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August 23, 2002

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**RE: Catron County Commission Comments for Improving the NEPA
Process for Intergovernmental Coordination**

Dear Sirs:

Catron County Commission appreciates the opportunity to submit comments for improving the NEPA Process for Intergovernmental Coordination (Federal Registers- Vol. 67, No. 131/July 9, 2002/pages 45510-45512 & Vol. 67, No. 161 / August 20, 2002 / pages 53931-53932). We would like to make comments specific to:

Item B. Federal and Inter-Governmental Collaboration:

1. Federal and intergovernmental collaboration obstacles and opportunities;
2. Case Study of Catron County Commission's Experiences with Intergovernmental Coordination in the NEPA Process.

Thank you for the opportunity to comment. Please contact Dr. Alex Thal (505) 538-6312 for any questions that you may have regarding our general comments or pertaining to our recommended case study.

Respectfully submitted,

Joy Riley
for Carl Livingston, Chairman
Catron County Commission

ATTACHMENTS



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ATTACHMENT A NEPA ISSUES & OPPORTUNITIES

TO: Catron County Commission
FROM: Alex Thal, Western New Mexico University

Subj.: Request Summary of Issues & Opportunities for Intergovernmental Coordination in the NEPA process

Preface: The Catron County Commission requested that I work up this paper to identify obstacles to effective intergovernmental coordination for NEPA compliance.

B. Federal and Inter-Governmental Collaboration

Based on twelve-years of experiences with Catron County Commission and my own planning and research, the following comments are prepared for submittal to CEQ:

1. The experiences of Catron County Commission to request partnerships (cooperating agency and joint lead) have been to say the least frustrating since the County signed the Memorandum of Understanding with the Forest Service, Region III, ten years ago. The U.S. Forest Service and the U.S. Fish & Wildlife Service routinely do not even respond in writing to the County's written request to be involved in the NEPA process. When the County requested CEQ to review this routine, even the CEQ did not afford the County the courtesy of a response (refer to Catron County Commission letter to CEQ, Ellen Athus, sent 5/5/98).
2. Since the issuance of the CEQ Directive of 1/30/02, and with the change in federal administration, federal agencies (namely the Forest Service and the Bureau of Land Management) appear to be more open to the County's requests for Cooperating Agency (CA) status. At this point in time, the Forest Service for the first time states that the County can be a CA. The BLM has also accepted the County's request to be CA. The proof is in the pudding.

The potential obstacle for the Catron County Commission now is that these federal agencies are not willing to allow the County on the Interdisciplinary Team (ID Team). They want to confine the County to a "Commenting" role, vs. a "Cooperating Agency" role by limiting the County to only commenting on the analyses, after-the-fact. They are not aware that the County is entitled to be on the ID Team. It is clear in the CEQ Directive Memo (of 01/02) that CAs should be allowed on the Interdisciplinary Team, and the CA County should be involved in the ID Team.

3. This same CEQ Directive also pointed out that federal agencies should allow CA to counties for not only environmental impact analyses but also environmental assessments. Hopefully, this clarification will put this debate

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behind us. For years, the Forest Services position was any request for CA was only for an EIS, not an EA.

4. In the same CEQ Directive also put forth expansive criteria for applying to a CA requests. The criteria specified in this directive appear to be the criteria for considering Joint Lead agency request, not CA request. This needs to be corrected because federal field staff can use this misappropriation of criteria to prevent non-federal agencies from being CA in the NEPA process.
5. Another issue with the CA status is the funding requirements. Over the years Catron County Commission has allocated significant funds for input into the NEPA process. The NEPA process can be costly for a county. In CEQ 1501.6(b)(5) it does state that the federal agencies may pay for the CA expertise or County jurisdictional role. It would seem worthwhile to examine some sort of cost-sharing approach – to encourage non-federal agency participation in this process.
6. The focus by CEQ and federal agencies seems to be on the cooperating agency requests. There is little attention given to 40 CFR §1506. It provides the language that federal agencies should jointly work with state, local and tribal governments “to the maximum extent possible”, not only in environmental analyses and documentation, but also in environmental / natural resource research, public involvement and natural resource plans (USFS Forest plans and BLM resource management plans). It would be quite useful for the CEQ to develop guidelines and specifics to these opportunities for collaborative planning, especially transboundary planning and management where there’s concurrent jurisdictional responsibilities.
7. Another area in need of specificity is the concept of “duplication of effort” in 1506.2(c). Catron County Commission has it’s own environmental planning and review ordinance, “affectionately” referred to as the County’s “mini-NEPA”. It’s a process that mirror’s NEPA. Yet, federal agencies appear to be blind or uninformed about this section of CEQ regulations. Federal agencies need CEQ guidance for incorporating local environmental and resource plans, ordinances into the federal compliance procedures. The BLM NEPA Handbook has some instructions for their personnel, regarding the incorporation of none federal agency analyses and documentation into the federal agency NEPA process. But even with the BLM, it leaves their staff uniformed about how to deal with this section of CEQ.
8. Also, CEQ §15062(d) makes reference to the consistency requirements – similar to the “consistency review” requirements in the Federal Land Management Act and the National Forest Management Act. The experience in Catron County and other federal land dependent counties in the Southwest, has been another one of frustration – with federal agencies avoiding this topic and requirement, as if to say, “ we don’t want to face the fact that the

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- proposed federal action may be inconsistent with local county ordinances, or, state law". Instead, local, state and federal agencies need to take this head on through coordinated process in NEPA to identify the consistent and inconsistent laws, ordinance, plans, etc. Only after we can see the "fit" and the "space", can we effectively move forward with collaborative planning and management of natural resources and environmental quality.
9. CEQ sections on cooperating agencies and 1506.2 appear not to apply to the US Fish Wildlife Service when it comes to their NEPA requirements for critical habitat designations (it should also apply to recovery plans). US Fish and Wildlife Service is the biggest obstacle to effective intergovernmental coordination. CEQ must bring them into the fold in order to improve the NEPA process, certainly out here in the West for authentic collaborative intergovernmental efforts.
 10. NEPA states as the purpose is to provide "harmony between man and the nature". Yet, it's rather lopsided in regards to assessing the effects on the "human environment". Most of the analyses of the human environment are on what we refer to as the biophysical, rather than on the human dimension. Both people and other life forms comprise the nature/ecosystems. Moreover, by-and-large, people and the biophysical are interrelated. Yet, federal agency staff often like to quote NEPA, that only biophysical effects initiate NEPA. One can take that restrictive interpretation but the NEPA experience and documentation during the 70s' and early 80s' energy boom and extraction era, many NEPAs were initiated because of potential effects on human settlements and individuals. It is hard to separate out the interrelationships between individuals and community in that ecosystem and other critters. To illustrate, when a public land rancher's livelihood is threatened because of an endangered species, the effects of the proposed action could have unintended consequences on the natural environment, say, in terms of range improvement maintenance of waterings by that rancher.
 11. Federal agencies have poor track records when it comes to assessing social, cultural and economic impacts of proposed actions. There needs to be more guidance for agency assessment of the rate and magnitude of effects at the local level, or, scale of analysis. This is another good justification for state and local involvement in the analyses, as well as the financing of such analysis. The other disciplines are relatively well-funded for full disclosures of the biophysical effects.
 12. In the area of socioeconomic effects, federal agencies do not know how to conduct distributional effects requirements (who wins and who loses) - for assessing disproportionate effects. This is key for displaying "full disclosure" in NEPA documentation. Moreover, distributional effects analysis is the way to *evaluate due process* procedures. And distributional effects analysis is where the impact analyst determines if there are any potential effects on civil

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rights, such as property rights/Takings Implication Assessment (TIA), undue burden, minorities, etc. It is also where Environmental Justice (EJ) comes into the analysis. As it is now, most NEPA documents have their standard "escape clauses" for NOT doing EJ or TIA. This is an extremely important component to socioeconomic assessments and for reaching that "harmony" or, balance when it comes to harm, health and safety and protecting rights of the individuals and avoiding disproportionate effects on rural communities and their capacity to absorb change. Hopefully, CEQ can address this component for improving intergovernmental collaboration in NEPA.

13. In addressing alternatives in the NEPA process, there appears to be a breakdown in going from effects analyses of alternatives to actually conducting genuine mitigation planning for the human environment significant negative effects. The federal agencies should utilize the collaborative intergovernmental process to coordinate the development of mitigation measures and monitoring plans. As federal agencies remind local communities, the federal agency is not required to mitigate the effects, just develop a plan for mitigation. States and especially local governments are usually left with the uncertainties of mitigation when it comes to potential negative impacts on humans and settlements. Intergovernmental collaboration is the most effective way to significantly reduce or eliminate the significant effects on the human environment. CEQ could significantly improve the mitigation and monitoring processes by explicitly providing guidance on this subject matter. In conclusion, one of the strongest reasons for state and county involvement in mitigation and NEPA itself is because local governments and state governments can and will fully use their US congressional delegation. AS experience has shown, it is better for all concerned to get support from our political representatives for mitigation, etc., rather than fighting for such remedies after-the-fact and after the damage has occurred.

Respectfully submitted,

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ATTACHMENT B**PROPOSED CASE STUDIES**

Catron County Commission has been involved in the NEPA process since 1990. The County has its own law and process for assessing proposed government actions on the "human environment" since 1992. Catron County Commission requests CEQ to consider two case studies for your consideration:

1. Examine County-federal interactions - obstacles to effective collaboration and ways to improve the collaborative process.
 2. Examine best management practices out of the experiences of Catron County.
- 1. Catron County Case Study:** This case study would examine the various NEPA experiences to determine the intergovernmental processes and procedures at work; the areas where collaboration was not present and why; the reasons for federal agency rejection/resistance to allow County coordinated planning status in the NEPA process; identify lessons learned; and, identify resulting alternatives for improving intergovernmental collaborative NEPA planning between Catron County and the relevant federal agencies (notably, the Forest Service, BLM and Fish and Wildlife Service).

Because of the notoriety of Catron County and the large federal presence in the region, a case study could be quite instructive for both federal agencies and non-federal governments. For over twelve years, the County has been persistent over time in its efforts to obtain coordinated planning status in the NEPA process. The documentation is substantial for a case study. Furthermore, there is a willingness on the part of County and the various federal agencies to discuss the obstacles and opportunities for improving the NEPA process.

The case study could start with the early 1990s' and expand to the year 2002. It could focus on one resource issue like the Mexican Spotted Owl, or, it could take all the resource issues that were NEPA driven and examine the impediments to successful intergovernmental collaboration. The case study could examine the significant issues of the local communities as well as federal agency documentation of significant issues; examine the alternatives, the impacts and the mitigation efforts. More importantly, the case study could look at the efficacy of communication and determine ways to improve this inherently intergovernmental process.

- 2. Best Management Practice Case Study:** Catron County Commission engaged in the BLM's *Healthy Rangeland Standards and Guidelines*, starting in the mid '90s and concluding with the final EIS in 1999. The County was one of eight CA counties, along with the State of New Mexico as Joint Lead Agency. While the intergovernmental experience was rather long and not without debate, it resulted in an EIS that reflected intergovernmental cooperation and acceptance of the Healthy Standards and Guidelines.

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Furthermore, it was the first time in New Mexico where there were buy-in by not only the state government but also by the rural, public land-dependent counties. It was truly an adoptive management process, experiential in process, as in analyses, documentation and in public involvement.

The case study proposal could look into the context that started the process; that is, the aftermath of "Rangeland Reform" debacle, and the start-up of the State BLM Resource Advisory Committee. Its value is in its adoptive and flexible approach to accommodate various government agencies, local governments and tribal entities. The counties would also like to think their participation on the ID Team resulted in a better assessment of the human environment, taking into consideration state resources issues and management regimes, as well as a more robust social, cultural, and economic and distributional effects analyses.