



N.E.P.A. Updates

A closer look at the changes in one of the nation's most influential environmental laws.
What county officials need to know to effectively engage as cooperating agencies.

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Wyoming County Commissioners Association

N.E.P.A.

~~National Environmental Policy Act~~

**“To declare a national policy which will encourage
productive and enjoyable harmony between
man and his environment”**

National Environmental Policy Act

- Passed by Congress in 1969
- Signed by President Nixon in 1970
- Same timeframe we got the rest of the natural resource alphabet soup
 - NFMA - 1976
 - FLPMA – 1976
 - CWA - 1972
 - CAA - 1963
 - ESA – 1973
 - CZMA - 1972



What's in NEPA?

Section 101 ~ the spirit of the law

- This section requires federal agencies to use “all practicable means” to improve and coordinate federal plans, functions, programs, and resources to the end that the nation may...

Section 102 ~ the letter of the law

- This section requires “all agencies of the Federal Government shall...”

Section 202 ~ Council on Environmental Quality (CEQ)

- President Carter issued EO 11991 in 1977
- CEQ Drafted first NEPA regulations in 1978

When does NEPA Apply?

- Section 102(2)(C) mandates that a federal agency prepare a "detailed statement" for "major federal actions significantly affecting the quality of the human environment."
- Major Federal Action is not defined, except to limit the phrase to actions "subject to Federal Control and responsibility."

What does NEPA require?

- It does not require any particular outcome, but a process.
- A detailed Statement:
 - Categorical Exclusion (authorized by agency or congress)
 - Environmental Assessment & a finding of no significant impact
 - Environmental Impact Statement and a Record of Decision
- A certain level of public involvement

Public Involvement:

Who can participate in the process?



"...IT IS THE CONTINUING POLICY OF THE FEDERAL GOVERNMENT, IN COOPERATION WITH STATE AND LOCAL GOVERNMENTS, AND OTHER CONCERNED PUBLIC AND PRIVATE ORGANIZATIONS . . . TO FOSTER AND PROMOTE THE GENERAL WELFARE..."



"... COMMENTS AND VIEWS OF THE APPROPRIATE FEDERAL, STATE, AND LOCAL AGENCIES WHICH ARE AUTHORIZED TO DEVELOP AND ENFORCE ENVIRONMENTAL STANDARDS ... SHALL ACCOMPANY THE PROPOSAL THROUGH THE EXISTING AGENCY REVIEW PROCESSES;"

Counties serving as Cooperating Agencies

State, local, tribal governments may serve as cooperating agencies when they have “jurisdiction by law” or “special expertise” regarding any environmental impact.

- NEPA’s systematic, interdisciplinary approach (both natural and social sciences) requires the Federal government to consider socio-economic impacts, both positive and negative, from proposed federal actions. (Section 102)



When do counties have special expertise?

“a board of county commissioners shall be deemed to have special expertise on all subject matters for which it has statutory responsibility, including but not limited to, all subject matters directly or indirectly related to the health, safety, welfare, custom and socio-economic viability of a county.” W.S. § 18-5-208(a); see W.S. § 18-5-201.

Was CEQ an appropriate entity to establish binding NEPA regulations on all federal agencies?

- *City of Alexandria, Va. v. Slater*, 198 F.3d 862, 866 (D.C. Cir. 1999)
- *Marin Audubon Society v. Federal Aviation Administration*, No. 23-1067 (D.C. Cir. Nov. 12, 2024)
- *Iowa v. CEQ*, No. 1:24-cv-00089 (D.N.D. Feb. 3, 2025)

“The first step to fixing a problem is admitting you have one. The truth is that for the past forty years all three branches of government operated under the erroneous assumption that CEQ had authority. But now everyone knows the state of the emperor’s clothing and it is something we cannot unsee. . . . If Congress wants CEQ to issue regulations, it needs to go through the formal process and grant CEQ the authority to do so.”





The E.O. giveth, and the E.O. taketh away...

- On January 20, 2025, President Trump issued EO 14154, “Unleashing American Energy.”
- Amongst other things, the EO directs federal agencies to expedite and simplify the permitting process and eliminates President Carter’s EO 11991.

CEQ Responds to EO 14154

- **CEQ is rescinding its NEPA implementing regulations at 40 CFR 1500-1508**
- Directs all agencies to revise or establish their NEPA implementing procedures
- Agencies must prioritize efficiency and certainty over other policy objectives that could add delays and ambiguity
- Agencies and departments will meet with CEQ to complete revisions before the end of the year



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

February 19, 2025

MEMORANDUM FOR HEADS OF FEDERAL DEPARTMENTS AND AGENCIES

FROM: Katherine R. Scarlett **KATHERINE**
Chief of Staff **SCARLETT** Digitally signed by
KATHERINE SCARLETT
Date: 2025.02.19 14:55:57
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SUBJECT: Implementation of the National Environmental Policy Act

I. Purpose and Overview

On January 20, 2025, President Donald J. Trump signed Executive Order (E.O.) 14154, *Unleashing American Energy*.¹ Section 5(b) of E.O. 14154 directs the Council on Environmental Quality (CEQ) to provide guidance on implementing NEPA to expedite and simplify the permitting process. Consistent with section 5(c) of the E.O., the guidance and any resulting agency NEPA implementing regulations must “expedite permitting approvals and meet deadlines established in the Fiscal Responsibility Act of 2023 (Public Law 118-5)” (FRA).² Agencies must prioritize efficiency and certainty over any other policy objectives that could add delays and ambiguity to the permitting process. Accordingly, CEQ is issuing this guidance³ to assist agencies with the implementation of NEPA and E.O. 14154.

Consistent with E.O. 14154, Federal agencies must revise or establish their NEPA implementing procedures (or establish such procedures if they do not yet have any) to expedite permitting approvals and for consistency with NEPA as amended by the FRA, including the deadlines established in NEPA. **While these revisions are ongoing, agencies should continue to follow their existing practices and procedures for implementing NEPA consistent with the text of NEPA, E.O. 14154, and this guidance. Agencies should not delay pending or ongoing NEPA analyses while undertaking these revisions. For such analyses, until revisions are completed via the appropriate rulemaking process, agencies should apply their current NEPA implementing procedures with any adjustments needed to be consistent with the NEPA statute as revised by the FRA. Moreover, although CEQ is rescinding its NEPA implementing regulations at 40 C.F.R. parts 1500–1508, agencies should consider voluntarily relying on those regulations in completing ongoing NEPA reviews or defending**

Departments issued Interim Final Rules

July 3, 2025

Department of the Interior

Changes to NEPA implementing procedures:

- DOI removed all but three sections of its NEPA implementing regulations and put everything else into its handbook
- DOI removed expressed cooperating agency roles and responsibilities
- DOI removed its commitment to early engagement with CAs



Previous DOI Regulations

Role of Cooperating Agencies – 43 CFR § 46.230

“... throughout the development of an environmental document, the lead bureau will collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise. Cooperating agencies may, by agreement with the lead bureau, help do the following:

- (a) identify issues to be addressed
- (b) Arrange for the collection and/or assembly of necessary resource, environmental, social, economic, and institutional data;
- (c) Analyze data
- (d) Develop alternatives;
- (e) Evaluate alternatives and estimate the effects of implementing each alternative;
- (f) Carry out any other task necessary for the development of the environmental impact analysis and documentation

Applying NEPA Early - 43 CFR § 46.200

“For any potentially major proposed Federal action [...] that may have potentially significant environmental impacts, bureaus must coordinate, as early as feasible, with: Any other bureaus or Federal agencies, State, local, and tribal governments having jurisdiction by law or special expertise.”

A Desk Guide to Cooperating Agency Relationships

Three Primary Lessons:

- Federal, State, local, and tribal partners need to recognize that the CA relationship is a forum for sharing information and expertise, not for asserting authority...
- BLM managers and staff should acknowledge that the CA relationship requires new ways of doing business. Engaging with government partners as CAs is a unique form of consultation. ***Cooperating agencies expect, and should be given, a significant role (commensurate with available time and knowledge) in shaping plans and environmental analyses—instead of merely commenting on them.***
- All parties will find the CA relationship most productive when they emphasize mutual, rather than individual, gains and seek solutions that meet others' needs as well as their own.

and Coordination with Intergovernmental Partners

U.S. Department of Agriculture

Changes to NEPA implementing procedures:

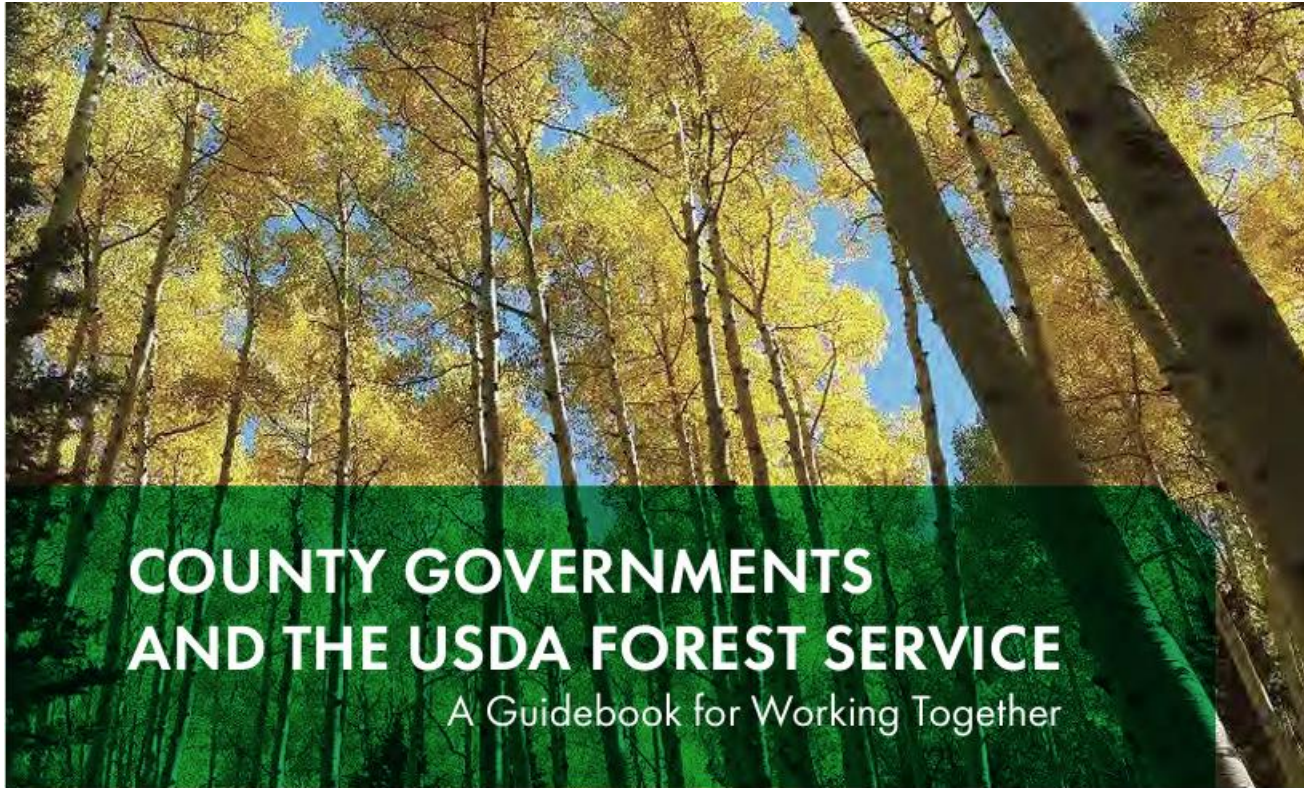
- Prior regulations relied almost entirely on CEQ regulations
- New regulations do not contain the same commitment to the cooperating agency relationship as the previous CEQ regulations
- Good news: Cooperating agency regulations are still in regulation



Heading/Role	Previous CEQ Language	Citation
Lead Agency Responsibilities	“Consider any analysis or proposal created by a cooperating agency and, to the maximum extent practicable, use the environmental analysis, proposal, and information provided by cooperating agencies;”	40 CFR § 1501.7(2)
Purpose and need	“Determine the purpose and need, and alternatives in consultation with any cooperating agency.”	40 CFR § 1501.7(4)
Cooperating agency responsibilities	“Participate in the scoping process (described in § 1502.4).”	40 CFR § 1501.8(b)(2)
Cooperating agency responsibilities	“On request of the lead agency, assume responsibility for developing information and preparing environmental analyses, including portions of the environmental impact statement or environmental assessment concerning which the cooperating agency has special expertise.”	40 CFR § 1501.8(b)(3)
Cooperating agency responsibilities	“Consult with the lead agency in developing and updating the schedule (§ 1501.10), meet the schedule, and elevate, as soon as practicable, to the senior agency official of the lead agency any issues relating to purpose and need, alternatives, or other issues that may affect any agencies' ability to meet the schedule.”	40 CFR § 1501.8(6)
Public and Governmental Engagement	“The purpose of governmental engagement is to identify the potentially affected Federal, State, Tribal, and local governments, invite them to serve as cooperating agencies, as appropriate, and ensure that participating agencies have opportunities to engage in the environmental review process, as appropriate.”	40 CFR § 1501.9(a)
Deadlines and Schedule	Setting milestones: “... The lead agency shall set milestones for all environmental reviews, permits, and authorizations required for implementation of the action, in consultation with any applicant and in consultation with and seek the concurrence of all joint lead, cooperating, and participating agencies, as soon as practicable.”	40 CFR § 1501.10(c)
Scoping	“As part of the scoping process, and consistent with § 1501.9 of this subchapter, the lead agency shall invite the participation of likely affected Federal, State, Tribal, and local agencies and governments as cooperating or participating agencies, as appropriate”	40 CFR § 1502.4(c)
Timing	“Federal agencies should work together and with potential applicants and applicable State, Tribal, and local agencies and governments prior to receipt of the application.”	40 CFR § 1502.5(b)
Draft, Final, and Supp. Statements	“The lead agency shall work with the cooperating agencies and shall obtain comments as required in part 1503 of this subchapter... (EIS Draft, final, and supplemental statements)”	40 CFR § 1502.9(b)
Environmental Consequences	“Where applicable, possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local plans, policies, and controls for the area concerned...”	40 CFR § 1502.16(a)(5)

New Cooperating Agency Language

Purpose of Regulations	“purpose of this part is to outline the procedures by which the U.S. Department of Agriculture will ... implement NEPA’s mandates regarding lead and cooperating agency roles...”	§ 1b.1
Soliciting Cooperating Agency Comments	“During the process of preparing an environmental impact statement, when a USDA subcomponent is the lead agency, it: (2) May request the comments of: (i) State, Tribal, or local governments that may be affected by the proposed action.”	§ 1b.7(d)
Time and Timeline for Soliciting Cooperating Agency Comments	“The process of obtaining and requesting comments may be undertaken at any time that is determined reasonable by the responsible official in the process of preparing the environmental impact statement.”	§ 1b.7(d)(3)
Certification of Consideration of Cooperating Agency information	“that the subcomponent has considered all the substantive alternatives, information, an analyses submitted by ... local governments... for consideration by the lead and cooperating agencies in developing the environmental impact statement.”	§ 1b.8(b)(2)



Best Practices for Counties and the Forest Service to Work Together

- Engage Early and Often – Set up Regular Meetings
- Understand Local History and Priorities
- Practice Behaviors to Build Trust
- Establish Leadership Intent
- Conduct field visits with County / USFS personnel
- Communicate Understanding of Forest Service Contributions and Impacts
- Work in Good Faith
- Strive Toward a Constructive Dialogue
- Know and Understand the Roles of Federal Officials and Agency Missions
- Understand the Legal Role of Counties in the Process
- Develop Local Resource Management Plans



County Natural Resource Plans



Amended Campbell County Natural Resource Land Use Plan

Developed by Campbell County Commissioners

Dr. Garry Becker (Chairman)
Mark A. Christensen
Matt Avery
Rusty Bell
Micky Shober



Livestock and Grazing

Custom and Culture

Grazing by native ungulates such as bison, elk, mule deer, and pronghorn antelope pre-dates settlement in Campbell County. Domestic livestock grazing has been established in

Campbell County since the industry economic heritage and environmental number and size

Campbell County was settled, grazing and livestock production has been an important industry in the county supporting local businesses and contributing to the local tax base thereby providing local government services and support for the local school system and retaining open spaces for wildlife. Many long-term commercial activities. The the sustainable county. Apper County.

Grazing leases producers to n present through BLM grazing grazing allotm managed by the 188,662 acres, span the count

Goal

An allowance for continued livestock grazing on private, state, and federal lands and the maintenance of current and/or historic animal unit month (AUM) levels, while sustaining and improving grazing land production, rangeland health and wildlife habitat.

Objectives

- *Healthy grazing lands and wildlife habitat.*
- *Reduction of soil erosion.*
- *Diversification of native plant populations.*
- *Maintenance of a strong and viable livestock production industry.*
- *Continued livestock grazing on state and federal land.*
- *Grazing potential, distribution and flexibility in the grazing season on state and federal land.*
- *Management and control of noxious weeds, invasive species and pests.*

Policies

- *Use relevant scientific data and rangeland monitoring data to support any modification of AUM's on state and federal lands.*

Consistency Review

State of Wyoming

Purpose and Need	State Statute	Consistent (Yes/No)	Inconsistencies and Reconciliation
Ensure continued conservation of at-risk species	The Wyoming Weed and Pest Act of 1973 classified black-tailed prairie dog as an agricultural pest (W.S. 11-5-1) includes provisions for management	No	While the State of Wyoming designates black-tailed prairie dog as a pest, the Thunder Basin National Grassland currently manages black-tailed prairie dog as a regional sensitive species and a management indicator. The plan ensures prairie dogs meet the criteria for conservation concern.

Review for Consistency with State and Local Plans

Converse County

The following is a review of consistencies and inconsistencies between the 2020 Thunder Basin National Grassland Plan Amendment Final Environmental Impact Statement and Draft Record of Decision and the **Converse County Land Use Plan of 2015** as well as a description of how the U.S. Forest Service plans to reconcile its proposed action with the local plans and laws.

Preferred Alternative	Local Plan and Laws	Consistent (Yes/No)	Inconsistencies and Reconciliation
Cooperating agency status and the incorporation of a consistency review of local plans	Policy – Invoke coordination with any and all appropriate agencies at the beginning of the scoping process and throughout the process for all areas of natural resource management and use (Page 6).	Yes	In addition to regular and open communication with county governments and districts as cooperating agencies and partners, the Forest Service intends to work with county representatives through a third-party collaboration of the

Campbell County

The following is a review of consistencies and inconsistencies between the 2020 Thunder Basin National Grassland Plan Amendment Final Environmental Impact Statement and Draft Record of Decision and the **CCNRLUP of 2016** as well as a description of how the U.S. Forest Service plans to reconcile its proposed action with the local plans and laws.

Preferred Alternative	Local Plan
Cooperating agency status and the incorporation of a consistency review of local plans	Policy – Supplement consultation, between the Federal agency and local objectives at Campbell County Land Use Plan Ordinance Campbell County Appendix A

Crook County

The following is a review of consistencies and inconsistencies between the 2020 Thunder Basin National Grassland Plan Amendment Final Environmental Impact Statement and Draft Record of Decision and the **Crook County Comprehensive Land Use Plan of 2014 (Resolution No. 2014-5)** as well as a description of how the U.S. Forest Service plans to reconcile its proposed action with the local plans and laws.

Preferred Alternative	Local Plan and Laws	Consistent (Yes/No)	Inconsistencies and Reconciliation
Cooperating agency status and the incorporation of a consistency review of local plans	The Federal Land Policy and Management Act, the National Environmental Policy Act (NEPA), the National Forest Management Act, and other State and Federal laws allow the County to fully participate through coordination or as a cooperating agency in the Federal and State planning process (Page 1).	Yes	The project has memoranda of understanding (MOUs) in place to document formal cooperating agency status with each of the five counties in the plan area including conservation districts and weed and pest districts, the USDA Natural Resources Conservation Service, and the U.S. Department of Interior Fish and Wildlife Service. State agencies in Wyoming and the Wyoming Governor's Office have cooperating agency status through existing MOUs.

TBNG 2020

Plan Amendment

Final EIS, Appendix F



N.E.P.A.

New England Environmental Policy Association



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New England Environmental Policy Association



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“...it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations . . . to foster and promote the general welfare...” - §4331.
Congressional declaration of national environmental policy

“When a federal agency is required to invite the participation of other governmental entities and allocate responsibilities to those governmental entities, that participation and delegation of duty must be meaningful.” *Int'l Snowmobile Mfrs. Ass'n v. Norton*, 340 F. Supp. 2d 1249, 1262 (D. Wyo. 2004) (citing *Wyoming v. USDA*, 277 F.Supp.2d 1197, 1219 (D.Wyo.2003)).



Questions