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Kearns & West Recommendations for Effective Public Engagement Associated with Federal Regulatory Processes

Opening and Background

Kearns & West is a facilitation, mediation, and public engagement firm founded in 1984 with almost 40 years of experience facilitating tribal and public involvement and multi-party processes on a range of local, state, regional, and federal issues. Our projects cover a variety of sectors, including energy, natural resources, water, transportation, climate adaptation, and resiliency. We facilitate information exchange by combining tribal and public engagement expertise with multi-party negotiations with in-depth knowledge of policy, technical, and regulatory issues impacting federal regulatory processes.

Based on our extensive experience conducting public engagement processes for federal agencies within the Department of Interior and others (NOAA/NMFS, EPA, FEMA, FERC) we are providing recommendations below for OIRA's consideration to broaden and improve public engagement in federal regulatory processes. K&W generally supports the recommendations listed in the notice for comment to enable the public and agencies to better understand the regulatory process and role of OIRA. Federal regulatory processes should be clear in approach and delivery, well-coordinated with the use of tools to enhance public engagement, and accessible and equitable to meet needs of tribes and the audiences involved.

Clarity in Public Engagement Approach

Federal regulatory processes should be clear in the approach for public engagement. Agencies can provide clear and direct instruction on how to provide public input and demonstrate how public input impacts government decision-making.

For the Bureau of Land Management, Kearns & West assisted with a series of public meetings across the west to address Sage Grouse management. When conducting multiple public meetings for one process, we recommend federal agencies:

- Be specific and give guidance to the public on what topics are most useful to address. Specifically listing these topics in the Federal Register and at public meetings will help.
- Develop material that is broadly accessible and easily understandable for the public to be better informed on the regulatory process, particularly on technical and complex topics.
- Disseminate materials proactively.

- Build relationships with key stakeholders and develop partnerships with community-based organizations.
- Consider the various publics involved and identify effective ways for them to contribute; not everyone is comfortable attending a public meeting; reaching various audiences through local organizations can assist.

Kearns & West has also supported rulemaking processes for the Federal Energy Regulatory Commission on hydropower licensing and U.S. Environmental Protection Agency on the Clean Water Act. We recommend that OIRA consider:

- In the draft and final rule document the feedback heard and how it was incorporated into the final rule.
- Closing the loop with the public is important and if feedback was not included in the final rule, explain why it was not included.

This level of transparency on how public input was used or not and why builds clarity and trust.

Structure and Tools for Clear Regulatory Processes

We support OIRA using tools and publications, such as the Regulatory Agenda and sharing information proactively with affected communities. Communicating clearly and to key communities and stakeholders is necessary for agencies to not only address the policy challenges, but to build better solutions that meet the community's or public's needs.

For the Bureau of Land Management, Kearns & West assisted with a series of public meetings across the West to address Sage Grouse management. When conducting multiple public meetings for one process, we recommend having a consistent meeting format and structure for all the meetings.

Also, for the Bureau of Land Management, Kearns & West developed a Guidebook for Improved Coordination for NEPA/CEQA (California Environmental Quality Act) processes and there were several public engagement process recommendations included:

- When the process involves a joint environmental review document, be clear on the public participation process and opportunities.
- When the process involves two environmental review documents in a coordinated manner:
 - Consider ways to cross-reference the federal and state processes for public participation. Coordinate the processes and timing, to the extent feasible.

- Consider holding joint scoping meetings and public comment timeframes.
- Clarify why multiple processes are occurring simultaneously and explain the opportunities for public participation in both.
- Consider including public comments from one process into the second process as an appendix.

During the Sage Grouse management project with the Bureau of Land Management, Kearns & West implemented public meeting tools to enhance public engagement, including:

- Giving notice on the public meetings in relevant local news outlets and through social media so the public has multiple ways to learn about the public meeting opportunities.
- Developing and implementing multiple ways to provide public input. We recognize that people have different needs to participate in these processes. There should be multiple venues to provide input – written public comment at the meetings; written input via email; having notetakers available to record public comment orally shared in the public meeting to name a few.
- Consider having different ways to communicate the same information. Visual aids like “stations” with posters and topics so people can informally gather information and have questions addressed either in real time or through public-facing media (e.g. website). Opening channels of communication between the public and federal agencies is crucial. Consider having visual aids to “tell the story” so people are fully briefed and understand the regulatory process and project purpose.
- Consider having hybrid meetings, offering online participation as well as in room participation. There are numerous barriers to engaging meaningfully and effectively with community.
- Consider a variety of meeting and engagement formats and continuing to engage the public online as well as in-person. We encourage agencies to consider timing and process for meetings that address potential barriers to participation – work hours, access to transportation, access to Internet, childcare.
- Consider ways to engage the public through partnerships with local organizations. Working with local organizations across all interested sectors can enable them, as a trusted leader, to encourage participation or to obtain input.

Accessible and Equitable Engagement

It is necessary to make regulatory material accessible and useable, especially during this time of recovery from the pandemic. Regulatory agencies can use plain language and avoid legal jargon when possible, to explain changes in rules or regulations. Materials

can be adapted to mobile-friendly formats and available in visual forms, including infographics, videos, and short summaries. Use of standardized language should not only be implemented consistently to describe key processes across agencies, but agencies can provide information in non-English languages based on the demographics of the communities involved.

While agencies can highlight key questions and issues that seek to understand and incorporate the public's views, it must be done with intention and a keen eye to detail. It is important to address the topics related to the project or program consistently and it is also important to consider the various audiences involved and how they receive and understand information. Every opportunity to engage with the public is another step to building relationships and connections with community. Agencies should proactively engage communities early and throughout the process.

Kearns & West assisted with the rulemaking processes conducted for the Federal Energy Regulatory Commission on hydropower licensing and U.S. Environmental Protection Agency on the Clean Water Act. Consider the following recommendations with this example in mind:

- Conduct public and tribal listening sessions multiple times prior to the formal rulemaking process. Be specific in requesting input on topics (list the topics in the federal register notice and design the listening sessions to address the specific topics while also providing open-ended opportunity for input).
- Consider having focused listening sessions with different groups of key stakeholders or interests in a sector-by-sector format. Participants may be more likely to share their perspectives in a setting with their peers.
- Consider having regional listening or input meetings prior to, or as part of, the rulemaking to increase opportunities to participate. Engage with relevant stakeholders on a continuous basis in ways that are collaborative and enhance public engagement for all participants.
- Consider having a publicly noticed public negotiation process as part of the rulemaking where a cross-section of interested sectors participate. Break out groups and key topics heard through the public input processes can be raised and possible solutions negotiated across interested sectors as input to the federal agency to consider in its final rule. This may not be appropriate in all cases, but is worth considering.

Evaluation and reporting of outcomes from engagement activities is also very important. Agencies can proactively analyze their engagement approaches to inform the public on the process and opportunity for input and build trust with community.

Consider:

- Keeping a record of how many members of the public engaged in the process, what sector the audience represents (analyze the sectors who participated - how many environmental groups, ranching groups, or other categories as relevant) to improve the process based on experience.
- Revising and adjusting outreach tactics throughout the program or project, if appropriate, and on an ongoing basis. Evaluating the effectiveness of community engagement strategies and adjust, as appropriate.

Closing

We appreciate the opportunity to provide input on OIRA's request for public comment. We look forward to improved public engagement in federal processes. Thank you for considering our recommendations and we would be happy to discuss in more detail, if appropriate.

Sincerely,



Anna West
Co-Founder and Principal