
November 21, 2019

Daniel James Jiron
Acting Deputy Under Secretary
Natural Resources and the Environment
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Dear Mr. Jiron:

The Western Governors' Association (WGA) appreciates the U.S. Forest Service's (USFS) commitment to implementing Section 8705 of the 2018 Farm Bill by updating its permitting practices for communications and broadband infrastructure. Modernizing these regulations will help expedite western rural access to broadband connectivity.

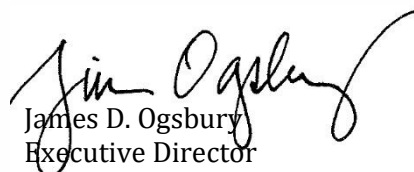
WGA Policy Resolution 2018-15, *Modernizing Western Infrastructure*, states that, "Western Governors support improved infrastructure permitting and environmental review processes that result in more efficient reviews." The USFS's [proposed rule](#) on Land Uses; Special Uses; Streamlining Processing of Communications Use Applications contains several provisions that reflect this recommendation. These changes include: expanded authority of the current categorical exclusion (CE) for special use authorizations; establishment of a new CE to streamline reissuance of special use authorizations; and revised directives to expedite requests to co-locate communications uses in or on existing communications facilities.

WGA supports these revisions and appreciates the ongoing efforts by USFS to develop an online mapping tool of communications sites on National Forest System (NFS) lands. Providing this information in a digital format will enable state agencies and private industry to more effectively plan and execute broadband infrastructure projects in rural areas.

WGA views the USFS as a critical partner in supporting healthy ecosystems and vibrant rural communities across the West. Please consider Western Governors as engaged and invested partners as you evaluate future decisions related to broadband infrastructure permitting and other issues on NFS lands.

Thank you for your attention to this matter. Please let us know how Western Governors may be of assistance as you implement these regulations.

Respectfully,



James D. Ogsbury
Executive Director

Attachment



Policy Resolution 2018-15

Modernizing Western Infrastructure

A. **BACKGROUND**

1. Western states depend on a safe, reliable and resilient network of infrastructure to move goods, people, energy, and agricultural products to meet growing demands across our nation and world. Investments to modernize our state's infrastructure, including ports, water systems, bridges, pipelines, highways, airports, electric generation and transmission, communications facilities, recreational assets and railways not only support the economic well-being of our communities, they also serve to position our economies to attract and retain investment through maintaining our competitive advantage in a growing global marketplace. Because a significant portion of the West is federally-owned, federal processes impact the region's infrastructure.
2. Modernizing and maintaining the West's network of infrastructure relies upon permitting and review processes that require close coordination and consultation among state, federal and tribal governments. State and federal coordination is necessary to ensure that infrastructure projects are designed, financed, built, operated and maintained in a manner that meets the needs of our economies, environment, public health, safety and security. Early, ongoing, substantial, and meaningful state-federal consultation can provide efficiency, transparency, and predictability for states, as well as prevent delays, in the federal permitting and environmental review process.
3. Western Governors applaud the principles and intent of the National Environmental Policy Act (NEPA) which, since its enactment in 1970, has required that federal agencies consider how proposed federal actions may impact natural, cultural, economic and social resources for present and future generations of Americans. The process by which NEPA is implemented has been defined over time through regulations and guidance issued by the Council on Environmental Quality (CEQ).
4. Congress recognized the need for improved state-federal coordination in the NEPA process in the Fixing America's Surface Transportation (FAST) Act, passed in December 2015, which implements reforms regarding cooperating agency status and coordination with state and local governments. This statute should be consistently implemented.
5. NEPA mandates federal agency cooperation with state and local governments through the designation of qualified "cooperating agencies." Under existing law, an entity shall: (i) participate in the NEPA process at the earliest possible time; (ii) participate in the NEPA scoping process; (iii) assume, at the lead agency's request, responsibility for developing information and preparing environmental analyses; (iv) provide staff support upon request of the lead agency; and (v) use its own funds in its participation as a cooperating agency.¹

¹ 40 CFR § 1501.6(b).

6. The manner in which cooperating agencies are selected by a lead agency to participate in the NEPA process is unclear and inconsistently implemented. Additionally, a lead agency's determination of whether or not to grant cooperating agency status to a federal or non-federal governmental entity is not subject to judicial review.
7. State and local governments often have the best available science, data and expertise related to natural resources within their borders. In cases where the states have primary management authority, such as wildlife and water governance, states also possess the most experience in managing those resources and knowledge of state- and locality-specific considerations that should inform infrastructure siting decisions.

B. GOVERNORS' POLICY STATEMENT

1. Western Governors support improved infrastructure permitting and environmental review processes that result in more efficient reviews without shortening timelines for state input and consultation, or compromising natural resource, wildlife, environmental quality or cultural values.
2. Western states have a diverse mix of infrastructure needs spanning rural and urban areas and across multiple sectors of our economies. Infrastructure financing reforms should recognize this diversity and should avoid shifting costs to states or creating undue or disproportionate impacts to the infrastructure that connects the West's cities and rural communities with the nation and world. Federal infrastructure financing appropriations should acknowledge and support the diverse infrastructure needs facing western states.
3. The federal infrastructure permitting and environmental review process must be transparent, predictable and consistent for states and project developers. Federal processes must ensure that agencies set, and adhere to, timelines and schedules for completion of reviews and develop improved metrics for tracking and accountability.
4. Federal programs that increase bottom-up coordination among agencies, state and local governments and that foster collaboration among diverse stakeholders and project proponents can create efficiency and predictability in the NEPA process, including reducing the risks of delays due to litigation.
5. State, local and tribal governments, as well as their political subdivisions, have unique and critical duties to serve their citizens and should not be considered ordinary "stakeholders" for purposes of the NEPA process.
6. Federal agencies should be required to engage with states and state agencies in early, meaningful, substantive and ongoing consultation. Federal agencies should be required to invite all qualified state governmental entities to participate in the NEPA process as "cooperating agencies" and promulgate regulations to clarify consultation procedures and states' roles as cooperating agencies. The denial of any *bona fide* request for cooperating status should be accompanied by a clear and thorough explanation from the lead agency denying such request, citing specific factors the agency used in its determination. Such information should be recorded and maintained by the lead federal agency and collected by the Office of Management and Budget.

7. Western Governors encourage consistency in the implementation of NEPA within and among agencies and across regions. The federal government should identify and eliminate inconsistencies in environmental review and analysis across agencies to make the process more efficient.
8. Federal NEPA regulations should allow for existing state environmental review processes to supplement and inform federal environmental review under NEPA. Federal agencies, in their NEPA implementation guidelines, should encourage joint reviews with the states where possible.
9. The federal government should consider and apply peer-reviewed environmental science in a consistent manner across agencies as each undertake their NEPA reviews of different projects' impacts on and contributions to environmental quality. Federal agencies should work directly with states to obtain and use up-to-date state data and analyses as critical sources of information in the NEPA process.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Governors direct WGA staff to work with Congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

Western Governors enact new policy resolutions and amend existing resolutions on a bi-annual basis. Please consult www.westgov.org/policies for the most current copy of a resolution and a list of all current WGA policy resolutions.