

May 26, 2005

MEMORANDUM FOR THE HEADS OF FEDERAL AGENCIES

FROM: JAMES L. CONNAUGHTON

SUBJECT: REPORT ON COOPERATING AGENCIES IN IMPLEMENTING THE
PROCEDURAL REQUIREMENTS OF THE NATIONAL ENVIRONMENTAL
POLICY ACT (NEPA)

This Memorandum provides a report on the progress made to involve tribal, state and local governments, as well as other federal agencies, as formal “cooperating agencies” in federal NEPA processes relevant to them. This effort has increased importance as one tool to achieve the objectives of Executive Order 13352, Facilitation of Cooperative Conservation. The January 2002 CEQ memorandum on cooperating agencies identified the benefits of using cooperating agencies to provide the environmental information necessary to make informed and timely decisions efficiently.

As an initial means of measuring progress, the 2002 memorandum called for agencies to report their efforts to engage other federal agencies and tribal, state and local governmental entities as formal cooperating agencies every six months. The reporting requirement began March 2002 and has been replaced a more basic report that covers the fiscal year (see my December 2004 memorandum, Reporting Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act at <http://ceq.eh.doe.gov/nepa/regs/guidance.html>). The first new report will cover the period October 1, 2004 through September 30, 2005 and is due in January 2006. The report will continue to provide an overview of how often Cooperating Agency status is used and the reasons that formal status is not employed, and help identify the challenges we face in increasing participation in federal NEPA analyses and decisions.

This memorandum synthesizes our progress, the challenges identified in establishing cooperating agency status, and reporting gaps. Overall progress in providing formal cooperating agency status to federal, tribal, state and local agencies has been good. However, the effort is not yet fully realized. The reports from March 2002 through August 2004 (see attached compilations), as well as inquiries CEQ received from NEPA lead federal agencies and potential cooperating agencies, indicate:

- Cooperating agencies were involved in approximately 40 percent of environmental impact statements (EISs) and approximately 8 percent of environmental assessments (EAs) from March 2002 through August 2004.

- Lead federal agencies are increasingly considering designating formal cooperating agencies when beginning their NEPA processes.
- Tribal, state and local government agencies are becoming more aware of their roles and responsibilities as cooperating agencies.
- A lack of capacity or resources (i.e., training, time, personnel) is a major factor for not establishing formal cooperating agency status when agencies might otherwise wish to do so.
- Lead federal agencies frequently engage federal, tribal, state and local agencies during the NEPA process without formal cooperating agency status. This occurs more often when federal lead agencies are proposing regulatory actions or preparing an EA.

We appreciate the efforts of the agencies that provided reports. This assessment, however, is incomplete as the Army and the Army Corps of Engineers have not yet provided full reports through May 2005.

As we move forward, we will use a more basic report that covers the fiscal year. The first such report for the period October 1, 2004 through September 30, 2005 is due January 3, 2006. The new report will continue to provide an overview of how often Cooperating Agency status is used, and, just as important, the reasons it is not employed and the challenges we face in increasing participation in federal NEPA analyses and decisions.

Please direct any questions to Horst G. Greczmiel, Associate Director for NEPA Oversight at 202-395-5750, Horst_Greczmiel@ceq.eop.gov, or 202-456-0753 (fax).

Attachment 1a: Cooperating Agency Data & Estimates for EISs as of May 13, 2005

Attachment 1b: Cooperating Agency Data & Estimates for EAs as of May 13, 2005

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