternative ❑ Use stakeholders as a sounding board to ensure that the range of alternatives responds to NEPA issues and unresolved issues
Identify Preferred Alternatives	❑ Use expert panels and stakeholder groups to help analyze alternatives ❑ Use agreed-upon criteria to evaluate alternatives ❑ Clarify the distinction between facts (science) and values (goals or desired future conditions)
Analyze EA or DEIS Public Comments	❑ Convene a working group of stakeholders to review public comments, clarify dominant themes, validate or revise NEPA issues, and identify criteria for the selected alternative
Select Alternative	❑ Before the responsible official announces the selected alternative, he/she may consult stakeholders to confirm decision and rationale
Appeal	❑ Resolve outstanding issues through informal, non-adversarial processes of negotiation and mediation
Litigation	❑ Consult Department of Justice and Office of the General Counsel ❑ Seek opportunities for settlement negotiations, mediation, and/or arbitration
Post Decision	❑ Convene a working group to monitor and evaluate implementation, and to suggest appropriate changes to the plan of action

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Item #3

BLM Montana State Office
222 North 32nd Street
P.O.Box 36800
Billings, Montana 59107

Forest Service, Northern Region
200 East Broadway
P.O. Box 7669
Missoula, Montana 59807

Montana Consensus Council
State of Montana
State Capitol
Helena, Montana 59620

Memorandum of Understanding

between
Bureau of Land Management, Montana State Office,
U.S. Forest Service, Northern Region,
and
Montana Consensus Council

Promoting Consensus Approaches to Federal Land Management

I. Purpose:

The purpose of this Memorandum of Understanding (MOU) is to foster the use of consensus-building techniques to build agreement on federal land management issues in Montana and the Northern Region.

The U.S. Bureau of Land Management, Montana State Office (BLM), the U.S. Forest Service, Northern Region (USFS), and the Montana Consensus Council (Council) agree to discover and create opportunities to integrate consensus building techniques into the management of federal lands.

This MOU is designed to add value or supplement the current capabilities of the BLM and the USFS to design and facilitate public involvement, dispute resolution, collaborative problem solving, and consensus building processes that involve multiple stakeholders.

II. Authority:

- Federal Land Policy and Management Act of 1976, as amended, Public Law 94-579 (90 STAT. 2743)
- National Forest Management Act of 1976, as amended, Public Law 94-588
- National Environmental Policy Act of 1969, as amended, Public Law 91-190
- Administrative Dispute Resolution Act of 1996, Public Law 104-320
- Negotiated Rulemaking Act of 1990, as amended, Public Law 101-648
- Natural Resource Alternative Dispute Resolution (NRADR) Initiative Strategic Plan for BLM (September 11, 1997)

Page 1 of 3

III. Procedures:

All parties agree to:

- Develop an annual work plan to incorporate consensus approaches into federal land management. This plan may include, but is not limited to, consensus-building projects, education, training programs, research and evaluation activities. The work plan should focus on both immediate and long term needs and interests of the BLM and USFS.

The Montana Consensus Council, at the request of the BLM and/or USFS, agrees to:

- Provide general information, advice, and consultation on public involvement, consensus building and dispute resolution.
- Provide training and education programs.
- Assess specific situations and design a process to match the situation.
- Facilitate and mediate such processes as appropriate.
- Evaluate the effectiveness of existing or experimental consensus-building processes.
- Abide by the Montana Consensus Council Code of Professional Conduct (attached) in the course of providing these services.

The BLM, Montana State Office and the USFS, Northern Region agree to:

- When appropriate, utilize consensus building processes to help prevent expensive and lengthy litigation and enhance the satisfaction of stakeholders.
- Incorporate and improve upon existing consensus building techniques to create more communicative and cooperative and less adversarial partnerships in public and land user relationships.
- Educate managers and employees in resolving issues and disputes through consensus-building philosophies and processes.
- Recognize that appeals and litigation may be necessary to establish case law and resolve ambiguities in the law.
- Continue to review existing regulations to ensure they provide opportunities for consensus building procedures.
- Identify and continuously market consensus building tools and techniques that can be used in the BLM and USFS arenas.
- Develop indicators that will measure the usage of consensus building tools and techniques throughout the BLM and USFS.
- Develop indicators to measure the success of consensus building processes in BLM and USFS.

IV. Administration.

This MOU becomes effective upon signature by all of its participants.

The participants will review this MOU at least every 5 years to determine its adequacy, effectiveness and continuing need. The need for this MOU is expected to continue for 5 years, at the end of which period it will expire, unless extended or renewed.

The terms of this MOU may be renegotiated at any time at the initiative of one or more of its participants, following at least 30 days notice to the other participants.

This MOU may be cancelled at any time by one or more of its participants, following at least 30 days notice to the other participants.

Nothing in this MOU shall obligate the BLM, the USFS or the Council to expend appropriations or to enter into any contract or other obligation. Specific work projects or activities that involve the transfer of funds, services, or property between the parties to this MOU will require the execution of separate agreements or contracts, contingent upon the availability of funds as appropriated by congress. Each subsequent agreement or arrangement involving the transfer of funds, services or property between the parties to this MOU must comply with all applicable statutes and regulations, including those statutes and regulations applicable to procurement activities, and must be independently authorized by appropriate statutory authority.

Contacts. The contact for the Council under this MOU is the Director. The contact for the BLM under this MOU is the Alternative Dispute Resolution Coordinator. The contact for the USFS under this MOU is the Director of Public and Governmental Relations.

Larry Hamilton — 12/14/98

State Director
U.S. Bureau of Land Management
Montana State Office

Date

Dale N. Bosworth — Dec 14, 1998

Regional Forester
U.S. Forest Service
Northern Region

Date

Matthew McKinney — December 14, 1998

Director
Montana Consensus Council

Date

Code of Professional Conduct

Montana Consensus Council
Executive Policy 1
Originally adopted in 1994
Revised in August 1998

Statement of Policy

The Montana Consensus Council is public-private partnership currently attached to the Office of the Governor for administrative purposes. The Consensus Council is committed to the following roles and responsibilities during any and all consensus-building processes that it helps design and manage.

Responsibility to the Participants

1.1 Impartiality

The Council is nonpartisan. It is not an advocate for any particular interest or outcome. It seeks to be impartial -- that is, it is free from favoritism or bias either by word or action -- and is committed to serving all parties rather than a single party.

1.2 Appropriateness of Consensus Processes

The Council provides information to potential participants on the procedures and assistance available to build agreement or resolve disputes. It helps potential participants choose an appropriate procedure, realizing that consensus processes are not effective in resolving every issue.

1.3 Conflicts of Interest

The Council does not enter or continue in any consensus process if it believes that participation would create a conflict of interest or raise a substantial question as to its impartiality. The Council will disclose any conflict of interest to all the participants, whenever it appears during the process.

1.4 Scope of Work

Before committing to work on a consensus-building process, the Council insists that the participants and the Council agree on the specific services to be provided by the Council, a strategy and timetable for beginning and ending the project, and the nature of compensation to the Council.

Responsibility for the Process

1.5 Process Design

The Council works with all the participants to design an appropriate consensus building process. In appropriate circumstances, the Council may refer the participants to other consensus building professionals for assistance.

- over -

The Council will not participate in any process where the purpose and expectations are not clear to all participants. The Council will withdraw from any process if its continuing involvement is not acceptable to the participants.

1.6 Facilitation and Mediation

The Council will engage in a variety of activities to coordinate the consensus process. It will serve as a impartial facilitator during meetings; focus the energy of the group on a common task; protect individuals and their ideas from attack; encourage everyone to participate and share their ideas; help the group find mutual gain solutions; coordinate pre- and post-meeting logistics; and, where necessary, shuttle among the participants between meetings. The Council will also help the participants amend an agreement during the implementation process. The Council will enforce the ground rules agreed to by the participants and confront any participant when the Council believes the participant is not acting in good faith and is inhibiting the group from moving forward.

1.7 Confidentiality

The Council will respect the confidentiality of private communications with any of the participants.

1.8 Documentation

Unless otherwise agreed to by all the participants and the Council, the Council shall prepare and maintain an objective record of the consensus process, including areas of agreement, disagreement, and strategies for implementation. The Council shall prepare both draft and final consensus documents, and when appropriate, research documents.

1.9 Implementation

The Council will continue to provide consultation to the participants during the process of implementing any agreement.

Responsibility to the Public

1.10 Unrepresented Interests

The Council contributes to the integrity of the process by identifying unrepresented interests during the building or implementation of any agreement.

Commitment to Improve Services

1.11 Training and Education

The Council constantly upgrades its skills through formal education, training programs, workshops, practical experience, and research and publication.

1.12 Evaluation by Participants

In an effort to improve its consensus-building services, the Council encourages candid comments and suggestions about its performance. The Council encourages participants to suggest improvements to the consensus-building, education, and research services provided by the Council.

Building Agreement on Natural Resources and Public Policy

A Two-day Workshop on
Strategies to Effectively Engage Citizens and Officials

Presented by
Western Consensus Council
Consensus Building Institute

What you will learn ...

Strategies to shape wise, stable, and popular public decisions

- Alternative approaches to public involvement and public dispute resolution
- How to tailor a public involvement or dispute resolution process to the situation
- When to engage in a collaborative process

How to effectively participate in a collaborative process, including:

- Using mutual gains negotiation
- Representing your organization

How to design and manage effective processes, including:

- The importance of ground rules — that is, agreeing on the desired outcomes, tasks, information needs, decision-making process, and media relations
- Clarifying the responsibilities of the sponsor and/or decision makers
- Ways to develop a common understanding of the issues and concerns
- Techniques for generating options and building agreement
- Managing effective meetings
- How to deal with difficult people
- Strategies to implement, monitor, and evaluate the agreement or outcome

Instructors

Matthew McKinney is the Director of the Montana Consensus Council and a founding member of the Western Consensus Council. Both organizations promote effective public policy through public involvement and consensus-building strategies. Mr. McKinney has facilitated and mediated many public policy forums, helping citizens and officials build agreement on fish and wildlife management, water policy, public land management, state superfund legislation, growth management, and county land-use planning. McKinney has taught natural resource policy and public dispute resolution in seminars and college courses.

Patrick Field is vice-president of the Consensus Building Institute, based in Cambridge, Massachusetts. He has assessed, facilitated, and mediated numerous public disputes over air quality, superfund cleanup, land use, and public health. Mr. Field has provided training to public and private organizations throughout North America. He co-authored, with Dr. Larry Susskind, *Dealing with an Angry Public*. CBI is a widely recognized not-for-profit organization dedicated to improving people's ability to shape public decisions that are fair, wise, and stable.

Item #4 cont'd

About the Workshop

This two-day workshop combines the extensive resources on negotiation and consensus building at the Harvard-MIT public disputes program with the wealth of knowledge and western experience of trainers based in the western United States. It uses a combination of lecture, negotiation simulations, case studies, and discussion. The course is intended to be intensive, interactive, and enjoyable. It requires active involvement of the participants.

The workshop is well suited for county, state, and federal officials and agencies who may play a convening role in a consensus building process and for potential participants such as advocacy organizations, citizen groups, and businesses. We strongly encourage joint training for individuals and organizations who may be about to enter a negotiation or collaborative process, are in the midst of a negotiation, or are at an impasse.

In addition to this two-day workshop, we offer half-day consultations, five-day seminars and institutes for college or continuing education credit, and 15-week academic courses. We can also teach custom-designed seminars and prepare tailored simulations on specific issues distinctive to the participants needs and interests. Examples of all our educational materials are available upon request.

Responsibilities of WCC and CBI

The WCC and CBI agree to provide:

1. Two experienced trainers. The trainers have direct experience in facilitating consensus building processes as well as providing training courses to individuals and organizations across the U.S. and Canada. ***The trainers time will be paid for by foundation grants.***

2. A master notebook of all course materials suitable for copying. The notebook will include copyrighted overheads, negotiation simulations, case studies, and readings.

3. Evaluation forms. We will collect these forms at the end of the course, summarize the results, and provide a copy of the summary to the hosting organization.

Responsibilities of the Hosting Organization

1. The hosting organization is responsible for all logistical and organizational arrangements, including:

   A. Marketing the workshop, including designing, printing and distributing promotional materials.
   B. Ensuring adequate participation.
   C. Arranging for facilities at which the workshop will be held. The trainers will provide advice regarding the room arrangements and audiovisual equipment needed.
   D. Managing all workshop registrations.
   E. Providing all copying and compilation of course materials.
   F. Receiving, disbursing, and accounting for all funds associated with the workshop.
   G. Providing refreshment at breaks, lunches, dinners, and any accommodations necessary.
   H. Providing staff during the workshop to take registration, distribute materials, serve refreshments, assist at an information table, and otherwise support the workshop.

2. The hosting organization agrees to pay the travel and lodging expenses (travel, car rental, lodging, meals, and so on) incurred by the two trainers. ***The cost of the trainers time, as mentioned above, is covered by foundation grants.***

3. As a general matter, there is no limit on the number of people that may participate in a workshop. However, seminars of approximately 30 participants provide the best size for one-on-one teaching as well as interaction with a number of other participants. Because our courses depend on interactive negotiation simulations, courses with fewer than 15 participants do not gain the full experience of comparing their multi-party negotiation results to others.

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

July 28, 1999

MEMORANDUM FOR HEADS OF FEDERAL AGENCIES

FROM: GEORGE T. FRAMPTON, JR. GTF Jr.
Acting Chair

SUBJECT: DESIGNATION OF NON-FEDERAL AGENCIES TO BE COOPERATING AGENCIES IN IMPLEMENTING THE PROCEDURAL REQUIREMENTS OF THE NATIONAL ENVIRONMENTAL POLICY ACT

The purpose of this Memorandum is to urge agencies to more actively solicit in the future the participation of state, tribal and local governments as "cooperating agencies" in implementing the environmental impact statement process under the National Environmental Policy Act (NEPA). 40 C.F.R. §1508.5. As soon as practicable, but no later than the scoping process, federal agency officials should identify state, tribal and local government agencies which have jurisdiction by law and or special expertise with respect to reasonable alternatives or significant environmental, social or economic impacts association with a proposed action that requires the preparation of an environmental impact statement[1]. The federal agency should then determine whether such non-federal agencies are interested in assuming the responsibilities of becoming a cooperating agency under 40 C.F.R. §1501.6. Where invited tribal, state, or local agencies choose not to become cooperators in the NEPA process, they may still be identified as an internal party on the distribution list, if they so desire.

[1] While CEQ has not attempted to identify every state, tribal and local government agencies with jurisdiction by law or special expertise (nor do we propose to do so), agencies may wish to refer to Appendix II to the CEQ regulations, "Federal and Federal-State Agencies with Jurisdiction by Law or Special Expertise on Environmental Quality Issues", Vol. 49 *Federal Register*,. No. 247, 49754-49778 (December 21, 1984), for guidance as to the types of actions and expertise that are relevant in determining appropriate cooperating agencies. Please contact CEQ for copies, if needed.

Recycled Paper

Item #5 cont'd

The benefits of granting cooperating agency status include disclosure of relevant information early in the analytical process, receipt of technical expertise and staff support, avoidance of duplication with state, tribal and local procedures, and establishment of a mechanism for addressing intergovernmental issues. If a non-federal agency agrees to become a cooperating agency, agencies are encouraged to document (e.g., in a memorandum of agreement) their specific expectations, roles and responsibilities, including such issues as preparation of analysis, schedules, availability of pre-decisional information and other issues. Cooperating agencies are normally expected to use their own funds for routine activities, but to the extent available funds permit, the lead agency should fund or include in its budget requests funding for major activities or analyses that it requests from cooperating agencies. 40 C.F.R. §1501.6(b)(5).

Agencies are reminded that cooperating agency status neither enlarges nor diminishes the decisionmaking authority of either federal or non-federal entities. However, cooperating agency relationships with state, tribal and local agencies help to achieve the direction set forth in NEPA to work with other levels of government "to promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." Considering NEPA's mandate and the authority granted in federal regulation to allow for cooperating agency status for state, tribal and local agencies, cooperator status for appropriate non-federal agencies should be routinely solicited.

2

Item #6

U.S. Department of the Interior
Bureau of Land Management
Washington, D.C. 20240

U.S. Department of Agriculture
Forest Service
Washington, D.C. 20090

Dated Oct 1998

Mr. James M. Souby, Executive Director
Western Governors' Association
600 17th Street
Suite 1705 South Tower
Denver, Colorado 80202-5452

Dear Mr. Souby:

Thank you for your letter of January 21, 1998, commenting on the Bureau of Land Management (BLM) and Forest Service (FS) proposed statement clarifying cooperating and joint lead agency provisions under the National Environmental Policy Act. We appreciate and have considered your thoughtful suggestions.

The final statement is attached. Please note that since we last spoke the National Park Service (NPS) has elected to join BLM and the FS as a signatory to this effort. The BLM, FS, and the NPS intend to further improve the environmental analysis process used by Federal land managers by taking advantage of the natural synergies between the Federal land management agencies and State, local and Tribal governments. We will distribute this statement, which is a clarification of current policy, to all our field offices as a reminder of the opportunities that may exist to work with State, local and Tribal governments as cooperating or joint lead agencies.

If you have further questions or need additional information, please contact David Williams, Manager, BLM Planning, Assessment, and Community Support Group, at 202-452-7793; Bertha Gillam, Director, FS Range Management Staff, at 202-205-1460; or Jacob Hoogland, Chief, NPS Environmental Quality Division, at (202) 208-3163.

Sincerely,

Pat Shea
Director, Bureau of Land Management

Mike Dombeck
Chief, Forest Service

Robert G. Stanton
Director, National Park Service

Enclosures

cc: National Association of Counties
Joint Center on Sustainable Development
Council on Environmental Quality

STATE, LOCAL, AND TRIBAL GOVERNMENTS AS COOPERATING OR JOINT LEAD AGENCIES WITH THE BUREAU OF LAND MANAGEMENT, THE FOREST SERVICE AND THE NATIONAL PARK SERVICE

Introduction

In the very first sentence of the National Environmental Policy Act (NEPA), the Congress declares that

> ...it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations...to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. [Sec. 101 (a); emphasis added]

Thus, from the very outset of NEPA Congress intended that the Federal government cooperate with State and local governments to achieve "productive harmony, and fulfill the social, economic and other requirements of present and future generations of Americans." Creating that productive harmony requires considerable effort, however, because of the complex jurisdictional and management issues related to Federal lands and the fact that State and local governments as well as Indian Tribes own and manage lands which are often near, adjacent to, or intermingled with Federal lands. As an outgrowth of these land ownership patterns, Federal, State, local and Tribal government entities have increasingly sought to coordinate their decisions as a means of improving land management. By embracing closer cooperation during the environmental analysis process, all levels of government can better assess the context of Federal actions and can better integrate decisionmaking within their jurisdictions.

In fact, the benefits of cooperation among Federal, State, local and Tribal governments are clearly reflected in the Council on Environmental Quality (CEQ) regulations for implementing NEPA (40 CFR 1500-1508). The regulations emphasize timely agency coordination as a means of dealing with interagency issues (40 CFR 1501.6). The regulations also express a desire that Federal agencies avoid duplication with State, local and Tribal procedures (40 CFR 1506.2).

The following questions and answers (Qs and As) respond to issues raised by some western State and county level government officials, the Western Governors' Association, and discussions with the CEQ regarding participation by non-Federal government entities with Federal land management agencies under NEPA. The Qs and As emphasize to Bureau of Land Management (BLM), Forest Service (FS), and National Park Service (NPS) field offices the opportunities for

State, local, and Tribal government entities to become a "cooperating agency" or a "joint lead agency" in accordance with the CEQ regulations. These Qs and As are simply clarifications of the CEQ regulations, the BLM NEPA procedures (MS 1790 and H-1790-1 and Departmental Manual 516 DM 1-7), the FS NEPA procedures (FSH 1909.15 Ch. 10, at 11.31, 11.31a, 11.31b. (57 Fed. Reg. 43180, 43195-43196, September 18, 1992)), and the NPS NEPA procedures (DO 12 and accompanying handbook and field guide and Departmental Manual 5176 DM 7). They neither broaden nor narrow the rights and responsibilities of the Forest Service, the BLM, the NPS or any other governmental entity.

Although the Qs and As were initially prepared in response to State and local governments' requests to be joint lead and cooperating agencies, Indian Tribes are also afforded similar opportunities by the CEQ regulations. Therefore, the scope of the Qs and As was broadened to include Indian Tribes.

Situations may arise that do not conform to the answers given herein. When this occurs, consult with your Office of the Solicitor or General Counsel, or Washington office program management for guidance on how best to define the working relationship with State, Local or tribal government entities. Further background on the roles and responsibilities of cooperating and joint lead agencies can be obtained from "Answers to 40 most asked questions on NEPA regulations," 46 Fed. Reg. 18026 - 18038 (March 1, 1981), a response to commonly asked questions on this and other topics, prepared by the CEQ. Questions 14a.-d. in that document refer specifically to operational aspects of cooperating agency relationships (see attachment).

Questions and Answers

1. What is a "cooperating agency"?

A cooperating agency assists the lead Federal agency in developing an Environmental Assessment (EA) or Environmental Impact Statement (EIS). The CEQ regulations implementing NEPA define a cooperating agency as any agency that has jurisdiction by law or special expertise for proposals covered by NEPA. See CEQ Regulations for Implementing NEPA, 40 CFR §1501.6. Any Federal, State, local, or Tribal government entity with such qualifications may become a cooperating agency on an EA or EIS by agreement with the lead Federal agency. For example, if a county has jurisdiction by law over some aspect of a proposed project or has special expertise, and wishes to assist in analyzing impacts, it may request cooperating agency designation from the lead Federal agency.

The benefits of granting cooperating agency status may include increasing the efficiency of the NEPA process; maximizing coordination among Federal, State, local and Tribal government agencies; and eliminating duplication between Federal and State/local procedures.

2. How are State, local or Tribal government entities designated as a cooperating agency?

The BLM/FS/NPS may invite State, local or Tribal government entities to participate as cooperating agencies, or a State, local or Tribal government entity may request that the BLM, FS, or the NPS grant cooperating agency status. In any case, the Federal lead agency with primary responsibility for preparing the EA or EIS would decide whether: 1) the local government entity meets the CEQ requirements for cooperating agency status (40 CFR §1501.6.), and 2) designation is appropriate. More than one agency or government entity may be designated as a cooperating agency.

In addition, BLM, FS, or the NPS may agree with a State, local or Tribal government entity that specific categories of activities are generally suitable for cooperating agency participation, based on the experience of the Federal agency and the State or local entity involved. However, specific designation of cooperating agency status will take place on a case-by-case basis. Memoranda of understanding or other agreement documents, which are discussed under item 6, play a useful role in specifically setting out the designated responsibilities of the lead Federal agency and each cooperating agency.

3. What are the responsibilities of a cooperating agency in the preparation of an EA or EIS?

A cooperating agency participates in the preparation of the EA or EIS by agreeing to:

-Assist in the NEPA analysis at the earliest possible time.
-Participate in the scoping process, which helps define and frame the issues to be addressed in the NEPA document.
-Develop information and prepare environmental analyses (upon request of the lead agency) for portions of the EA or EIS over which the cooperating agency has special expertise.
-Contribute staff support and other resources at the lead agency's request to enhance the NEPA team's interdisciplinary capability.
-Share freely any information and data relevant to the NEPA analysis, thereby facilitating rational, fact-based decision making.
-Rely on its own funds to support its participation in the EA or EIS.

In harmony with the goals of NEPA, participation by cooperating agencies promotes efficiency, cooperation, and disclosure to the public of all relevant information. Prior to the designation of a non-Federal entity as a cooperating agency, the Federal and non-Federal entities should discuss each other's expectations and responsibilities. All parties would thus be assured that any request by the lead Federal agency, pursuant to 40 CFR 1501.6 (b)(3), (4), and (5), could be met by the cooperating agency.

4. What are the limitations on the role of a non-Federal cooperating agency?

In becoming a cooperating agency, a State, local or Tribal governmental entity does not gain new authority. BLM, NPS, or the FS retains the exclusive authority to make decisions on projects or programs for which it has responsibility by law. For example, the Federal land management agency retains sole decisionmaking authority for the lands and resources it administers; under the law, this authority cannot be delegated to a non-Federal government entity. Similarly, by becoming a cooperating agency, a non-Federal entity does not give up its authority to make decisions on issues over which it has legal jurisdiction.

The lead Federal agency retains decisionmaking authority over issues relating to the completion of the EA or EIS. That is so, because it is the Federal agency that is charged with carrying out the NEPA process under §102(2)(c) of NEPA. If parties find they cannot agree on issues related to the preparation of the EA or EIS, each will be free to proceed independently in order to meet respective schedules for rendering decisions.

5. May a non-Federal governmental entity become a "joint lead" agency?

Yes. The CEQ regulations permit a State or local governmental entity to serve as a joint lead agency with a Federal agency that is preparing an EA or EIS (40 CFR § 1501.5 (b)). The joint lead provision exists primarily to assist in paperwork reduction and in pooling of resources. Joint lead designation may be appropriate if: 1) a State or local agency and a Federal agency have decisions that need to be coordinated, and 2) each agency would otherwise need to prepare separate environmental analyses (e.g., separate EIS-type documents).

6. How does the NPS, FS or BLM formalize designation of a cooperating or joint lead agency?

The NPS, FS, or BLM prepares a memorandum of understanding (MOU), letter, or other agreement document that sets forth the working relationship between the Federal agency and the State, local or Tribal government entity serving as a joint lead or cooperating agency. This written agreement formally establishes the expectations, roles, and responsibilities of the parties involved. A single agreement may cover all project participants, or there may be separate agreements, as appropriate. The respective NPS, BLM or FS Washington Office program staff can provide sample MOUs or other types of agreement documents. The appropriate Departmental legal counsel should be consulted before such agreements are executed.

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