RAS 11463

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

CHAIRMAN

May 12, 2003

The Honorable Norman Y. Mineta
Secretary, Department of Transportation
400 Seventh St., S.W., Room 10200
Washington, D.C. 20590

Dear Secretary Mineta:

I write in response to your letter of May 6, 2003, asking for the Council on Environmental Quality's (CEQ) guidance on the issue of "purpose and need" in the context of compliance with CEQ's regulations implementing the procedural provisions of NEPA. Your letter refers to the fact that the Interagency Transportation Infrastructure Streamlining Task Force has identified "purpose and need" as a priority issue in need of clarification. Specifically, you ask for guidance on the appropriate exercise of authority by lead and cooperating agencies in determining the purpose and need.

The requirement for a discussion of "purpose and need" in an environmental impact statement under the CEQ regulations is to "briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." 40 C.F.R. §1502.13. This discussion, typically one or two paragraphs long, is important for general context and understanding as well as to provide the framework in which "reasonable alternatives" to the proposed action will be identified.

The lead agency -- the federal agency proposing to take an action -- has the authority for and responsibility to define the "purpose and need" for purposes of NEPA analysis. This is consistent with the lead agency's responsibilities throughout the NEPA process for the "scope, objectivity, and content of the entire statement or of any other responsibility" under NEPA. 42 U.S.C. §4332(D); see also, 40 C.F.R. §§1501.5, 1506.5.

Federal courts generally have been deferential in their review of a lead agency's "purpose and need" statements, absent a finding that an agency acted in an arbitrary or capricious manner. They have recognized that federal agencies should respect the role of local and state authorities in the transportation planning process and appropriately reflect the results of that process in the federal agency's NEPA analysis of purpose and need. *North Buckhead Civic Assoc. v. Skinner*, 903 F.2d 1533 (11th Cir. 1990). Courts have cautioned agencies not to put forward a purpose and need statement that is so narrow as to "define competing 'reasonable alternatives' out of consideration (and even out of existence)", *Simmons v. U.S Army Corps of Engineers*, 120 F.3rd 664 (7th Cir. 1997); (see also, *Alaska Wilderness Recreation and Tourism Association v. Morrison*, 67 F.3d 723 (9th Cir. 1995).

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In situations involving two or more agencies that have a decision to make for the same proposed action and responsibility to comply with NEPA or a similar statute, it is prudent to jointly develop a purpose and need statement that can be utilized by both agencies. An agreed-upon purpose and need statement at this stage can prevent problems later that may delay completion of the NEPA process. As Congress stated in the Federal Aid Highway Act of 1973, "It is the national policy that to the maximum extent possible the procedures to be utilized by the Secretary and all other affected heads of Federal departments, agencies, and instrumentalities for carrying out this title and any other provision of law relating to the Federal highway programs shall encourage the substantial minimization of paperwork and interagency decision procedures and the best use of available manpower and funds so as to prevent needless duplication and unnecessary delays at all levels of government", 23 U.S.C. §101(e); see also, CEQ's regulations implementing NEPA at 40 C.F.R. §§1500.4, 1500.5.

In the case of a proposal intended to address transportation needs, joint lead or cooperating agencies should afford substantial deference to the DOT agency's articulation of purpose and need. 49 U.S.C. §101(b)(5). This deference reflects CEQ's expectation and experience in other settings where an agency has the primary substantive expertise and program responsibility. If a cooperating or joint lead agency identifies substantive or procedural problems with the purpose and need statement, including an omission of factors, important to that agency's independent legal responsibilities, the agency should raise those issues immediately and, if necessary, elevate those issues to higher level decisionmakers in the region and at headquarters for resolution. Thoughtful resolution of the purpose and need statement at the beginning of the process will contribute to a rational environmental review process and save considerable delay and frustration later in the decisionmaking process.

Please let me know if you have any further questions regarding this issue. Thank you for your leadership and I commend your department officials for the work they are undertaking in fulfilling the President's direction.

Sincerely,

[Original signed by]

James L. Connaughton

U.S. NUCLEAR REGULATORY COMMISSION
In the Matter of Louisiana Energy Services, LP
Docket No. 70-3103-ML Official Exhibit No. Staff-64-M
OFFERED by: Applicant/Licensee Intervenor
NRC Staff
IDENTIFIED on 3/10/06 Witness/Panel Staff Purpose & Need
Action Taken: ADMITTED REJECTED WITHDRAWN
Reporter/Clerk

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