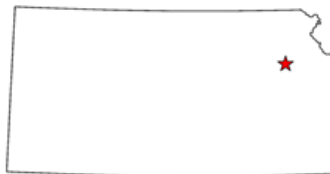


**NATURAL RESOURCE
COORDINATION PLAN**
of
The Kansas Natural Resource Coalition

October 14, 2013
Revision 3



EXECUTIVE SUMMARY

In recent decades natural-resource conservation efforts have gained substantially in importance. Because rural Americans share common environmental resources, areas and regions, there is acute need to define, assess, prioritize and allocate natural resources in a manner which promotes the general welfare, fosters creativity, and creates conditions under which man and nature can co-exist in productive social, economic and environmental harmony.

The complex array, varying missions, and sometimes conflicting roles of local, state, or federal agencies suggest the need for a systematic approach to natural resource conservation that assures local government receives early communication, timely exchange of technical information, ample opportunity to understand issues, and a clear platform to vet, affect or arbitrate environmental issues. This Natural Resource Coordination Plan (NRCP) outlines such a platform, providing in broad strokes the rationale, objectives, protocol, and implementation structure necessary to further natural resource conservation in those areas governed by the Kansas Natural Resource Coalition (KNRC).

Because the majority of the 27,514 mi² (17,608,960 acres) region governed by Coalition Members contains private property and nearly all business and governmental interests fall into the *Small Business Concern/Small Governmental Jurisdiction* classification, this Plan ensures appropriate human, cultural, and socioeconomic safeguards are in place to balance both the human and natural environments.

This Plan contains little new information but instead relies on the extensive public record as basis for its requirements. The Plan begins by presenting existing Statutes, Regulations, Executive Orders and Case Law as foundational to both conservation and human protection. By adopting and implementing a systematic approach already part of the public record, the existing technical, regulatory and administrative platform will assure meaningful, net conservation benefits take place alongside appropriate and assured human protections.

All Major Actions by Federal Agencies as defined in 40 CFR§1508.18 fall within the scope, intent and procedural rules invoked by this Plan.

Table of Contents

1.0 KANSAS NATURAL RESOURCE COALITION	1
<i>1.1 Purpose and Organization</i>	1
<i>1.2 Roles and General Responsibilities</i>	1
2.0 OVERVIEW	1
<i>2.1 Applicability and Central Theme</i>	1
<i>2.2 Purpose and Approach</i>	3
<i>2.2.1 Major Federal Actions - Defined</i>	3
<i>2.2.2 Guiding Statutes; Applicability</i>	4
<i>2.2.3 Private Property</i>	6
<i>2.2.4 Small Business</i>	6
<i>2.2.5 Public Lands</i>	7
3.0 COORDINATION PROGRAM	8
<i>3.1 Process</i>	8
<i>3.1.1 Natural and Human Resource Impact Evaluation</i>	8
<i>3.1.2 Resource Priorities</i>	9
<i>3.1.3 Evaluation Criteria</i>	10
<i>3.2 Data, Information and Maps</i>	10

Appendices

Appendix A: Coalition Organizational Chart	A-1
Appendix B: Coalition Contact Information	B-1
Appendix C: Coalition Map	C-1
Appendix D: Definitions	D-1
Appendix E: Statutes and Executive Orders	E-1
Appendix F: County Resolutions	F-1

1.0 The Kansas Natural Resource Coalition

1.1 Purpose and Organization

The Kansas Natural Resource Coalition (KNRC) is an organization of 32 county governments joined together for collective coordination of natural resource conservation and environmental programs with federal and state governmental agencies. Each member county has adopted a Resolution asserting its authority to expect and invoke coordination with respective governmental agencies, either independently or as part of the Coalition. For purposes of brevity and example, one executed Resolution has been included in Appendix F of this NRCP. The remaining, identical and executed Resolutions have been compiled in a separate volume.

1.2 Roles and General Responsibilities

The KNRC has been organized with a central policy committee and four subordinate working groups to facilitate communications, budget/finance, technical oversight, and centralized leadership. This structure provides conduits for communication, document retention, technical review, cost management/allocation, and centralized decision making throughout coordination activities.

Each member county has a participative voice in the policy committee and the opportunity to staff all respective committees. Officers include a president, vice president, secretary and treasurer, all elected by the policy committee for 3-year terms. The organizational structure and general responsibilities of KNRC committees are presented on Table 1 in Appendix A.

2.0 Overview

2.1 Applicability and Central Theme

This Natural Resource Coordination Plan (NRCP) provides the technical, administrative and coordination foundation to achieve a net increase in resource conservation over time. As a planning document having regional coverage, its purpose is to outline a framework, philosophy, and expectations to assure meaningful participation in government-to-government coordination between the Coalition or individual county members and federal and state agencies.

The goal of increased conservation will be achieved by ensuring major actions are procedurally consistent, scientifically based, and economically sound. Those items, issues or conflicts not resolvable at the staff or local level will be referred to the secretaries of the respective federal agencies for mediation; typically the Secretaries of Interior, Agriculture or Commerce.

Experience demonstrates regulatory proposals coordinated with local governments early in the process elicit less resistance, are more efficient, use fewer resources, and offer greater overall conservation benefits to the human and natural environments. Accordingly, one objective of this NRCP is to assemble those administrative, procedural, and data-quality assurance requirements necessary to affect appropriate, consistent and effective conservation decisions for the widest possible circle of stakeholders.

The Coalition consists of 32 counties occupying an approximately 27,714 mi² (17,736,960 acres) area in western and southern Kansas. The Coalition is designed to represent the general interests of member counties during the coordination process with federal agencies, but its existence does not at all diminish the sovereign status or the right of individual counties to expect coordination on those actions that concern them. Individual county members retain the right to withdraw from elements, portions or the entirety of this NRCP with correspondence to the Coalition Steering Committee or by independently asserting coordination on their own behalf. Contact information, individual county data and supporting information for participating counties is included in Appendix B. Figure 1 in Appendix C presents a map of the territory governed by participating county signatories.

Signatories to this NRCP are sovereign, small governmental entities each having responsibility for taxation, land use, zoning, infrastructure, local industry, small business, public health/safety, and similar decision making. Because natural and human resources - and potential governmental regulations pertaining to them - are of crucial importance to local populations, Coalition members represent front-line stakeholders potentially affected by Major Federal Actions.^{1,2} Consequently, federal environmental or natural-resource proposals potentially affecting populations, local economies or cultures within the coalition area are to be made available prior to or at very early stages of the federal planning process - well before notifications of such actions are published in the Federal Register.³

¹ 40 CFR §1508.18; 40 CFR §1508.27.

² Executive Order 12291 Section 1(b) Regulatory Impact Analysis and Review.

³ 40 CFR §1501.2

This NRCP is applicable to all federal agencies contemplating Major Actions.⁴ Consistent with federal statutes, regulations and various Executive Orders, the Coalition is establishing and expecting coordination with those agencies whose Major Actions or Proposals could have direct or indirect impacts on human or natural environments. As a result, the Coalition shares mutual, government-to-government responsibility and expects consistency with this NRCP from federal agencies, subordinates or those governmental affiliates receiving federal funding or assistance, including:⁵

- United States Bureau of Land Management;
- United States Department of Interior;
- United States Fish and Wildlife Service;
- United States Department of Agriculture;
- United States Environmental Protection Agency;
- Kansas Department of Health and Environment.

2.2 Purpose and Approach

Coalition members will work in tandem with their respective government counterparts in achieving federal responsibility to use all “*practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.*”⁶ The Coalition expects all respective agencies to make every practicable effort to “*utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment.*”

2.2.1 Major Federal Actions - Defined

Major Federal Actions subject to the statutory NEPA requirements and this NRCP include actions with effects that may be major and which are potentially subject to federal control and responsibility. Specific Major Federal Actions include:⁷

⁴ 42 USC §4332(1); 40 CFR §1500.2(a-f); Executive Orders 12372 and 13352.

⁵ 42 USC §4331(a)

⁶ 42 USC §4331(a)

⁷ 40 CFR 1508.18 (a),(b)(1-4)

1. *“New and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures;”*
2. *Adoption of formal plans, such as official documents prepared or approved by federal agencies;*
3. *Adoption of programs, such as a group of concerted actions to implement a specific policy or plan;*
4. *Legislative Proposals.*

2.2.2 Guiding Statutes; Applicability

The foundational statutory mandate which undergirds all environmental law and policies of the United States is the National Environmental Policy Act of 1969 (NEPA).⁸ All subsequent environmental acts by the US Congress are built upon, subject to, and to be viewed through the lens of NEPA.

NEPA establishes a format for procedural review of the consequences of any Major Federal Action to the human and natural environments. NEPA Title I declares the purpose and national policy of the Act, whereas NEPA Title II created the Council for Environmental Quality (CEQ).

NEPA and its implementing CEQ Regulations,⁹ in concert with numerous Executive Orders,^{10,11} bind federal agencies to the environmental processes, procedures, notification requirements and government-to-government coordination requirements included as part of this NRCP. Similarly, the statutory mandates in the *Regulatory Flexibility Act* of 1980¹² covering small business and governments and the public land-management principals codified in the *Federal Land Policy and Management Act*¹³ serve as foundational statutory laws underpinning this NRCP.

The threshold tests the Coalition will use to determine whether Major Federal or State Actions may significantly influence the human environment¹⁴ include:

⁸ 42 USC. §§4321 - 4347

⁹ 40 CFR §§1500-1508

¹⁰ Executive Order 11514 Protection and Enhancement of Environmental Quality.

¹¹ Executive Order 11991 Responsibilities of Council on Environmental Quality.

¹² 5 USC §§601-612

¹³ 43 USC §§1701-1782

¹⁴ 40 CFR §1508.14; 40 CFR §1508.8

- 1) Could federal or state proposals be defined as “Major Federal Actions?”¹⁵
- 2) Does a program receive federal funding and/or technical assistance?¹⁶
- 3) Is or could a proposed, potential action be controversial?

If pre-proposals to Major Actions pass any or all of the above tests, the responsibilities and procedural requirements outlined in this NRCP apply.¹⁷

An extensive record of judicial review of USFWS listing proposals under the Endangered Species Act (ESA) demonstrates the procedural rules in NEPA apply unless a “*clear and unavoidable statutory conflict*” exists.¹⁸ For several species-listing efforts, USFWS has relied upon an archaic 1983 CEQ Opinion Letter¹⁹ and rulings by the 9th and 6th Circuit Courts of Appeal that the EA/EIS process is not required “*as a matter of law.*” However, subsequent rulings by the 10th Circuit Court of Appeals - the Federal Circuit Court having jurisdiction over the region governed by the Coalition - expressly rejected the Service’s reliance upon the CEQ letter and rationale from the earlier 9th and 6th Court decisions. Instead, the 10th Circuit held NEPA procedural rules *do* apply to actions under a threatened listing proposal proposed under ESA.²⁰ The 10th Circuit also discounted the Service’s position that congressional silence during subsequent ESA reauthorizations was tantamount to approval of USFWS’s departure from NEPA mandates.²¹ Other, more recent appellate decisions have reached the same conclusion: that the procedural requirements of NEPA are not optional, and reliance upon the 1983 guidance letter from CEQ does not exempt USFWS from the requirement to complete an Environmental Assessment.²² In keeping with a plain reading of NEPA and binding 10th Court decisions, the Coalition requires federal agencies contemplating Major Actions to complete the NEPA process in a timely fashion prior to or at the onset of Major Agency Action.²³

¹⁵ 40 CFR §1508.18

¹⁶ 31 USC §1221

¹⁷ The technical, procedural and economic-study requirements of Coordination may also be retroactively applied to environmental programs and regulations.

¹⁸ Flint Ridge Development Co. v. Scenic Rivers Assn. 426 USC 776, 788 (1976).

¹⁹ Federal Register Vol. No. 207 October, 1983. P. 49244.

²⁰ Catron County Board of Commissioners v. USFWS 75 F.3d 1429 (10th Cir. 1996).

²¹ Ibid. Catron County v. USFWS.

²² In re Polar Bear Endangered Species Act Listing and 4(d) Rule Litigation No. 08-764 DKTS 282, 283 D.D.C. October 17, 2011.

²³ 40 CFR §1502.5

2.2.3 Private Property

The Coalition will work with all federal agencies in fulfilling their obligation to work in a timely^{24,25} manner which:

- i) *facilitates cooperative conservation;*
- ii) *takes appropriate account of and respects the interests of persons with ownership or other legally recognized interests in land; and,*
- iii) *properly accommodates local participation.*^{26,27}

Similarly, and with respect to private property, “because principles of good government require that government decision-makers evaluate carefully the effect of their administrative, regulatory, and legislative actions on constitutionally protected property rights” the Coalition expects “executive departments and agencies review their actions carefully to prevent unnecessary takings” in a manner which “account in decision-making for those takings that are necessitated by statutory mandate.”²⁸

2.2.4 Small Business

The economy in the Coalition-governed region is nearly entirely agrarian. Most communities and small governmental jurisdictions are substantially dependent upon ranching, farming, beef processing, energy extraction/transport, and electric generation as a means of a livelihood. Unlike urban settings, citizens in rural areas typically augment their primary occupations with other civic and vocational responsibilities. Examples include a farmer who works part-time as a county firefighter, an EMS technician who doubles as a school bus driver, or the house wife who teaches part-time at the community college.

Because major federal actions often have wide ranging (and sometimes unintended) consequences, the need to examine economic effects and impacts on social cohesiveness of communities of <50,000 people exists.²⁹ As a result, any contemplated Major Actions in the region governed by the Coalition must include a *Regulatory Flexibility Agenda (RFA-1)* and *Regulatory Flexibility Analysis (RFA-2)*. The Coalition expects publication and notification requirements of RFA to be fulfilled, and requests the respective agendas and analysis to be sent both to affected member counties and the Steering Committee.

²⁴ 40 CFR §1502.5

²⁵ *Kleppe v. Sierra Club*, 427 U.S. 390, 406 (1976).

²⁶ Executive Order 13352. Facilitation of Cooperative Conservation.

²⁷ Executive Order 13575, 3(1-23); 4(a)-(d) Establishment of White House Rural Council.

²⁸ Executive Order 12630. Governmental Actions and Interference With Constitutionally Protected Property Rights.

²⁹ Executive Order 12291, Section 3. Regulatory Impact Analysis and Review.

The required RFAs must explore the range of alternatives and economic impact(s) to those *specific small entities* and *governmental jurisdictions* where actions are proposed to take place. The RFAs shall include, at a minimum, the following information:

1. Description of the subject, reasoning, and promulgation-schedule of those contemplated actions likely to have a significant economic impact(s) on a substantial number of small entities within the Coalition area;^{30,31}
2. Summary of the nature, objectives and legal basis for completing a contemplated action;³²
3. A *Regulatory Flexibility Analysis* estimating the number or classifications of *small entities* and *governmental jurisdictions* and an economic impact-analysis of the contemplated actions to each small entity or classification;
4. A summary of competing alternatives to the contemplated action which accomplish the objectives of the action and which minimize the economic impact of the rule to small business and government;
5. Identification of all relevant federal rules which may duplicate, overlap or conflict with the contemplated or proposed action.

2.2.5 Public Lands

The vast majority of land in the region governed by the Coalition is private; nonetheless, some public lands are interspersed within the region governed by the Coalition. Land use, planning, management and recreational interests³³ on public land within areas governed by the Coalition shall be coordinated with individual Coalition members and the Coalition expects early and advance notice of those federal decisions which could have a significant impact upon intermingled federal and non-federal lands. The Coalition recognizes federal law includes a multiple-use principle for federally managed lands, and they positively support all multiple use in practice. Maintenance of multiple use priorities include preservation of historic and traditional economic uses of public lands in the region.

³⁰ Regulatory Flexibility Act 5. USC §602 (a)(1).

³¹ Executive Order 12291 Sections 1,2; Regulatory Impact Analysis and Review.

³² Regulatory Flexibility Act 5. USC §602 (a)(2).

³³ 16 USC Section 4601-1. Outdoor Recreation Programs – Coordination of Programs.

The Federal Land Policy and Management Act (FLPMA) sets forth the “*criteria for development and revision of land use plans.*”³⁴ FLPMA section 1712 (c)(9) provides for coordinate status to local governments when engaging in land use planning, and requires the *Secretary [of Interior]* to “*coordinate the land use inventory, planning, and management activities...with the land use planning and management programs of other federal departments and agencies and of the State and local governments within which the lands are located.*”³⁵ This provision gives priority to those counties engaged in a land-use planning over the general public, special interest groups of citizens, and other, non-governmental organizations.

In view of the requirement that the Secretary (of Interior) “coordinate” land use inventory, planning and management activities with local governments, the Coalition understands meaningful coordination of planning activities must take place at the beginning of the planning cycle, before draft federal plans are released for public consideration. Section 1712 (c)(9) further provides that the Secretary of Interior must assure that the BLM’s land use plans be “consistent with State and local plans” to the maximum extent possible under federal law and the purposes of the FLMPA. The Coalition recognizes and has adopted the early notification, coordination, and consistency requirements of FLMPA as part of the Public Land Planning Process.

3.0 Coordination Program

3.1 Process

3.1.1 Natural and Human Resource Impact Evaluation

Because environmental, conservation, and natural resource-related decisions have wide-ranging and long-term implications for both the natural and human environments, the Coalition recommends all economic, procedural, and cultural studies required by federal law be consolidated into a central, Resource Impact Evaluation (RIE) document. This recommendation is intended to impose no new requirements; instead it provides a centralized mechanism to present the benefits, alternatives, limitations or restrictions identified for human and natural environments resulting from contemplated major actions.

³⁴ 43 USC 1712 (c)

³⁵ The definition of Coordination in FLMPA is translated *in pari materia* to the Endangered Species Act, Clean Water Act, Clean Air Act and other, similar environmental legislation.

The RIE is intended to guide the coordination process and implement 5 USC § 603(a)(b), Executive Orders 12630 and 12291, and present, as may be appropriate, consolidated information for early implementation of NEPA³⁶ and the NEPA process in general. Thus, the RIE would serve as the central document to achieve consistency with local plans and should be concurrent with the Environmental Assessment (EA) or Environmental Impact Statement (EIS) process.

The Coalition anticipates the RIE could support a federal agency decision for a Categorical Exclusion, preparation of an Environmental Assessment, or an Environmental Impact Statement, providing the foundation for a Record of Decision (ROD).

3.1.2 Resource Priorities

The objective behind establishing resource priorities is to identify sectors that could be affected by major actions so focused studies can be conducted in context of proposed conservation actions. This approach enables balanced resource decision making in a manner that promotes conservation in tandem with economic stability, social cohesiveness, public health/safety and appropriate, required safe guards for industry, culture and private property. The RIE should contain the minimum information sufficient to enable third party evaluation of down stream and future impacts of contemplated federal actions - such as potential changes in property values, limitations on property rights, diminution of public health or safety, or impact(s) in economic circumstance.

The Coalition has identified 12 resource-priority categories for evaluation, as appropriate, during the RFA and EO-required socioeconomic impact analysis. The potential impacts and alternatives to those categories should be addressed for each Coalition member prior to or in conjunction with preparation of the RIE or performance of the EA or EIS process.

The resource categories are:

General Agriculture	Farming
Ranching	Beef Supply Chain
Energy Extraction	Beef Processing
Water Quality and Resources	Energy Transmission
Electricity Generation	Grain Transportation/Storage
Ethanol Production	Wind Energy

³⁶ 40 CFR §1501.2; 50 CFR 424.13; 50 CFR 424.16

3.1.3 Evaluation Criteria

During the Regulatory Impact, Environmental Assessment or Environmental Impact Statement process the potential economic and down stream cultural impacts to those Coalition Counties contemplated for major actions are evaluated. Systematic use of the existing regulatory framework allows impacts of any proposed action(s) to be defined, quantified and presented in a side-by-side comparison with those alternative actions which achieve similar technical and regulatory objectives. This methodology allows the cost, benefits, and/or drawbacks of any proposed action - and its alternative(s) - to be clearly understood by those counties which could be most affected.

If a federal agency promulgates a final rule, a final Regulatory Flexibility Analysis shall be published containing the results of the RFI process, alternatives evaluated, and issues raised by the Coalition, if any.³⁷

3.2 Data, Information, and Maps

All contemplated Major Federal Actions must be based upon usable, objective, timely, accurate, readably-accessible and reproducible data, information, facts, and research.³⁸ The minimum federal standards *are even higher* for that body of information defined by Office of Management and Budget (OMB) to be “influential” in nature – such as data used for decision making of important public policies.³⁹

In the context of coordination, it is the Coalition’s policy is to have timely, full, and transparent access to all data, research sources, notes and maps used to contemplate Major Actions. This is particularly the case for geographical or range maps such that underlying data, resolutions and all supporting information necessary to assure reproducibility and third-party review can be achieved. This requirement will help ensure the quality, utility, objectivity, and integrity such that sound and reproducible science supports all environmental and conservation-related decisions.

³⁷ 5 USC §604 (a)1-4;(6)

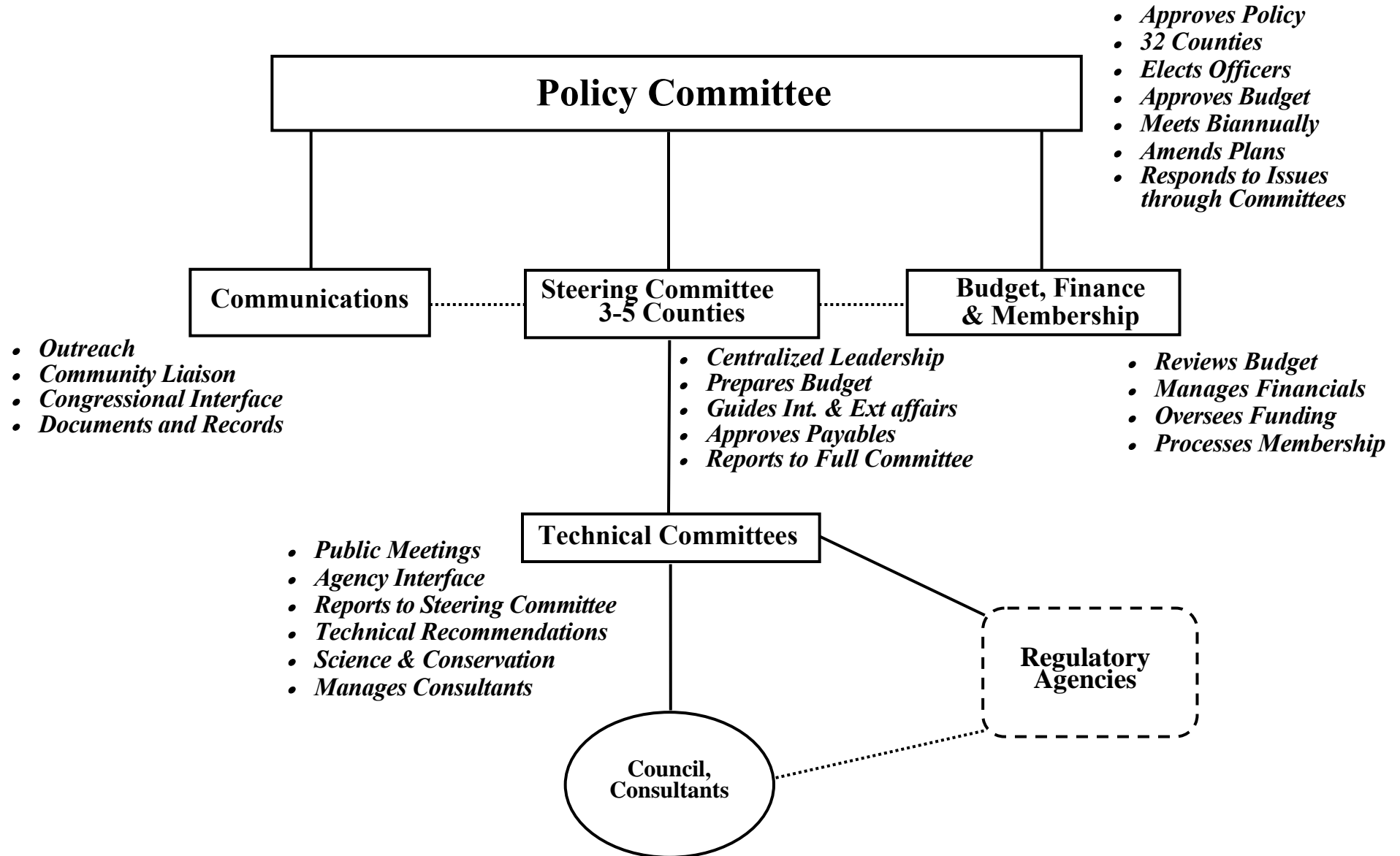
³⁸ Data Quality Act (Information Quality Act) Section 515(a) 3504(d)(1);3516.

³⁹ 66 Federal Register 34489 September 28, 2001.

Appendix A
Coalition Organizational Chart

ORGANIZATIONAL STRUCTURE & RESPONSIBILITIES

(Effective October 14, 2013)



Appendix D
Definitions and Glossary

DEFINITIONS

Best Available Science	The best available science is that body of reproducible and credible data, information and studies that are collectively available <u>to the average person under normal circumstances.</u>	
Best Management Practices (BMPs)	A suite of techniques that guide or may be applied to management actions to aide in achieving desired outcomes. BMPs are often developed in conjunction with land use plans, but they are not considered a planning decision unless the plans specify that they are mandatory.	
Categorical Exclusion (CX)	A category of actions that do not individually or cumulatively have a significant effect on the human environment and have been found to have no such effect in procedures adopted by a federal agency pursuant to NEPA.	40 CFR 1500.4(p) 40 CFR 1500.5(k) 40 CFR 1501.4(a) 40 CFR 1507.3(b) 40 CFR 1508.4
Collaborate	To work together with another toward a common goal, especially in an intellectual endeavor; as, four chemists collaborated on the synthesis of the compound; three authors collaborated in writing the book.	Webster's Revised Unabridged Dictionary
Consistent	Possessing firmness or coherence; marked by harmony, regularity, or steady continuity; free from variation or contradiction.	Webster's Revised Unabridged Dictionary
Cooperation	The act of cooperating, or operating together to one end; joint operation; concurrent effort or labor.	Webster's Revised Unabridged Dictionary
Coordinate	Equal in rank or order; not subordinate.	Webster's Revised Unabridged Dictionary
Coordination	(1) The act of coordinating; the act of putting in the same order, class, rank, dignity, etc.; as, the coordination of the executive, the legislative, and the judicial authority in forming a government; the act of regulating and combining so as to produce harmonious results; harmonious adjustment as, a coordination of functions. (2) a process by which local government and federal agencies are to meet in a government to government dialogue in order to attempt to reach consistency between federal plans and actions and local plans and policies.	Webster's Revised Unabridged Dictionary
Coordination Meeting	A government-to-government meeting between a government agency or agencies and the Coalition. These meetings are public meetings, publicly noticed with agenda provided in advance. While public comment is not received during the meeting, the public is encouraged to attend regular Coalition meetings as the intent is for the coordination process to be open and transparent to the public. For the coordination meeting, the discussion is between federal agencies and the Coalition and is for the purpose of fulfilling the coordination duty, informing the agencies and Coalition of relevant projects, plans, studies and management activities. It is also the forum for discussion towards the resolution of unresolved conflicts between the counties policies, plans and contemplated agency programs.	

Coordination Process	<p>A process mandated by federal law that requires federal agencies to coordinate their plans, programs and management activities with local governments. The minimum parameters of this process were defined by Congress at 43 USC 1712(c)(9) and prescribe that the agencies:</p> <ul style="list-style-type: none"> (1) keep apprised of State, local, and tribal land use plans; (2) assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; (3) assist in resolving, to the extent practical, inconsistencies between federal and non-federal government plans; (4) provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-federal lands; and (5) make land use plans consistent with State and local plans to the maximum extent the Secretary finds consistent with federal law. 	Federal Land Policy and Management Act, 43 USC 1701
Early Application of NEPA	Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to reduce potential conflicts.	40 CFR 1501.2
Environmental Assessment	A concise public document prepared in compliance with NEPA, that briefly discusses the purpose and need for an action, alternatives to such action, and provides sufficient evidence and analysis of impacts to determine whether to prepare an environmental impact statement (EIS) or finding of no significant impact (FONSI).	40 CFR 1508.9
Environmental Impact Statement	A detailed written statement required by section 102(2)(C) of NEPA, analyzing the environmental impacts of a proposed action, adverse effects of the project that cannot be avoided, alternative courses of action, short-term uses of the environment versus the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitment of resources.	40 CFR 1508.11
Environmental Impact Statement-When	<p>It is important to be as objective as possible when making a determination as to whether to prepare an EIS. One or more of the following criteria, depending on the severity and duration of effects, may trigger the preparation of an EIS.</p> <ul style="list-style-type: none"> (a) <u>Controversy over environmental effects (e.g., major scientific or technical disputes or inconsistencies</u> over one or more environmental effects). (b) Change in policy having a major positive or negative environmental effect. (c) Precedent-setting actions with wide-reaching or long-term implications (e.g., special use permits for off-road vehicles, mineral extraction, new road construction). (d) Major alterations of natural environmental quality that may exceed local, State, or federal environmental standards. 	

- (e) Exposing existing or future generations to increased safety or health hazards.
- (f) Conflicts with substantially proposed or adopted local, regional, State, interstate, or federal land use plans or policies, that may result in adverse environmental effects.
- (g) Adverse effects on designated or proposed natural or recreation areas, such as wilderness areas, parks, research natural areas, wild and scenic rivers, estuarine sanctuaries, national recreation areas, habitat conservation plan areas, threatened and endangered species, fish hatcheries, wildlife refuges, lands acquired or managed with Dingell-Johnson/Pittman-Robertson funds, unique or major wetland areas, and lands within a 100-year floodplain.
- (h) Removal from production of prime and unique agricultural lands, as designated by local, regional, State, or federal authorities; in accordance with the Department's Environmental Statement Memorandum No. ESM 94-7.
- (i) Adverse effects on municipal, industrial, or agricultural water supply or quality; or major consumptive use or other long-term commitment of water.
- (j) Condemnation of property rights or fee title to land; or large-scale relocation of people, homes, commercial, industrial, or major public facilities.

Federal Agency	All agencies of the federal government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.	40 CFR 1508.12
Finding of No Significant Impact-FONSI	A document prepared in compliance with NEPA, supported by an environmental assessment that analyzes whether a federal action will have no significant effect on the human environment and for which an environmental impact statement, therefore, will not be prepared.	40 CFR 1508.13
Governmental Information	Governmental information means information created, collected, processed, disseminated, or disposed of by or for the federal government.	
Human Environment	Includes the natural and physical environment and the relationship of people with the environment.	40 CFR 1508.13 40 CFR 1508.14
Influential	Influential, when used in the phrase “influential scientific, financial, or statistical information”, means that the agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions.	66FR 49718 September 28, 2001

Information	Information means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that an agency disseminates from a web page, but does not include the provision of hyperlinks to information that others disseminate.	
Integrity	Integrity refers to the security of information – protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.	66 FR 49718 September 28, 2001
Major Federal Action	Actions with effects that may be major and which are potentially subject to federal control and responsibility.	40 CFR 1508.18
Mandate, NEPA	Parts 1500 through 1508 of this title provide regulations applicable to and binding on all federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 <i>et seq.</i>) (NEPA or the Act) <u>except where compliance would be inconsistent with other statutory requirements</u> . These regulations are issued pursuant to NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 <i>et seq.</i>) section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977). These regulations, unlike the predecessor guidelines, are not confined to sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. It is the Council's intention that judicial review of agency compliance with these regulations not occur before an agency has filed the final environmental impact statement, or has made a final finding of no significant impact (when such a finding will result in action affecting the environment), or takes action that will result in irreparable injury. Furthermore, it is the Council's intention that any trivial violation of these regulations not give rise to any independent cause of action.	40 CFR 1500.3
Meaningful Participation, Doctrine of	Timely, mutual inclusion of local governments in seeking consistency with local plans and policies including full disclosure, transparency monitoring and full availability of meaningful scientific data, information and studies.	
Multiple Use	The management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future	Federal Land Policy and Management Act, 43 USC 1702(c)

generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

National Environmental Policy Act of 1969 (NEPA)	Requires <u>all</u> federal agencies to examine the environmental impacts of their actions, incorporate environmental information, and utilize public participation in the planning and implementation of all actions. Federal agencies must integrate NEPA with other planning requirements and prepare appropriate NEPA documents to facilitate better environmental decision making. NEPA requires federal agencies to review and comment on federal agency environmental plans/documents when the agency has jurisdiction by law or special expertise with respect to any environmental impacts involved.	42 USC 4321-42 USC 4327 40 CFR 1500-40 CFR 1508
Notification	The agencies must, to the extent practicable, provide for public notification and public involvement when an environmental assessment is being prepared. However, the methods for providing public notification and opportunities for public involvement are at the discretion of the responsible official.	43 CFR 46.305 (a)
Objectivity	Objectivity involves two distinct elements, presentation and substance. Objectivity includes whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner. This includes whether the information is presented within a proper context. <u>Objectivity includes the requirement to identify all sources of the disseminated information and, in a scientific, financial, or statistical context, the supporting data and models so that the public can assess for itself whether there may be some reason to question the objectivity of the sources.</u> Objectivity also includes a focus on ensuring accurate, reliable, and unbiased information. In a scientific, financial, or statistical context, the original and supporting data shall be generated, and the analytic results shall be developed, using sound statistical and research methods.	66 FR 49718 September 28, 2001
Offsite Mitigation	Compensating for resource impacts by replacing or providing substitute resources or habitat at a different location than the project area.	
Proposal	<i>Proposal</i> exists at that stage in the development of an action when an agency subject to the Act <u>has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated.</u> Preparation of an environmental impact statement on a proposal should be timed (§ 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.	40 CFR 1508.23

Quality	Quality is an all encompassing term in Data Quality Act comprising utility, objectivity, and integrity.	66 FR 49718 September 28, 2001
Reproducibility	<u>Reproducibility means that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision.</u> For information judged to have more (less) important impacts, the degree of imprecision that is tolerated is reduced (increased).	
Scientific Accuracy	Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.	40 CFR 1502.24
Significantly	as used in NEPA, requires considerations of both context and intensity: (a) <i>Context.</i> This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant. (b) <i>Intensity.</i> This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action.	40 CFR 1508.27
Social Effects	(a) Direct effects, which are caused by the action and occur at the same time and place. (b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. Effects and impacts as used in these regulations are synonymous. <u>Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.</u> Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.	40 CFR 1508.8

Utility

Utility is the usefulness of the information to its intended users, including the public. In assessing the usefulness of information that the federal agencies disseminate to the public, the agencies need to consider the uses of the information not only from the perspective of the agency but also from the perspective of the public. As a result, when transparency of information is relevant for assessing the information's usefulness from the public's perspective, the agency must take care to ensure that transparency has been addressed in its review of the information.

FR 6649718
September 28, 2001

Appendix E
Statutes and Executive Orders

Executive Order 13575

Establishment of the White House Rural Council

June 9, 2011

By the authority vested in me as President by the Constitution and the laws of the United States of America and in order to enhance Federal engagement with rural communities, it is hereby ordered as follows:

Section 1. Policy. Sixteen percent of the American population lives in rural counties. Strong, sustainable rural communities are essential to winning the future and ensuring American competitiveness in the years ahead. These communities supply our food, fiber, and energy, safeguard our natural resources, and are essential in the development of science and innovation. Though rural communities face numerous challenges, they also present enormous economic potential. The Federal Government has an important role to play in order to expand access to the capital necessary for economic growth, promote innovation, improve access to health care and education, and expand outdoor recreational activities on public lands.

To enhance the Federal Government's efforts to address the needs of rural America, this order establishes a council to better coordinate Federal programs and maximize the impact of Federal investment to promote economic prosperity and quality of life in our rural communities.

Sec. 2. Establishment. There is established a White House Rural Council (Council).

Sec. 3. Membership.

(a) The Secretary of Agriculture shall serve as the Chair of the Council, which shall also include the heads of the following executive branch departments, agencies, and offices:

- (1) the Department of the Treasury;
- (2) the Department of Defense;
- (3) the Department of Justice;
- (4) the Department of the Interior;
- (5) the Department of Commerce;
- (6) the Department of Labor;
- (7) the Department of Health and Human Services;
- (8) the Department of Housing and Urban Development;
- (9) the Department of Transportation;
- (10) the Department of Energy;
- (11) the Department of Education;
- (12) the Department of Veterans Affairs;
- (13) the Department of Homeland Security;
- (14) the Environmental Protection Agency;
- (15) the Federal Communications Commission;
- (16) the Office of Management and Budget;
- (17) the Office of Science and Technology Policy;
- (18) the Office of National Drug Control Policy;
- (19) the Council of Economic Advisers;
- (20) the Domestic Policy Council;
- (21) the National Economic Council;
- (22) the Small Business Administration;
- (23) the Council on Environmental Quality;
- (24) the White House Office of Public Engagement and Intergovernmental Affairs;
- (25) the White House Office of Cabinet Affairs; and such other executive branch departments, agencies, and offices as the President or the Secretary of Agriculture may, from time to time, designate.

- (b) A member of the Council may designate, to perform the Council functions of the member, a senior-level official who is part of the member's department, agency, or office, and who is a full-time officer or employee of the Federal Government.
- (c) The Department of Agriculture shall provide funding and administrative support for the Council to the extent permitted by law and within existing appropriations.
- (d) The Council shall coordinate its policy development through the Domestic Policy Council and the National Economic Council.

Sec. 4. Mission and Function of the Council. The Council shall work across executive departments, agencies, and offices to coordinate development of policy recommendations to promote economic prosperity and quality of life in rural America, and shall coordinate my Administration's engagement with rural communities. The Council shall:

- (a) make recommendations to the President, through the Director of the Domestic Policy Council and the Director of the National Economic Council, on streamlining and leveraging Federal investments in rural areas, where appropriate, to increase the impact of Federal dollars and create economic opportunities to improve the quality of life in rural America;
- (b) coordinate and increase the effectiveness of Federal engagement with rural stakeholders, including agricultural organizations, small businesses, education and training institutions, health-care providers, telecommunications services providers, research and land grant institutions, law enforcement, State, local, and tribal governments, and nongovernmental organizations regarding the needs of rural America;
- (c) coordinate Federal efforts directed toward the growth and development of geographic regions that encompass both urban and rural areas; and
- (d) identify and facilitate rural economic opportunities associated with energy development, outdoor recreation, and other conservation related activities.

Sec. 5. General Provisions.

- (a) The heads of executive departments and agencies shall assist and provide information to the Council, consistent with applicable law, as may be necessary to carry out the functions of the Council. Each executive department and agency shall bear its own expense for participating in the Council.
- (b) Nothing in this order shall be construed to impair or otherwise affect:
 - (i) authority granted by law to an executive department, agency, or the head thereof; or
 - (ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
- (c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
- (d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA

The White House, June 9, 2011.

[Filed with the Office of the Federal Register, 11:15 a.m., June 13, 2011] NOTE: This Executive order was published in the *Federal Register* on June 14.

Categories: Executive Orders : White House Rural Council, establishment. *Subjects:* White House Office : Rural Council, White House. *DCPD Number:* DCPD201100431.

Executive Order 13352
Facilitation of Cooperative Conservation

August 26, 2004

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Purpose. The purpose of this order is to ensure that the Departments of the Interior, Agriculture, Commerce, and Defense and the Environmental Protection Agency implement laws relating to the environment and natural resources in a manner that promotes cooperative conservation, with an emphasis on appropriate inclusion of local participation in Federal decisionmaking, in accordance with their respective agency missions, policies, and regulations.

Sec. 2. Definition. As used in this order, the term "cooperative conservation" means actions that relate to use, enhancement, and enjoyment of natural resources, protection of the environment, or both, and that involve collaborative activity among Federal, State, local, and tribal governments, private for-profit and nonprofit institutions, other nongovernmental entities and individuals.

Sec. 3. Federal Activities. To carry out the purpose of this order, the Secretaries of the Interior, Agriculture, Commerce, and Defense and the Administrator of the Environmental Protection Agency shall, to the extent permitted by law and subject to the availability of appropriations and in coordination with each other as appropriate:

- (a) carry out the programs, projects, and activities of the agency that they respectively head that implement laws relating to the environment and natural resources in a manner that:
 - (i) facilitates cooperative conservation;
 - (ii) takes appropriate account of and respects the interests of persons with ownership or other legally recognized interests in land and other natural resources;
 - (iii) properly accommodates local participation in Federal decisionmaking; and
 - (iv) provides that the programs, projects, and activities are consistent with protecting public health and safety;
- (b) report annually to the Chairman of the Council on Environmental Quality on actions taken to implement this order; and
- (c) provide funding to the Office of Environmental Quality Management Fund (42 U.S.C. 4375) for the Conference for which section 4 of this order provides.

Sec. 4. White House Conference on Cooperative Conservation. The Chairman of the Council on Environmental Quality shall, to the extent permitted by law and subject to the availability of appropriations:

- (a) convene not later than 1 year after the date of this order, and thereafter at such times as the Chairman deems appropriate, a White House Conference on Cooperative Conservation (Conference) to facilitate the exchange of information and advice relating to (i) cooperative conservation and (ii) means for achievement of the purpose of this order; and
- (b) ensure that the Conference obtains information in a manner that seeks from Conference participants their individual advice and does not involve collective judgment or consensus advice or deliberation.

Sec. 5. General Provision. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

GEORGE W. BUSH
THE WHITE HOUSE,
August 26, 2004.

Executive Order 12630

Governmental Actions and Interference With Constitutionally Protected Property Rights

March 16, 1988

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure that government actions are undertaken on a well-reasoned basis with due regard for fiscal accountability, for the financial impact of the obligations imposed on the Federal government by the Just Compensation Clause of the Fifth Amendment, and for the Constitution, it is hereby ordered as follows:

Section 1. Purpose.

- (a) The Fifth Amendment of the United States Constitution provides that private property shall not be taken for public use without just compensation. Government historically has used the formal exercise of the power of eminent domain, which provides orderly processes for paying just compensation, to acquire private property for public use. Recent Supreme Court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have an impact on constitutionally protected property rights, have also reaffirmed that governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required.
- (b) Responsible fiscal management and fundamental principles of good government require that government decision-makers evaluate carefully the effect of their administrative, regulatory, and legislative actions on constitutionally protected property rights. Executive departments and agencies should review their actions carefully to prevent unnecessary takings and should account in decision-making for those takings that are necessitated by statutory mandate.
- (c) The purpose of this Order is to assist Federal departments and agencies in undertaking such reviews and in proposing, planning, and implementing actions with due regard for the constitutional protections provided by the Fifth Amendment and to reduce the risk of undue or inadvertent burdens on the public fisc resulting from lawful governmental action. In furtherance of the purpose of this Order, the Attorney General shall, consistent with the principles stated herein and in consultation with the Executive departments and agencies, promulgate Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings to which each Executive department or agency shall refer in making the evaluations required by this Order or in otherwise taking any action that is the subject of this Order. The Guidelines shall be promulgated no later than May 1, 1988, and shall be disseminated to all units of each Executive department and agency no later than July 1, 1988. The Attorney General shall, as necessary, update these guidelines to reflect fundamental changes in takings law occurring as a result of Supreme Court decisions.

Sec. 2. Definitions. For the purpose of this Order:

- (a) "Policies that have takings implications" refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property. "Policies that have takings implications" does not include:
 - (1) Actions abolishing regulations, discontinuing governmental programs, or modifying regulations in a manner that lessens interference with the use of private property;
 - (2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;
 - (3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;
 - (4) Studies or similar efforts or planning activities;

- (5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority.
 - (6) The placement of military facilities or military activities involving the use of Federal property alone; or
 - (7) Any military or foreign affairs functions (including procurement functions thereunder) but not including the U.S. Army Corps of Engineers civil works program.
- (b) Private property refers to all property protected by the Just Compensation Clause of the Fifth Amendment.
- (c) "Actions" refers to proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, applications of Federal regulations to specific property, or Federal governmental actions physically invading or occupying private property, or other policy statements or actions related to Federal regulation or direct physical invasion or occupancy, but does not include:
- (1) Actions in which the power of eminent domain is formally exercised;
 - (2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;
 - (3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;
 - (4) Studies or similar efforts or planning activities;
 - (5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority;
 - (6) The placement of military facilities or military activities involving the use of Federal property alone; or
 - (7) Any military or foreign affairs functions (including procurement functions thereunder), but not including the U.S. Army Corps of Engineers civil works program.

Sec. 3. General Principles. In formulating or implementing policies that have takings implications, each Executive department and agency shall be guided by the following general principles:

- (a) Governmental officials should be sensitive to, anticipate, and account for, the obligations imposed by the Just Compensation Clause of the Fifth Amendment in planning and carrying out governmental actions so that they do not result in the imposition of unanticipated or undue additional burdens on the public fisc.
- (b) Actions undertaken by governmental officials that result in a physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use, may constitute a taking of property. Further, governmental action may amount to a taking even though the action results in less than a complete deprivation of all use or value, or of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary in nature.
- (c) Government officials whose actions are taken specifically for purposes of protecting public health and safety are ordinarily given broader latitude by courts before their actions are considered to be takings. However, the mere assertion of a public health and safety purpose is insufficient to avoid a taking. Actions to which this Order applies asserted to be for the protection of public health and safety, therefore, should be undertaken only in response to real and substantial threats to public health and safety, be designed to advance significantly the health and safety purpose, and be no greater than is necessary to achieve the health and safety purpose.

- (d) While normal governmental processes do not ordinarily effect takings, undue delays in decision-making during which private property use is interfered with carry a risk of being held to be takings. Additionally, a delay in processing may increase significantly the size of compensation due if a taking is later found to have occurred.
- (e) The Just Compensation Clause is self actuating, requiring that compensation be paid whenever governmental action results in a taking of private property regardless of whether the underlying authority for the action contemplated a taking or authorized the payment of compensation. Accordingly, governmental actions that may have a significant impact on the use or value of private property should be scrutinized to avoid undue or unplanned burdens on the public fisc.

Sec. 4. Department and Agency Action. In addition to the fundamental principles set forth in Section 3, Executive departments and agencies shall adhere, to the extent permitted by law, to the following criteria when implementing policies that have takings implications:

- (a) When an Executive department or agency requires a private party to obtain a permit in order to undertake a specific use of, or action with respect to, private property, any conditions imposed on the granting of a permit shall:
 - (1) Serve the same purpose that would have been served by a prohibition of the use or action; and
 - (2) Substantially advance that purpose.
- (b) When a proposed action would place a restriction on a use of private property, the restriction imposed on the use shall not be disproportionate to the extent to which the use contributes to the overall problem that the restriction is imposed to redress.
- (c) When a proposed action involves a permitting process or any other decisionmaking process that will interfere with, or otherwise prohibit, the use of private property pending the completion of the process, the duration of the process shall be kept to the minimum necessary.
- (d) Before undertaking any proposed action regulating private property use for the protection of public health or safety, the Executive department or agency involved shall, in internal deliberative documents and any submissions to the Director of the Office of Management and Budget that are required:
 - (1) Identify clearly, with as much specificity as possible, the public health or safety risk created by the private property use that is the subject of the proposed action;
 - (2) Establish that such proposed action substantially advances the purpose of protecting public health and safety against the specifically identified risk;
 - (3) Establish to the extent possible that the restrictions imposed on the private property are not disproportionate to the extent to which the use contributes to the overall risk; and
 - (4) Estimate, to the extent possible, the potential cost to the government in the event that a court later determines that the action constituted a taking.

In instances in which there is an immediate threat to health and safety that constitutes an emergency requiring immediate response, this analysis may be done upon completion of the emergency action.

Sec. 5. Executive Department and Agency Implementation.

- (a) The head of each executive department and agency shall designate an official to be responsible for ensuring compliance with this Order with respect to the actions of that department or agency.

- (b) Executive departments and agencies shall, to the extent permitted by law, identify the takings implications of proposed regulatory actions and address the merits of those actions in light of the identified takings implications, if any, in all required submissions made to the Office of Management and Budget. Significant takings implications should also be identified and discussed in notices of proposed rule-making and messages transmitting legislative proposals to the Congress, stating the departments' and agencies' conclusions on the takings issues.
- (c) Executive departments and agencies shall identify each existing Federal rule and regulation against which a takings award has been made or against which a takings claim is pending including the amount of each claim or award. A "takings" award has been made or a "takings" claim pending if the award was made, or the pending claim brought, pursuant to the Just Compensation Clause of the Fifth Amendment. An itemized compilation of all such awards made in Fiscal Years 1985, 1986, and 1987 and all such pending claims shall be submitted to the Director, Office of Management and Budget, on or before May 16, 1988.
- (d) Each Executive department and agency shall submit annually to the Director, Office of Management and Budget, and to the Attorney General an itemized compilation of all awards of just compensation entered against the United States for takings, including awards of interest as well as monies paid pursuant to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601.
- (e) (1) The Director, Office of Management and Budget, and the Attorney General shall each, to the extent permitted by law, take action to ensure that the policies of the Executive departments and agencies are consistent with the principles, criteria, and requirements stated in Sections 1 through 5 of this Order, and the Office of Management and Budget shall take action to ensure that all takings awards levied against agencies are properly accounted for in agency budget submissions.

(2) In addition to the guidelines required by Section 1 of this Order, the Attorney General shall, in consultation with each Executive department and agency to which this Order applies, promulgate such supplemental guidelines as may be appropriate to the specific obligations of that department or agency.

Sec. 6. Judicial Review. This Order is intended only to improve the Internal management of the Executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

RONALD REAGAN

The White House,

March 15, 1988.

[Filed with the Office of the Federal Register, 4:53 p.m., March 16, 1988]

Executive Order 12372

Intergovernmental review of Federal programs

July 14, 1982

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 401(a) of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(a)), Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334) and Section 301 of Title 3 of the United States Code, and in order to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development, it is hereby ordered as follows:

[Preamble amended by Executive Order 12416 of Apr. 8, 1983, 48 FR 15587, 3 CFR, 1983 Comp., p. 186]

Section 1. Federal agencies shall provide opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance or direct Federal development.

Sec. 2. To the extent the States, in consultation with local general purpose governments, and local special purpose governments they consider appropriate, develop their own processes or refine existing processes for State and local elected officials to review and coordinate proposed Federal financial assistance and direct Federal development, the Federal agencies shall, to the extent permitted by law:

- (a) Utilize the State process to determine official views of State and local elected officials.
- (b) Communicate with State and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions.
- (c) Make efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the designated State process. For those cases where the concerns cannot be accommodated, Federal officials shall explain the bases for their decision in a timely manner.
- (d) Allow the States to simplify and consolidate existing Federally required State plan submissions. Where State planning and budgeting systems are sufficient and where permitted by law, the substitution of State plans for Federally required State plans shall be encouraged by the agencies.
- (e) Seek the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas. Existing interstate mechanisms that are redesignated as part of the State process may be used for this purpose.
- (f) Support State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has a Federally-prescribed membership, which is established for a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

Sec. 3. (a) The State process referred to in Section 2 shall include those where States delegate, in specific instances, to local elected officials the review, coordination, and communication with Federal agencies.

- (b) At the discretion of the State and local elected officials, the State process may exclude certain Federal programs from review and comment.

Sec. 4. The Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development. The Office of Management and Budget shall disseminate such lists to the Federal agencies.

Sec. 5. (a) Agencies shall propose rules and regulations governing the formulation, evaluation, and review of proposed Federal financial assistance and direct Federal development pursuant to this Order, to be submitted to the Office of Management and Budget for approval.

- (b) The rules and regulations which result from the process indicated in Section 5(a) above shall replace any current rules and regulations and become effective September 30, 1983.

[Sec. 5 amended by Executive Order 12416 of Apr. 8, 1983, 48 FR 15587, 3 CFR, 1983 Comp., p. 186]

Sec. 6. The Director of the Office of Management and Budget is authorized to prescribe such rules and regulations, if any, as he deems appropriate for the effective implementation and administration of this Order and the Intergovernmental Cooperation Act of 1968. The Director is also authorized to exercise the authority vested in the President by Section 401(a) of that Act (42 U.S.C. 4231(a)), in a manner consistent with this Order.

Sec. 7. The Memorandum of November 8, 1968, is terminated (33 *Fed. Reg.* 16487, November 13, 1968). The Director of the Office of Management and

Budget shall revoke OMB Circular A-95, which was issued pursuant to that Memorandum. However, Federal agencies shall continue to comply with the rules and regulations issued pursuant to that Memorandum, including those issued by the Office of Management and Budget, until new rules and regulations have been issued in accord with this Order.

Sec. 8. The Director of the Office of Management and Budget shall report to the President by September 30, 1984 on Federal agency compliance with this Order. The views of State and local elected officials on their experiences with these policies, along with any suggestions for improvement, will be included in the Director's report.

[*Sec. 8* amended by Executive Order 12416 of Apr. 8, 1983, 48 FR 15587, 3 CFR, 1983 Comp., p. 186]

/s/ RONALD REAGAN

The White House July 14, 1982

[Filed with the Office of the Federal Register, 3:18 p.m., July 14, 1982]

Executive Order 12291

Federal regulation

Source: The provisions of Executive Order 12291 of Feb. 17, 1981, appear at 46 FR 13193, 3 CFR, 1981 Comp., p. 127, unless otherwise noted.

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to reduce the burdens of existing and future regulations, increase agency accountability for regulatory actions, provide for presidential oversight of the regulatory process, minimize duplication and conflict of regulations, and insure well-reasoned regulations, it is hereby ordered as follows:

Section 1. Definitions. For the purposes of this Order:

- (a) "Regulation" or "rule" means an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of an agency, but does not include:
 - (1) Administrative actions governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code;
 - (2) Regulations issued with respect to a military or foreign affairs function of the United States; or
 - (3) Regulations related to agency organization, management, or personnel.
- (b) "Major rule" means any regulation that is likely to result in:
 - (1) An annual effect on the economy of \$100 million or more;
 - (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
 - (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.
- (c) "Director" means the Director of the Office of Management and Budget.
- (d) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), excluding those agencies specified in 44 U.S.C. 3502(10).
- (e) "Task Force" means the Presidential Task Force on Regulatory Relief.

Sec. 2. General Requirements. In promulgating new regulations, reviewing existing regulations, and developing legislative proposals concerning regulation, all agencies, to the extent permitted by law, shall adhere to the following requirements:

- (a) Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action;
- (b) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society;
- (c) Regulatory objectives shall be chosen to maximize the net benefits to society;
- (d) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and
- (e) Agencies shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

Sec. 3. Regulatory Impact Analysis and Review.

- (a) In order to implement Section 2 of this Order, each agency shall, in connection with every major rule, prepare, and to the extent permitted by law consider, a Regulatory Impact Analysis. Such Analyses may be combined with any Regulatory Flexibility Analyses performed under 5 U.S.C. 603 and 604.

- (b) Each agency shall initially determine whether a rule it intends to propose or to issue is a major rule, provided that, the Director, subject to the direction of the Task Force, shall have authority, in accordance with Sections 1(b) and 2 of this Order, to prescribe criteria for making such determinations, to order a rule to be treated as a major rule, and to require any set of related rules to be considered together as a major rule.
- (c) Except as provided in Section 8 of this Order, agencies shall prepare Regulatory Impact Analyses of major rules and transmit them, along with all notices of proposed rulemaking and all final rules, to the Director as follows:
 - (1) If no notice of proposed rulemaking is to be published for a proposed major rule that is not an emergency rule, the agency shall prepare only a final Regulatory Impact Analysis, which shall be transmitted, along with the proposed rule, to the Director at least 60 days prior to the publication of the major rule as a final rule;
 - (2) With respect to all other major rules, the agency shall prepare a preliminary Regulatory Impact Analysis, which shall be transmitted, along with a notice of proposed rulemaking, to the Director at least 60 days prior to the publication of a notice of proposed rulemaking, and a final Regulatory Impact Analysis, which shall be transmitted along with the final rule at least 30 days prior to the publication of the major rule as a final rule;
 - (3) For all rules other than major rules, agencies shall submit to the Director, at least 10 days prior to publication, every notice of proposed rulemaking and final rule.
- (d) To permit each proposed major rule to be analyzed in light of the requirements stated in Section 2 of this Order, each preliminary and final Regulatory Impact Analysis shall contain the following information:
 - (1) A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits;
 - (2) A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, and the identification of those likely to bear the costs;
 - (3) A determination of the potential net benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms;
 - (4) A description of alternative approaches that could substantially achieve the same regulatory goal at lower cost, together with an analysis of this potential benefit and costs and a brief explanation of the legal reasons why such alternatives, if proposed, could not be adopted; and
 - (5) Unless covered by the description required under paragraph (4) of this subsection, an explanation of any legal reasons why the rule cannot be based on the requirements set forth in Section 2 of this Order.
- (e)
 - (1) The Director, subject to the direction of the Task Force, which shall resolve any issues raised under this Order or ensure that they are presented to the President, is authorized to review any preliminary or final Regulatory Impact Analysis, notice of proposed rulemaking, or final rule based on the requirements of this Order.
 - (2) The Director shall be deemed to have concluded review unless the Director advises an agency to the contrary under subsection (f) of this Section:
 - (A) Within 60 days of a submission under subsection (c)(1) or a submission of a preliminary Regulatory Impact Analysis or notice of proposed rulemaking under subsection (c)(2);
 - (B) Within 30 days of the submission of a final Regulatory Impact Analysis and a final rule under subsection (c)(2); and
 - (C) Within 10 days of the submission of a notice of proposed rulemaking or final rule under subsection (c)(3).
- (f)
 - (1) Upon the request of the Director, an agency shall consult with the Director concerning the review of a preliminary Regulatory Impact Analysis or notice of proposed rulemaking under this Order, and shall, subject to Section 8(a)(2) of this Order, refrain from publishing its preliminary Regulatory Impact Analysis or notice of proposed rulemaking until such review is concluded.

(2) Upon receiving notice that the Director intends to submit views with respect to any final Regulatory Impact Analysis or final rule, the agency shall, subject to Section 8(a)(2) of this Order, refrain from publishing its final Regulatory Impact Analysis or final rule until the agency has responded to the Director's views, and incorporated those views and the agency's response in the rulemaking file.

(3) Nothing in this subsection shall be construed as displacing the agencies' responsibilities delegated by law.

(g) For every rule for which an agency publishes a notice of proposed rulemaking, the agency shall include in its notice:

(1) A brief statement setting forth the agency's initial determination whether the proposed rule is a major rule, together with the reasons underlying that determination; and

(2) For each proposed major rule, a brief summary of the agency's preliminary Regulatory Impact Analysis.

(h) Agencies shall make their preliminary and final Regulatory Impact Analyses available to the public.

(i) Agencies shall initiate reviews of currently effective rules in accordance with the purposes of this Order, and perform Regulatory Impact Analyses of currently effective major rules. The Director, subject to the direction of the Task Force, may designate currently effective rules for review in accordance with this Order, and establish schedules for reviews and Analyses under this Order.

Sec. 4. Regulatory Review. Before approving any final major rule, each agency shall:

(a) Make a determination that the regulation is clearly within the authority delegated by law and consistent with congressional intent, and include in the **Federal Register** at the time of promulgation a memorandum of law supporting that determination.

(b) Make a determination that the factual conclusions upon which the rule is based have substantial support in the agency record, viewed as a whole, with full attention to public comments in general and the comments of persons directly affected by the rule in particular.

Sec. 5. Regulatory Agendas.

(a) Each agency shall publish, in October and April of each year, an agenda of proposed regulations that the agency has issued or expects to issue, and currently effective rules that are under agency review pursuant to this Order. These agendas may be incorporated with the agendas published under 5 U.S.C. 602, and must contain at the minimum:

(1) A summary of the nature of each major rule being considered, the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any major rule for which the agency has issued a notice of proposed rulemaking;

(2) The name and telephone number of a knowledgeable agency official for each item on the agenda; and

(3) A list of existing regulations to be reviewed under the terms of this Order, and a brief discussion of each such regulation.

(b) The Director, subject to the direction of the Task Force, may, to the extent permitted by law:

(1) Require agencies to provide additional information in an agenda; and

(2) Require publication of the agenda in any form.

Sec. 6. The Task Force and Office of Management and Budget.

(a) To the extent permitted by law, the Director shall have authority, subject to the direction of the Task Force, to:

(1) Designate any proposed or existing rule as a major rule in accordance with Section 1(b) of this Order;

(2) Prepare and promulgate uniform standards for the identification of major rules and the development of Regulatory Impact Analyses;

(3) Require an agency to obtain and evaluate, in connection with a regulation, any additional relevant data from any appropriate source;

(4) Waive the requirements of Sections 3, 4, or 7 of this Order with respect to any proposed or existing major rule;

- (5) Identify duplicative, overlapping and conflicting rules, existing or proposed, and existing or proposed rules that are inconsistent with the policies underlying statutes governing agencies other than the issuing agency or with the purposes of this Order, and, in each such case, require appropriate interagency consultation to minimize or eliminate such duplication, overlap, or conflict;
 - (6) Develop procedures for estimating the annual benefits and costs of agency regulations, on both an aggregate and economic or industrial sector basis, for purposes of compiling a regulatory budget;
 - (7) In consultation with interested agencies, prepare for consideration by the President recommendations for changes in the agencies' statutes; and
 - (8) Monitor agency compliance with the requirements of this Order and advise the President with respect to such compliance.
- (b) The Director, subject to the direction of the Task Force, is authorized to establish procedures for the performance of all functions vested in the Director by this Order. The Director shall take appropriate steps to coordinate the implementation of the analysis, transmittal, review, and clearance provisions of this Order with the authorities and requirements provided for or imposed upon the Director and agencies under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Paperwork Reduction Plan Act of 1980, 44 U.S.C. 3501 *et seq.*

Sec. 7. Pending Regulations.

- (a) To the extent necessary to permit reconsideration in accordance with this Order, agencies shall, except as provided in Section 8 of this Order, suspend or postpone the effective dates of all major rules that they have promulgated in final form as of the date of this Order, but that have not yet become effective, excluding:
 - (1) Major rules that cannot legally be postponed or suspended;
 - (2) Major rules that, for good cause, ought to become effective as final rules without reconsideration. Agencies shall prepare, in accordance with Section 3 of this Order, a final Regulatory Impact Analysis for each major rule that they suspend or postpone.
- (b) Agencies shall report to the Director no later than 15 days prior to the effective date of any rule that the agency has promulgated in final form as of the date of this Order, and that has not yet become effective, and that will not be reconsidered under subsection (a) of this Section:
 - (1) That the rule is excepted from reconsideration under subsection (a), including a brief statement of the legal or other reasons for that determination; or
 - (2) That the rule is not a major rule.
- (c) The Director, subject to the direction of the Task Force, is authorized, to the extent permitted by law, to:
 - (1) Require reconsideration, in accordance with this Order, of any major rule that an agency has issued in final form as of the date of this Order and that has not become effective; and
 - (2) Designate a rule that an agency has issued in final form as of the date of this Order and that has not yet become effective as a major rule in accordance with Section 1(b) of this Order.
- (d) Agencies may, in accordance with the Administrative Procedure Act and other applicable statutes, permit major rules that they have issued in final form as of the date of this Order, and that have not yet become effective, to take effect as interim rules while they are being reconsidered in accordance with this Order, *provided that*, agencies shall report to the Director, no later than 15 days before any such rule is proposed to take effect as an interim rule, that the rule should appropriately take effect as an interim rule while the rule is under reconsideration.
- (e) Except as provided in Section 8 of this Order, agencies shall, to the extent permitted by law, refrain from promulgating as a final rule any proposed major rule that has been published or issued as of the date of this Order until a final Regulatory Impact Analysis, in accordance with Section 3 of this Order, has been prepared for the proposed major rule.
- (f) Agencies shall report to the Director, no later than 30 days prior to promulgating as a final rule any proposed rule that the agency has published or issued as of the date of this Order and that has not been considered under the terms of this Order:

- (1) That the rule cannot legally be considered in accordance with this Order, together with a brief explanation of the legal reasons barring such consideration; or
 - (2) That the rule is not a major rule, in which case the agency shall submit to the Director a copy of the proposed rule.
- (g) The Director, subject to the direction of the Task Force, is authorized, to the extent permitted by law, to:
- (1) Require consideration, in accordance with this Order, of any proposed major rule that the agency has published or issued as of the date of this Order; and
 - (2) Designate a proposed rule that an agency has published or issued as of the date of this Order, as a major rule in accordance with Section 1(b) of this Order.
- (h) The Director shall be deemed to have determined that an agency's report to the Director under subsections (b), (d), or (f) of this Section is consistent with the purposes of this Order, unless the Director advises the agency to the contrary:
- (1) Within 15 days of its report, in the case of any report under subsections (b) or (d); or
 - (2) Within 30 days of its report, in the case of any report under subsection (f).
- (i) This Section does not supersede the President's Memorandum of January 29, 1981, entitled "Postponement of Pending Regulations", which shall remain in effect until March 30, 1981.
- (j) In complying with this Section, agencies shall comply with all applicable provisions of the Administrative Procedure Act, and with any other procedural requirements made applicable to the agencies by other statutes.

Sec. 8. Exemptions.

- (a) The procedures prescribed by this Order shall not apply to:
- (1) Any regulation that responds to an emergency situation, *provided that*, any such regulation shall be reported to the Director as soon as is practicable, the agency shall publish in the **Federal Register** a statement of the reasons why it is impracticable for the agency to follow the procedures of this Order with respect to such a rule, and the agency shall prepare and transmit as soon as is practicable a Regulatory Impact Analysis of any such major rule; and
 - (2) Any regulation for which consideration or reconsideration under the terms of this Order would conflict with deadlines imposed by statute or by judicial order, *provided that*, any such regulation shall be reported to the Director together with a brief explanation of the conflict, the agency shall publish in the **Federal Register** a statement of the reasons why it is impracticable for the agency to follow the procedures of this Order with respect to such a rule, and the agency, in consultation with the Director, shall adhere to the requirements of this Order to the extent permitted by statutory or judicial deadlines.
- (b) The Director, subject to the direction of the Task Force, may, in accordance with the purposes of this Order, exempt any class or category of regulations from any or all requirements of this Order.

Sec. 9. Judicial Review. This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person. The determinations made by agencies under Section 4 of this Order, and any Regulatory Impact Analyses for any rule, shall be made part of the whole record of agency action in connection with the rule.

Sec. 10. Revocations. Executive Orders No. 12044, as amended, and No. 12174 are revoked

Executive Order 11991
Environmental Impact Statements

May 24, 1977

RELATING TO PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the purpose and policy of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the Environmental Quality Improvement Act of 1970 (42 U.S.C. 4371 et seq.), and Section 309 of the Clean Air Act, as amended (42 U.S.C. 1857h-7), it is hereby ordered as follows:

SECTION 1. Subsection (h) of Section 3 (relating to responsibilities of the Council on Environmental Quality) of Executive Order No. 11514, as amended, is revised to read as follows:

"(h) Issue regulations to Federal agencies for the implementation of the procedural provisions of the Act (42 U.S.C. 4332(2)). Such regulations shall be developed after consultation with affected agencies and after such public hearings as may be appropriate. They will be designed to make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses. The Council shall include in its regulations procedures (1) for the early preparation of environmental impact statements, and (2) for the referral to the Council of conflicts between agencies concerning the implementation of the National Environmental Policy Act of 1969, as amended, and Section 309 of the Clean Air Act, as amended, for the Council's recommendation as to their prompt resolution."

SEC. 2. The following new subsection is added to Section 2 (relating to responsibilities of Federal agencies) of Executive Order No. 11514, as amended:

"(g) In carrying out their responsibilities under the Act and this Order, comply with the regulations issued by the Council except where such compliance would be inconsistent with statutory requirements."

JIMMY CARTER

The White House,

May 24, 1977.

[Filed with the Office of the Federal Register, 1:45 p.m., May 24, 1977]

Executive Order 11514

Protection and Enhancement of Environmental Quality

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law No. 91-190, approved January 1, 1970), it is ordered as follows:

Section 1. Policy.

The Federal Government shall provide leadership in protecting and enhancing the quality of the Nation's environment to sustain and enrich human life. Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals. The Council on Environmental Quality, through the Chairman, shall advise and assist the President in leading this national effort.

Sec. 2. Responsibilities of Federal agencies.

Consonant with Title I of the National Environmental Policy Act of 1969, hereafter referred to as the "Act", the heads of Federal agencies shall:

- (a) Monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities. Heads of agencies shall consult with appropriate Federal, State and local agencies in carrying out their activities as they affect the quality of the environment.
- (b) Develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Federal agencies shall also encourage State and local agencies to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment.
- (c) Insure that information regarding existing or potential environmental problems and control methods developed as part of research, development, demonstration, test, or evaluation activities is made available to Federal agencies, States, counties, municipalities, institutions, and other entities, as appropriate.
- (d) Review their agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the purposes and provisions of the Act. A report on this review and the corrective actions taken or planned, including such measures to be proposed to the President as may be necessary to bring their authority and policies into conformance with the intent, purposes, and procedures of the Act, shall be provided to the Council on Environmental Quality not later than September 1, 1970.
- (e) Engage in exchange of data and research results, and cooperate with agencies of other governments to foster the purposes of the Act.
- (f) Proceed, in coordination with other agencies, with actions required by section 102 of the Act.
- (g) In carrying out their responsibilities under the Act and this Order, comply with the regulations issued by the Council except where such compliance would be inconsistent with statutory requirements.

Sec. 3. Responsibilities of Council on Environmental Quality

The Council on Environmental Quality shall:

- (a) Evaluate existing and proposed policies and activities of the Federal Government directed to the control of pollution and the enhancement of the environment and to the accomplishment of other objectives which affect the quality of the environment. This shall include continuing review of procedures employed in the development and enforcement of Federal standards affecting environmental quality. Based upon such evaluations the Council shall, where appropriate, recommend to the President policies and programs to achieve more effective protection and enhancement of environmental quality and shall, where appropriate, seek resolution of significant environmental issues.

- (b) Recommend to the President and to the agencies priorities among programs designed for the control of pollution and for enhancement of the environment.
- (c) Determine the need for new policies and programs for dealing with environmental problems not being adequately addressed.
- (d) Conduct, as it determines to be appropriate, public hearings or conferences on issues of environmental significance.
- (e) Promote the development and use of indices and monitoring systems (1) to assess environmental conditions and trends, (2) to predict the environmental impact of proposed public and private actions, and (3) to determine the effectiveness of programs for protecting and enhancing environmental quality.
- (f) Coordinate Federal programs related to environmental quality.
- (g) Advise and assist the President and the agencies in achieving international cooperation for dealing with environmental problems, under the foreign policy guidance of the Secretary of State.
- (h) Issue regulations to Federal agencies for the implementation of the procedural provisions of the Act (42 U.S.C. 4332(2)). Such regulations shall be developed after consultation with affected agencies and after such public hearings as may be appropriate. They will be designed to make the environmental impact statement process more useful to decision makers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses. The Council shall include in its regulations procedures (1) for the early preparation of environmental impact statements, and (2) for the referral to the Council of conflicts between agencies concerning the implementation of the National Environmental Policy Act of 1969, as amended, and Section 309 of the Clean Air Act, as amended, for the Council's recommendation as to their prompt resolution.
- (i) Issue such other instructions to agencies, and request such reports and other information from them, as may be required to carry out the Council's responsibilities under the Act.
- (j) Assist the President in preparing the annual Environmental Quality Report provided for in section 201 of the Act.
- (k) Foster investigations, studies, surveys, research, and analyses relating to (i) ecological systems and environmental quality, (ii) the impact of new and changing technologies thereon, and (iii) means of preventing or reducing adverse effects from such technologies.

Sec. 4. Amendments of E.O. 11472.

[EDITOR'S NOTE: E.O. 11472 *expired* January 5, 1977]

/s/ Richard Nixon

THE WHITE HOUSE

March 5, 1970

Appendix F
County Resolutions

Resolution No. 13__

**A Resolution of _____ Board of Commissioners
Adopting
The Natural Resource Coordination Plan
of
the Kansas Natural Resource Coalition**

WHEREAS, The complex array, varying missions, and potentially conflicting roles of local, state, or federal agencies suggests need of a systematic approach to natural-resource conservation that assures this County receives timely communication, a means to exchange technical information, ample opportunity to understand, vet, affect or arbitrate natural resource or environmental issues;

WHEREAS, This County has an ongoing interest and participative role in federal and state policies that could, do or will affect its populations, interests, properties, culture or socioeconomic wellbeing;

WHEREAS, Government to Government Coordination provides the means, mechanism and opportunity to effectively solicit, communicate and exchange information, data, issues or plans between governmental agencies;

WHEREAS, This County has, will and can establish resource priorities that work *to create and maintain conditions in which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of its members*;

WHEREAS, The Natural Resource Coordination Plan provides the background, history, justification and basis for effective Government-to-Government Coordination;

WHEREAS, This County desires to exercise, either individually or collectively as part of a group, its right to Coordinate with respective governmental agencies;

WHEREAS, This County recognizes the statutory obligation of the United States Bureau of Land Management; United States Department of Interior; United States Fish and Wildlife Service; United States Department of Agriculture; United States Environmental Protection Agency; United States Forest Service, and other federal and state agencies undertaking actions within its boundaries to attempt consistency with the policies, plans and natural-resource conservation programs of this County in their planning, inventory and management activities.

NOW THEREFORE, BE IT RESOLVED THAT THE BOARD OF COUNTY COMMISSIONERS OF _____COUNTY, KANSAS RESOLVE TO:

1. ADOPT The principals, practices and policies of the Natural Resource Coordination Plan of the Kansas Natural Resource Coalition.

This Resolution was approved and adopted this _____ day of August, 2013.

BOARD OF COUNTY COMMISSIONERS:

_____COUNTY, KANSAS

Chairman

Member

Member

ATTEST: County Clerk _____