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FINAL REPLY:

James Connaughton
The White House
(Council on Environmental Quality)

TO:

Agency Heads

FOR SIGNATURE OF : ** GRN ** CRC NO: 04-0649

Lohaus, STP

DESC:

ROUTING:

Cooperating Agencies in Implementing the
Procedural Requirements of the National
Environmental Policy Act (NEPA)

Reyes
Virgilio
Kane
Merschhoff
Norry
Dean
Burns
Strosider, NMSS
Dyer, NRR
Cyr, OGC

DATE: 10/20/04

ASSIGNED TO: CONTACT:
STP Lohaus

SPECIAL INSTRUCTIONS OR REMARKS:

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

CHAIRMAN

October 7, 2004

MEMORANDUM FOR THE HEADS OF FEDERAL AGENCIES

FROM: JAMES CONNAUGHTON *JCC*
Chair

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

This Memorandum provides an interim report on the progress made to formally involve tribal, state and local governments as "cooperating agencies" in federal NEPA processes relevant to them. This effort takes on increased importance as a tool for achieving the objectives of the recent Executive Order 13352 on 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 a report every six months. Below is a brief summary of progress and gaps in reporting by certain agencies.

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 February 2004 (compilation attached), as well as inquiries CEQ received from lead and potential cooperating agencies, indicate:

- Cooperating agencies were involved in approximately 40 percent of Environmental Impact Statements (EISs) and approximately 7 percent of Environmental Assessments (EAs).
- Lead agencies are increasingly considering designating formal cooperating agencies when beginning the NEPA process.
- Tribal, state and local government agencies are becoming more aware of the responsibilities associated with cooperating agency status.
- A lack of capacity or resources (i.e., training, time, personnel) are major factors for not establishing formal cooperating agency status when agencies might otherwise wish to do so.
- Lead 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.

Recycled Paper

We appreciate the agencies that provided complete reports for the first four reporting periods. This assessment, however, is incomplete as the following agencies have not yet provided full reports through February 2004: USDA Agricultural Research Service; National Park Service; Army; Navy; Marine Corps; Defense Logistics Agency; Army Corps of Engineers; Department of Labor; Department of State; Department of Housing and Urban Development; CIA; National Indian Gaming Commission; and National Science Foundation.

We expect to issue a final compilation and report later this year. Missing reports must be provided by November 1st to be included in the final report. The bi-annual reports begun in March 2002 will end with the fifth report for the March-August 2004 period that is due this November.

I am also proposing, and seek your comments on, revisions to the reporting process that will reduce the amount of information required and put the reports on an annual fiscal year timeline. Provide your comments by fax or electronic mail by November 1, 2004.

As we move forward, we propose that agencies submit a more basic report to cover the fiscal year. The first such report for the period October 1, 2004 through September 30, 2005 would be due November 30, 2005. For EISs with a Notice of Intent published after October 1, 2004, the lead agency would provide: the title; cooperating agencies; potential cooperating agencies who were not invited or whose cooperating agency status was ended and the reason; and the current status of the EIS. For EAs, the lead agency would report the number of EAs begun after October 1, 2004 and the number of those involving cooperating agency(s) that are ongoing and the number completed. A report form is attached. Reports after FY 05 would include updates to previous reports.

Please submit your comments and 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).

Cooperating Agency (CA) Data & Estimates for
Environmental Impact Statements as of October 4,
2004

	# of EIS begun Mar 1 - Aug 31, 2002	# EISs with CAs	# of EIS begun Sep 1, 02 - Feb 28, 03	# of EISs with CAs	# of EIS begun Mar 1 - Aug 31, 2003	# of EISs with CAs	# of EIS begun Sep 1, 03 - Feb 28, 04	# of EISs with CAs
Department of Agriculture	67	17	40	9	39	3	35	6
Department of Commerce	11	7	3	1	6	1	5	4
Department of Defense	51	16	21	12	2	0	2	1
Department of Energy	4	4	3	2	6	4	2	1
Department of Health and Human Services	1	0	1	0	0	0	3	0
Department of Homeland Security	na	na	na	na	1	1	6	6
Department of Housing and Urban Development	0	0	2	1				
Department of the Interior	37	25	19	12	24	16	68	22
Department of Justice	0	0	0	0	0	0	0	0
Department of Labor	0	0						
Department of State								
Department of Transportation	57	32	43	16	33	31	37	13
Department of the Treasury	0	0	0	0	0	0	0	0
Department of Veterans Affairs	0	0	0	0	0	0	0	0
Agencies reporting EISs:								
Environmental Protection Agency	4	2	1	0	4	3	2	0
Federal Energy Regulatory Commission	3	2	2	2	3	3	7	7
General Services Administration	1	0	1	0	1	1	1	0
NASA	1	1	1	1	1	0	1	0
Nuclear Regulatory Commission	3	0	5	1	0	0	10	0
Tennessee Valley Authority	3	3	0	0	1	1	2	0
Total:	243	109	142	57	121	64	181	60
	44.855967		40.140845		52.892562		33.149171	

Cooperating Agency (CA) Data & Estimates for
Environmental Assessments as of October 4, 2004

	# of EAs begun Mar 1 - Aug 31, 2002	# EAs with CAs	# of EAs begun Sep 1, 02 - Feb 28, 03	# of EAs with CAs	# of EAs begun Mar 1 - Aug 31, 2003	# of EAs with CAs	# of EAs begun Sep 1, 03 - Feb 28, 04	# of EAs with CAs
Department of Agriculture	1732	61	1193	79	1056	47	1522	34
Department of Commerce	162	15	113	21	117	24	171	11
Department of Defense	2799	177	1921	113	151	12	136	11
Department of Energy	23	2	11	2	10	2	10	2
Department of Health and Human Services	257	3	74	8	226	9	218	8
Department of Homeland Security	na	na	na	na	33	17	33	13
Department of Housing and Urban Development	1275	0	1125	0				
Department of the Interior	2302	477	3080	302	4152	359	4552	284
Department of Justice	2	0	1	0	0	0	27	27
Department of Labor	0	0						
Department of State								
Department of Transportation	220	32	228	28	532	30	142	14
Department of the Treasury	6	0	1	0	0	0	0	0
Department of Veterans Affairs	2	0	0	0	0	0	1	0
Agencies reporting EAs:								
Central Intelligence Agency	6	0						
Environmental Protection Agency	61	6	56	3	58	6	63	4
Federal Communications Commission	0	0	34	0	56	0	109	0
Federal Emergency Management Agency	35	4	18	1	na	na	na	na
Federal Energy Regulatory Commission	47	5	45	4	45	1	27	3
Federal Reserve	0	0	0	0	0	0	1	0
General Services Administration	5	0	4	0	1	1	3	0
International Boundary and Water Commission	0	0	0	0	1	0	0	0
NASA	4	0	1	0	6	0	4	0
National Capital Planning Commission	2	2	1	1	1	1	0	0
Nuclear Regulatory Commission	85	2	52	0	64	0	57	0
Presidio Trust	0	0	1	1	0	0	1	0
Securities Exchange Commission	1	0	0	0	0	0	0	0
Tennessee Valley Authority	19	6	24	1	24	6	8	2
US Postal Service	0	0	0	0	0	0	1	1

Total	9045	792	7983	564	6533	515	7086	414
	8.7562189		7.0650132		7.8830553		5.8425064	

Attachment 1b

Cooperating Agency Report to the Council on Environmental Quality

October 1, 2004 to September 30, 2005

I. Environmental Impact Statements:

	EIS #1.	EIS #2.	etc.
EIS	(Insert Title of each EIS your agency prepared as lead agency)		
Cooperating Agencies	(Insert names of any Cooperating Agencies engaged in the EIS)		
Cooperating Agency Status not Initiated or Ended	(If applicable, insert the name of the agency and the reason cooperating agency status was not initiated or was ended – see examples listed below)		
Status of EIS	(Insert the following dates: Notice of Intent published on mm/dd/yy; DEIS notice of availability published mm/dd/yy; FEIS notice of availability published mm/dd/yy; ROD published mm/dd/yy)		

II. Environmental Assessments:

	Total
Number of EAs started by your agency during the reporting period	
Number of EAs your agency prepared with CAs that were begun and ongoing during the reporting period	
Number of EAs your agency prepared with CAs that were begun and completed during the reporting period	

Examples of reasons CA status was not initiated or why it ended:

1. Lack of special expertise – identify the expertise sought by the lead agency and/or offered by the potential cooperating agency).
2. State, Tribal or local entity lacks authority to enter into an agreement to be a CA.
3. Potential CA unable to agree to participate during scoping and/or throughout the preparation of the analysis and documentation as necessary and meet milestones established for completing the process.

4. Potential or active CA unable or unwilling to identify significant issues, eliminate minor issues, identify issues previously studied, or identify conflicts with the objectives of regional, State and local land use plans, policies and controls in a timely manner.
5. Potential or active CA unable or unwilling to assist in preparing portions of the review and analysis and resolving significant environmental issues in a timely manner.
6. Potential or active CA unable or unwilling to provide resources to support scheduling and critical milestones.
7. Agency unable or unwilling to consistently participate in meetings or respond in a timely fashion after adequate time for review of documents, issues and analyses.
8. CA unwilling or unable to accept the lead agency's decisionmaking authority regarding the scope of the analysis, including authority to define the purpose and need for the proposed action or to develop information/analysis of alternatives they favor and disfavor.
9. Agency unable or unwilling to provide data and rationale underlying the analyses or assessment of alternatives.
10. Agency releases predecisional information (including working drafts) in a manner that undermines or circumvents the agreement to work cooperatively before publishing draft or final analyses and documents.
11. Agency consistently misrepresents the process or the findings presented in the analysis and documentation.
12. Other. Identify the other.