

## Guidance Document for Cooperating Agency Agreements for Water Supply Projects in Colorado

**1. Purpose:** This document is intended to serve as a resource for federal lead agencies preparing cooperating agency agreements for water supply projects in Colorado.

**2. Background** A Lean rapid improvement event was held in March 2016 to begin examining the NEPA and permitting process related to water supply projects in Colorado. Lean is a set of principles and methods for identifying and eliminating waste for any process in order to improve the customer experience. A process improvement recommendation resulting from this exercise was to improve the level of detail in cooperating agency agreements in order to better outline roles and responsibilities for each cooperating agency. Additional specificity was recommended to clearly outline data needs, to seek agreement on methodologies, and to document the expertise of each cooperating agency early on in the agreement development. The goal of this document is to increase the efficiency of cooperation and coordination between the federal lead agency and cooperating agencies related to water supply projects in Colorado.

**3. Potential Cooperating Agencies:** The following list is not meant to be exhaustive, but rather to provide a starting point for federal lead agencies to determine potential cooperating agencies based on the associated expertise and jurisdiction of each organization. This list will also help the federal lead agency understand the decision points that each organization may be involved in related to the permitting of a water supply project in Colorado.

Organization	Area of Special Expertise	Decision Point (if applicable)
Bureau of Land Management	Impacts to BLM lands and resources	Special land use permits
Bureau of Reclamation	Water resources, Federal Reclamation Law	When applicable, Record of Decision, Contract, Special Use Permit
Colorado Department of Transportation	Highway impacts	
Colorado Department of Natural Resources (includes Colorado Parks and Wildlife, Colorado Water Conservation Board, & Colorado Division of Water Resources)	Terrestrial and aquatic wildlife, outdoor recreation, water supply planning	Fish and Wildlife Mitigation Plan (37-60-122.2, C.R.S.)
Colorado Department of Public Health and Environment	Water quality, Clean Water Act, air quality	401 Certification Process

<b>Organization</b>	<b>Area of Special Expertise</b>	<b>Decision Point (if applicable)</b>
Environmental Protection Agency	Surface water, ground water, aquatic resources, geomorphology, and air resources: monitoring, baseline condition, impact assessment and mitigation; NEPA process; CWA 404(b)(1) requirements; Clean Water Act; Clean Air Act; Safe Drinking Water Act;	CWA § 404 permit
Federal Energy Regulatory Commission	Hydropower	Hydropower License
Local Governments	Private land management decisions, impacts to local government services (housing, jobs, transportation, etc.), local environmental and wildlife protection.	1041 Permit
U.S. Army Corps of Engineers	Clean Water Act Section 404	CWA § 404 permit
U.S. Fish and Wildlife Service	Terrestrial and aquatic wildlife and ecosystems: baseline condition, impact assessment, mitigation	Section 7 Consultation, Biological Opinion
U.S. Forest Service	Impacts to USFS lands and management	Special land use permits
U.S. Park Service	Impacts to National Parks	Special land use permits

#### **4. Best Practices for Lead Federal Agencies When Drafting Agreements**

- Engage early with potential cooperating agencies
- Include an anticipated schedule of dates and decision points in agreement, where possible
- Specify, and in some cases limit the scope of the agreement to, the cooperating agencies' expertise or authority

#### **5. Example Agreement Language:**

Roles and responsibilities of lead agency:

- Responsible for the preparation, overall direction, and content of the EIS
- Responsible for following the NEPA process in 40 CFR § 1500, Council on Environmental Quality guidance, and lead agency policies
- Provide relevant documents to cooperating agency for review
- Not disclose pre-decisional documents and communications to the public unless through FOIA
- Identify what reports and sections of the EIS that the cooperating agency will be invited to review

- Establish specific time frames for cooperating agency review of document, allowing for adequate time to complete the review and adequate time for the lead agency to incorporate input
- Seek agreement on impact assessment methodologies:

Roles and responsibilities of cooperating agency:

- Prepare and submit relevant data and analysis to the lead agency in a timely manner.
- Not disclose pre-decisional documents and communications to other entities, or the public, unless through FOIA or related state process
- Participate in technical meetings related to their expertise
- Identify cooperating agency's data needs and resource analysis needs and provide input to the lead agency
- Provide input regarding general time frames for reviewing preliminary documents and post iterative processes
- Provide specific comments that are consistent with 40 CFR 1503.3. For example:
  - When a cooperating agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why
  - Specify in its comments whether it needs additional information
  - When a cooperating agency with jurisdiction by law objects or expresses reservations about a proposed project, the agency should specify the mitigation measures necessary to allow the agency to grant a permit
- Per 40 CFR 1503.2, if a cooperating agency is satisfied that its views are adequately reflected in the EIS, it should reply that it has no comment

**6. Checklist for Preparing Agreements with Cooperating Agencies and Early Engagement with Interested Parties**

- Identify potential cooperating agencies based on special expertise and jurisdiction related to the proposed project
- Identify other groups that may need to be consulted with during the preparation of the EIS such as non-governmental organizations, local agencies, special districts, or other federal and state agencies
- Identify specific expertise of each cooperating agency and which stage of analysis or review the expertise is needed
- Identify project-specific data needs for the baseline and existing analyses from each cooperating agency
- Identify areas where cooperating agencies and the lead federal agency will seek to agree on methodologies
- Identify cooperating agency regulatory timeframes, where applicable.
- Develop and include an anticipated project schedule in the agreement