

Desk Guide to
Cooperating Agency Relationships

2008

Missouri River Ecosystem Restoration Plan
United States Army Corps of Engineers



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Section 1

Introduction: The Corps' Cooperating Agency Initiative

Over the past one hundred years, the Missouri River has been highly altered due to channelization and bank stabilization projects. As a result, the river has lost connection to much of the original floodplain resulting in degradation of its natural habitats and processes. The Missouri River Ecosystem Restoration Plan (MRERP) was initiated to reestablish the river's naturally beneficial qualities and provide all its biota with a healthier living environment, while continuing to support human uses on the river mainstem. The MRERP is intended to coordinate and fill gaps in existing programs to better meet the ecological needs of the Missouri River.

Among the challenges of the MRERP is collaborating effectively with the public, federal partners, tribes, stakeholders and state and private organizations. This guide serves as a tool for creating more effective governmental partnerships, in particular, the lead agency-cooperating agency (CA) relationship (referred to in this guide as the cooperating agency relationship or CA relationship). It is intended to assist all parties in better executing the National Environmental Policy Act (NEPA) responsibilities of the United States Army Corps of Engineers (Corps). Although this guide concentrates on the establishment of formal cooperating agency relationships in planning the MRERP, partnering with Tribal and State governments — as well as with other Federal agencies — should be part of standard practices the Corps will implement before, during, and after the MRERP has been executed.

Section 1 of this desk guide introduces the CA relationship and describes the opportunities and challenges it entails for the Corps and its governmental partners.

Section 2 describes the CA eligibility requirements and the appropriate roles for CAs at each step of the MRERP process.

Section 3 provides answers to frequently asked questions regarding effective working relationships with CAs.

Section 4 describes the process for establishing and the function of the Cooperating Agency Team (CAT).

Section 5 describes other sources of information and resources used for this guide for the interest of the CAs and other interested parties.



The Corps' Cooperating Agency Guidelines

The CA relationship is distinctive, moving beyond consultation to engage officials and staff of other agencies in a working partnership. CAs share skills and resources that help shape the MRERP process to better reflect the policies, needs, and conditions of their jurisdictions and the citizens they represent. By providing a framework for intergovernmental efforts, the CA relationship can help the Corps achieve a number of objectives throughout the planning and implementation processes:

- Gain early and consistent involvement of CA partners;
- Incorporate local knowledge of environmental and socioeconomic conditions, as well as Tribal, State and local land use requirements; address intergovernmental issues;
- Avoid duplication of effort;
- Enhance local credibility of the planning review process; encourage CA support for planning decisions;
- Acquire knowledge of local Tribal traditions; and
- Build relationships of trust and cooperation.

By participating in this collaborative process, the CAs have an opportunity to:

- Actively engage in the planning process early and throughout the process;
- Participate in the development of the purpose, need, and objectives of the study as well as formulation and analysis of the alternatives;
- Define the environmental and socioeconomic conditions of the region;
- Ensure that their agency concerns and the concerns of their constituents are considered; and
- Directly make a recommendation to the lead agency as to the preferred alternative.

Section 1

The CA role is derived from the NEPA of 1969, which calls on Federal, State, and local governments to cooperate with the goal of achieving “productive harmony” between humans and their environment. The Council on Environmental Quality’s (CEQ) regulations implementing NEPA allow Federal agencies (as lead agencies) to invite Tribal, State, and local governments, as well as other Federal agencies, to serve as CAs in the preparation of environmental impact statements (EIS).

Challenges Facing the MRERP

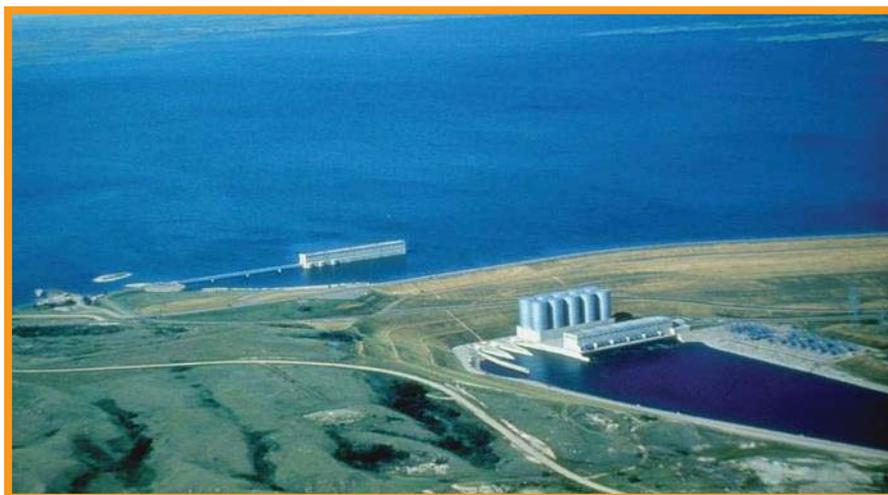
Developing an EIS covering the entire Missouri River is an enormous and complex challenge. In undertaking this endeavor, the Corps must consistently implement Federal laws, regulations, and policies while maintaining local laws, needs, and values. The CA partnership facilitates congruency between Federal and local views by providing a bridge between federal interests and the knowledge of local conditions necessary in overcoming the challenges that can arise from unfamiliarity. Such common challenges include:

- **Local Factors.** Tribal, State, and local government officials are at times in a better position than are Federal agencies to engage the communities and interest groups most likely to be affected by a plan, as well as provide information regarding the environmental, biological, and socioeconomic impacts of the MRERP on a more localized basis.
- **Complex Information.** The sheer size of the Missouri River alone is cause for concern in terms of gathering facts for the project. Productive discussion between Federal agencies, local agencies, Tribal and State governments, and local experts can sometimes come to a halt when facts are misconstrued, especially when it comes to environmental and socioeconomic

conditions and how the plan will affect an area and its inhabitants. Resolution often requires the lead agency and cooperating agency partners to engage in joint fact-finding efforts to seek agreement on where to find valid information and how to interpret it.

- **Conflicting Policies and Institutions.** The challenge of developing the MRERP can reveal significant disagreements in jurisdictions and mandates, not only between Federal, Tribal, State and local governments, but also among different Federal or State agencies. The CA relationship offers an opportunity to discuss and, if possible, resolve divergent policies and plans for the common good.

Intergovernmental cooperation in the planning of the MRERP will yield great benefits for the public and the environment. The cooperating agency relationship can advance joint efforts among governmental partners. The CA relationship is a forum for sharing information and expertise, not for asserting or relinquishing authority. Engaging in a CA relationship neither augments nor diminishes an agency’s jurisdiction and authority. When mutual benefit is the goal, the CA relationship functions most effectively.



Section 2

Implementing the Cooperating Agency Relationship

This section of the desk guide explains the requirements regarding CA relationships developed by the Corps. The CEQ regulations implementing the NEPA govern the CA relationship for all Federal agencies preparing EISs under the NEPA. The Corps' regulations and policies regarding CAs are in agreement with those of CEQ.

The Role of Cooperating Agencies

The CEQ regulations call for early and significant involvement by cooperating agencies in the preparation of an EIS. Both lead and cooperating agencies assume significant obligations in offering and accepting the CA relationship.

As the lead agency, the Corps is expected to use the analysis and proposals of a CA "to the maximum extent possible consistent with its responsibility" (40 CFR 1501.6 (a) (2)).

CAs agree to contribute staff to the CAT, develop analyses for which they have particular expertise, and fund their own participation.

The MRERP is a collaborative process that will identify objectives, develop a set of reasonable alternatives to meet those objectives, and perform analysis of those alternatives to determine the alternative that best meets the objectives and provides the most benefits. This process will ultimately lead to the plan and EIS.

Once becoming a CA partner, the agency remains a CA throughout the entire NEPA process, unless they withdraw due to exhausted resources or funding.

40 CFR 1501.6 (CEQ)

Roles of lead and cooperating agencies.

- (a) The lead agency shall:
1. Request the participation of each cooperating agency in the NEPA process at the earliest possible time.
 2. Use the environmental analysis and proposals of cooperating agencies with "jurisdiction by law" or "special expertise," to the maximum extent possible consistent with its responsibility as lead agency.
 3. Meet with a cooperating agency at the latter's request.
- b) Each cooperating agency shall:
1. Participate in the NEPA process at the earliest possible time.
 2. Participate in the scoping process.
 3. Assume on request of the lead agency responsibility for

developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has "special expertise."

4. Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability. Normally use its own funds.
5. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

Eligibility for CA Status

State agencies, local governments, Tribal governments, and other Federal agencies may be eligible to serve as CAs. Other than its provisions for Tribes (see subsection Eligibility of Tribes), CEQ regulations recognize two criteria for CA status: jurisdiction by law and special expertise.

40 CFR 1508.5 (CEQ) Defining Eligibility.

"Cooperating agency" means any federal agency other than a lead agency, which has "jurisdiction by law" or "special expertise" with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major federal action significantly affecting the quality of the human environmentA state or local agency of similar qualifications or, when the effects are on a reservation, an Indian tribe, may by agreement with the lead agency become a cooperating agency.

40 CFR 1508.15 (CEQ) Jurisdiction by law.

"Jurisdiction by law" means agency authority to approve, veto, or finance all or part of the proposal.

Jurisdiction by law offers a very specific basis for CA status and clearly states its statutory obligation to assist in EIS development and implementation.

40 CFR 1508.26 (CEQ) Special expertise.

"Special expertise" means statutory responsibility, agency mission, or related program experience.

Special expertise provides a broader window for CA status, emphasizing the relevant capabilities or knowledge that a Federal, Tribal, State, or local governmental entity can contribute to the MRERP stemming from its statutory responsibilities or agency mission.

Section 2

State and Local Concerns

The Corps and CAs are to be aware of State and regional needs. As stated in the U.S. Water Resources Council [Principles and Guidelines](#), March 1983, "Federal water resources planning is to be responsive to State and local concerns. Accordingly, State and local participation is to be encouraged in all aspects of water resources planning. Federal agencies are to contact Governors or designated State agencies for each affected State before initiating studies, and to provide appropriate opportunities for State participation."

Eligibility of Tribes

The CEQ regulations specify that a Tribe is eligible for CA status "when the effects [of an undertaking] are on a reservation" (40 CFR 1508.5). For the MRERP, the Corps will apply the same criteria for Federal, State, local, and Tribal government entities: *jurisdiction by law* or *special expertise* (43 CFR 1601.0-5(d)(2)).

In addition to the cooperating agency relationship with Tribal governments, the Corps has responsibilities under other laws, regulations, and policies to consult with Tribes on planning projects. Additional information about the Tribal consultation process for the MRERP can be found in the MRERP Tribal Consultation Plan.

Inviting Participation

CEQ regulations permit a lead agency to invite other eligible agencies and governments to assume a CA role "at the

earliest possible time" (40 CFR 1501.6). Project Managers are expected to make a reasonable effort to identify Federal, Tribal, State and local entities possessing *jurisdiction by law* or *special expertise* concerning the area potentially affected by the project. Conversely, when a government entity requests CA status, the request must be evaluated against CA eligibility criteria. If either of the criteria (*jurisdiction by law* or *special expertise*) is met, CA status can be granted.

Establishing Participation

To establish CA status, the Corps will send a Letter of Invitation to the eligible government entity. The Letter of Invitation will include a brief outline of the roles of a cooperating agency in the MRERP study and an invitation for the entity to establish itself as a formal CA in the study. To establish the formal CA relationship, the eligible government entity will send a written response back to the Corps stating their intent to serve as a CA in the MRERP study. The roles and responsibilities for each CA will be formalized when the CAT is formed and develop their operating procedures.

Implementing the Cooperating Agency Relationship

NEPA sets forth that CAs should be sought early in the process. Gathered early, the CA knowledge of regional biological status, physical processes, socioeconomic conditions, and culture will be used to further benefit the MRERP.



Section 2

Preparation Planning

Every Civil Works project will have its own set of guidelines to abide by in order to efficiently carry out and implement a plan. The following “road map” of steps has been created specifically to apply to the MRERP to ensure its effective execution.

1. Project Initiation

Omaha District, Kansas City District, and the U.S. Fish and Wildlife Service (USFWS) will collaborate to compile the relevant scientific research and ecological models; develop preliminary scope, purpose and need statements; and develop a set of communications tools. Early in this phase, informal discussions with potential cooperating agencies will begin followed by formal invitations for CA status. Members from the Corps, USFWS, and each CA will form the CAT.

Suggested Roles for CAs: Establish the formal cooperating agency relationship. Appoint a member and an alternate to serve on the CAT.

2. Define Purpose and Need & Assess the Affected Environment

This phase includes all activities required to initiate preparation and development of an EIS. It includes notifying the public of the project by publishing a Notice of Intent in the Federal Register and initiating the public scoping process; defining the project purpose, need, and objectives statements through a series of CAT meetings and public scoping meetings for incorporation into the draft EIS; developing a conceptual ecological model; and succinctly describing the existing environmental conditions and resource baselines in the Affected Environment Section of the draft EIS.

Suggested Roles for CAs: Identify relevant local and regional organizations and interest groups, sponsor public workshops with lead agency, collaborate in assessing scoping comments. Identify data needs; provide data and technical analyses within CA's expertise. Provide information (such as local monitoring and baseline data) for the ecological model and draft affected environment section of the EIS and help interpret the ecological model to constituents as appropriate.

3. Consider Alternatives with Public Input

The CAT will utilize public input to formulate the No Action Alternative and a suite of reasonable alternatives to achieve the MRERP purpose, need, goals, and objectives. The information gathered during this phase will be used to prepare the Alternatives Chapter of the draft EIS.



Suggested Roles for CAs: Sponsor public workshops with lead agency to obtain local input on alternatives development. Suggest potential alternatives; suggest management actions to resolve issues.

4. Analyze Impacts

The CAT will assist in analyzing the impacts (adverse and beneficial) and the significance of impacts on the environment of the area(s) to be affected or created by the alternatives under consideration. These impacts will be documented in the Environmental Consequences Chapter of the draft EIS.

Suggested Roles for CAs: Suggest models and methods for impact analyses; provide effects analysis within CA's expertise; identify direct, indirect, and cumulative effects within CA's expertise; suggest mitigation measures for adverse effects.

5. Develop Adaptive Management Strategy

The concept of an adaptive management (AM) strategy must be understood by the MRERP participants in order to successfully plan for the future. AM is an ongoing progression of problem-solving measures that emphasizes learning while doing. When a problem is encountered, AM will be implemented to not only repair setbacks, but to alter the process to better suit individual situations. This phase will consist of developing an adaptive management plan for evaluating and adjusting management actions implemented as a result of MRERP over the course of implementation based upon new information. This plan will include the development of a monitoring plan, an assessment process and schedule, and a governance and decision-making process.

Section 2

Suggested Roles for CAs: Assist in developing adaptive management measures and monitoring strategy within the CA's expertise.

6. Solicit MRERP Review/Comment

This phase will consist of consolidating all previously prepared draft chapters and appendices into a complete draft MRERP/EIS and release of the document to all interested parties. Comments will be solicited from appropriate Federal, State, and local agencies, Tribes, the public, and any person or organization that may be interested or affected. A series of meetings will be held within the basin to answer questions on the draft MRERP/EIS and solicit comments.

Suggested Roles for CAs: Collaborate with lead agency in evaluating alternatives; provide information for draft EIS. Sponsor public workshops with lead agency to obtain input on draft plan/EIS. Just as other agencies and members of the public do, CAs may also provide written public comments on the published draft EIS if desired.

7. Consider Comments and finalize MRERP and EIS

This phase includes all the activities necessary to consider and respond to comments received on the draft MRERP/EIS, revise (especially changes to alternatives or impact analysis conclusions) and finalize the MRERP and EIS, prepare the document for printing and print the required copies, prepare and publish a Notice of Availability for the final MRERP and EIS, prepare a draft and final Record of Decision (ROD), and hold meetings/briefings necessary to complete these tasks.

Suggested Roles for CAs: Review comments within CA's expertise and assist in preparing responses. Suggest changes to alternatives or analysis as appropriate when comments dictate.

8. Project Closeout

Once the ROD has been signed the planning phase of the project will be complete and the project will move into the implementation phase.

Suggested Roles for CAs: CAs have a limited role in this phase.

Plan Implementation

When the Record of Decision is signed, the EIS has been completed. While formal CA status for the EIS ends at this time, Tribal, local, State, and Federal entities are strongly encouraged to work with the Corps and stakeholders to implement the EIS through on-the-ground projects and other support. Such projects will range from small actions, with few effects (endangered species bird counting), to large actions with the potential for significant effects (chute construction). Actions approved by the Corps under the EIS will be conducted under the appropriate level of environmental analysis under the NEPA.

Section 3

Cooperating Agency Issues: Questions and Answers

A. Establishing the Cooperating Agency Relationship

Q1. What types of organizations may serve as CAs?

A1. CA status is limited to governmental entities. Depending on the scope and scale of the project, these include Federal agencies, and can include Tribal, State, and local governments.

Q2. If an agency is not a CA, what other ways are there to provide input into the MRERP planning process?

A2. There will be many opportunities for participation in the study. Series of public meetings and workshops will be held throughout the basin at many points within the planning process. In addition, agencies and the public may also comment on the draft and final EIS when released for public comment.

Q3. What discretion do Federal agencies have when requested to serve as CAs?

A3. A Federal agency eligible on the basis of jurisdiction by law must serve as a CA when so requested. A Federal agency eligible on the basis of special expertise, and a Tribal, State, or local entity eligible on either basis may choose whether or not to serve as a CA when so requested.

As stated in the NEPA, "Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency" (40 CFR 1501.6).

Q4. Is it appropriate to extend or shorten a planning schedule to accommodate the needs of CAs?

A4. The preferences of CAs regarding the pace and direction of collaborative planning efforts do not supersede the need to adhere to a schedule that meets the legal and policy requirements of the lead agency. However, whenever possible, a mutually agreeable planning schedule should be established.

Q5. What discretion does the Corps have to determine the scope of a CA's special expertise?

A5. The criterion of special expertise emphasizes the relevant capabilities or knowledge that a CA can contribute to the planning process and associated EIS. The Corps should offer CA status to potentially eligible government entities when preparing or revising an EIS. The Corps has a responsibility to determine which entities possess special expertise relative to a proposed EIS and the nature of their expertise.



Section 3

B. Scope of the Cooperating Agency Relationship

Q1. May the CAs use their expertise to prepare analyses that may be used by the Corps as sections of the EIS, as well as comment on sections of the EIS or the technical analyses on which it is based?

A1. Yes, the Corps may request CA to prepare an analysis when the CA possess the knowledge to complete the task in a timely manner. As stated in the NEPA, “[t]he lead agency shall... [u]se the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency” (40 CFR 1501.6 (a)).

Q2. Within the planning process, is a CA limited to participating only on the topics on which the Corps has acknowledged its jurisdiction by law or special expertise?

A2. A CA is entitled to collaborate as part of the planning process in those areas for which jurisdiction by law or special expertise is acknowledged. A CA’s formal involvement on other issues is at the Corps discretion, taking into account the CA’s policy concerns, the staff and resources it can reasonably contribute to the planning effort, the plan schedule, and other constraints.

Q3. Will the Corps compensate the CAs for their participation?

A3. Generally, no. The CA should establish its extent of allowable resources prior to collaboration. CAs are expected to participate using their funds throughout the partnership, however, the Corps may reimburse major activities or analyses it requests from the CAs within its expertise where funding is available (40 CFR 1501.6(b)(5)).

C. Terminating the Cooperating Agency Relationship

Q1. Under what circumstances may the CA relationship be terminated?

A1. Factors identified by the CEQ as suggesting the need to consider termination include a CA’s unwillingness to accept the lead agency’s key decisions; deliberately violating key procedural agreements (such as the restriction of pre-decisional

documents); and deliberately misrepresenting the planning and EIS process or its findings. The party wishing to terminate the CA relationship should send a written request to the other party stating its intent to withdraw from the CA relationship and the reason for wishing to end the relationship.

D. Tribal Participation as a Cooperating Agency

Q1. When are Tribes considered CAs?

A1. The CEQ NEPA regulations allow Tribes to serve as CAs “when the effects [of a proposed action] are on a reservation” (40 CFR 1508.5). For the MRERP process, the Corps will use the same eligibility criteria for Tribes as for Federal, State, and local government entities: jurisdiction by law or special expertise. Thus, the proposed action doesn’t need to effect a reservation for a Tribe to be considered as a CA.

Q2. Must a Tribe be Federally recognized to be eligible to serve as a CA?

A2. Yes. Only governmental entities can be CAs. Under Federal law, only Federally recognized Tribes qualify as governments (25 U.S.C. 479a).

Q3. To what extent are Tribes allowed to contribute if they are not CAs?

A3. All Federally recognized Tribes located within the basin will be consulted with in some manner regardless of their status as CAs. Discussions between the Corps and Tribes will be consistently conducted on a government-to-government basis.

Section 4

The Cooperating Agency Team

The intimate knowledge of regional and local-level social, economic, environmental, and cultural conditions that the members of an CAT bring to the table represents an invaluable resource to the MRERP. The CAT will consist of members from the Corps, USFWS, and each of the cooperating agencies. The CAT will work closely with the MRERP Product Development Team (PDT) and Missouri River Recovery Implementation Committee (MRRIC) in developing the project's Scope of Work Statements, Purpose and Needs Statement, alternatives, and other components of the Plan. In addition to directly affecting the shape of the Plan and EIS, the CAT will also have the opportunity to coordinate and consult stakeholders in the basin through various workshops and meetings. Effective development of the MRERP could not occur without the collaborative efforts of the CAT.

Steps for Establishing the CAT

1. Identification of Potential CAs

The Corps and USFWS will identify Federal and State Agencies, and Federally recognized Tribes that have Jurisdiction by Law or Special Expertise for the MRERP study. Members of the Corps and USFWS will hold initial meetings with potential CAs to describe the project and identify specific roles that each entity can play in the MRERP study.

2. Letter of Invitation

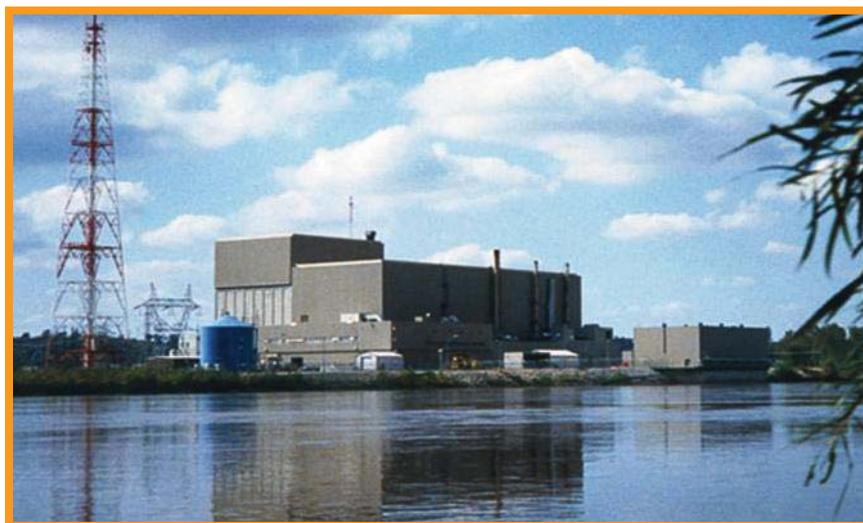
A letter of Invitation to serve as a CA during the MRERP study will be sent out to eligible Federal and State agencies, and Federally recognized Tribes. Each Tribe or agency will provide a written response back whether or not they wish to serve as a CA in the MRERP study. Once the Corps receives a written response back that a Tribe or Agency wishes to serve as a CA in the MRERP study, the official CA relationship is established.

3. Formation of the CAT

Once CA relationships have been established, CAs along with members of the Corps and USFWS will form the CAT.

4. Establishing Roles and Responsibilities

During the initial meetings of the CAT, a set of operating procedures will be developed that identify each member's roles and responsibilities in the MRERP study, taking into account each member's Jurisdiction by Law and/or Special Expertise. Any technical analysis that the CA is anticipated to provide during the study should be identified at this time.



Section 5

Additional Information

It takes hard work and friendly collaboration for the lead-CA relationship to flourish and produce effective results. This guide is meant to help further clarify the roles and responsibilities of all participants involved in the MRERP and to strengthen understanding of the important policies and regulations involved. A healthy understanding of NEPA and of the MRERP is essential when participating in this project and the following information is provided to assist others in grasping all key concepts and goals.

Sources of Information:

1. Council on Environmental Quality NEPA regulations
http://www.nepa.gov/nepa/regs/ceq/toc_ceq.htm
2. Forty Most Asked Questions Concerning CEQ's NEPA Regulations
http://www.eh.doe.gov/nepa/tools/guidance/volume1/4-1-40_questions.html
3. The Corps Environmental Quality Procedures for Implementing NEPA
<http://www.usace.army.mil/publications/eng-regs/er200-2-2/entire.pdf>
4. Corps Tribal Policy Principles
<https://www.nwo.usace.army.mil/html/de/natampol.htm>
5. Department of the Interior
<http://www.doi.gov/initiatives/AdaptiveManagement/index.html>
6. National Association of Tribal Historic Preservation Officers' report ("Tribal Consultation: Best Practices in Historic Preservation")
http://www.nathpo.org/PDF/Tribal_Consultation.pdf
7. *Principles and Guidelines*, U.S. Water Resources Council, Mar 1983: Economic and Environmental Principles for Water and Related Land Resources Implementation Studies
http://www.usace.army.mil/cw/cecw-cp/library/Principles_Guidelines.pdf

Websites with information on the project and Missouri River:

8. Missouri River Recovery Program (MRRP) and Related Information
<https://w3.nwo.usace.army.mil/html/pm-c/PMCBiOp.htm>
9. Missouri River Recovery Implementation Committee (MRRIC) Information
<http://www.nwd-mr.usace.army.mil/rcc/mrric.html>
10. National Park Service Missouri River Recreation Information
<http://www.nps.gov/mnrr/>
11. USACE Planner's Library
<http://www.usace.army.mil/cw/cecw-cp/library/planlib.html>
12. Water Management Information Links – hourly updated river conditions
<http://www.nwd-mr.usace.army.mil/rcc/current.html>