



**Peer Learning Teleconference:  
Collaboration and the Federal Advisory Committee Act  
May 6, 2009**

**Participants:**

Rick Alexander..... Secure Rural Schools, USFS, Washington Office  
Anne Badgley ..... U.S. Fish and Wildlife Service  
Anne Marie “Ree” Brannon..... Clearwater RC&D Coordinator  
Phil Chang ..... Central Oregon Intergovernmental Council  
Carol Cole.....Sawtooth National Recreation Area  
Karen DiBari.....National Forest Foundation  
Jodi Kramer.....TEAMS Enterprise Unit, USFS  
Carol Kruse.....Arapaho-Roosevelt NFs & Pawnee NG  
Chris Miller.....USFS Washington, DC  
Elayne Murphy..... Clearwater National Forest  
Lisa Pattni.....Tribal Liaison, Superior National Forest  
Ken Post.....Appeals Specialist USFS Region 10  
Julia Riber .....NEPA & Litigation Group Leader, Northern Region, USFS  
Anne Roberts.....Crooked River National Grassland, USFS  
Susan Skakel.....Deschutes National Forest  
Janette Turk.....Kootenai National Forest  
Peter Williams.....USDA-Forest Service Washington

**Presentation by Julia Riber:**

I have worked for the Forest Service in Alaska, California, Washington D.C., Montana, Idaho, and North Dakota. I have served on one Federal Advisory Committee Act (FACA) committee, I have been a government advisor on three others and I have represented the Forest Service to numerous collaborative groups that were not FACA chartered. In California I spent about seventy percent of my job working with the public and a lot of that was with collaborative groups. I have never run into FACA issues with those groups. I think the reason I haven’t run into issues is because I’ve been very aware of the requirements and have been appreciative of the law’s objective. I look at it as something to follow and the best way to do that is to know what it is. I’ve kept a folder on it over the years and the basic advice I’ve followed has not changed. Everything I know or follow is contained in the Partnership Guide at <http://www.partnershipresourcecenter.org/resources/partnership-guide/chap8-3.html>.

***Three Key tests for FACA: If the answer is “yes” to all three of these questions, then the committee is governed by FACA.***

***1. Is the group a committee?***

- Does it have a formal structure?
- Fixed membership?
- A specific purpose and seek to reach a position of the group?

**2. *Is the committee established or utilized by the agency?***

- Has the agency created or does it control the group, such as setting the agenda and determining the membership?

**3. *Is the purpose of the committee to give advice to the agency?***

- The Forest Service (FS) has to avoid any possibility of looking like the agency controls or established the group.

***How can the agency figure out how to work with the public without violating FACA?***

- FACA does not apply to groups established, organized and managed by entities outside the federal government. The FS may meet with such groups to hear their opinions, views, and advice.
- In situations where a federal agency is interested in getting some key work done with the public, the agency needs to be aware that if establishing a group with the intent to give advice, then it's a FACA committee.
- The partnership guide link ([www.partnershipresourcecenter.org/resources/partnership-guide/chap8-3.html](http://www.partnershipresourcecenter.org/resources/partnership-guide/chap8-3.html)) includes a link to the Willamette Forest Service webpage. I (Julia) refer to a letter, dated October 2<sup>nd</sup>, 1995, from Jack Ward Thomas, about FACA. I find this letter very helpful on the things to watch out for. A paragraph on the second page addresses groups not controlled by the Federal Government. It says:

*“FACA does not apply to groups established, organized and managed by entities outside the federal government. You may meet with such groups to hear their opinions, views, and advice.”*

- Federal employees may attend meetings of groups not controlled by the federal government, and represent the Forest Service at such meetings as long as the Federal employees are not in a position to determine the group's activities, either directly or indirectly.
- Even if you fear a FACA violation, it is much better for us to work together than being segregated.

***Things to watch out for:***

*No group can become a preferred source of advice for the agency without sparking FACA concern.*

- When the agency has a group that represents diverse interests, it's very easy to use them as a go-to when you're looking for advice. The FS cannot do that, but must be open to receive advice from anybody.

*Public perception is everything.*

- If people observe the FS holding repeated private meetings with the same group, they may feel excluded and assume that FACA formation committee requirements are being violated. If you become aware of the public having such feelings, find a way to include them. Every interested party that wishes to be heard should be heard. I have to mention that some of the groups where I served as Forest Service advisor had fixed memberships. People had to go through a process to become a member so I had to pay very close attention to that situation and make it apparent to anyone in the public that they could give us their advice to us as well.

*Does the collaborative group have Federal Funding?*

- Some groups may apply for federal grants and agencies have to pay close attention to the rules of FACA so that it doesn't appear that the FS is controlling the group. It can appear as if the agency is controlling them if the agency is involved in setting the agendas. Those are big "watch outs."

## **Open Discussion**

**Ree Brannon:** 100% of our funding comes from the FS. So is FACA more of a concern for the FS folks who come and answer questions at collaborative meetings?

**Julia Riber:** You have to have someone who handles the money.

- **The big questions are:**
  - What is the source of the money and what is it for?
  - Is it a grant?
  - What does the funding language say?
  - Is it a part of a co-share agreement?
  - What are the details of how the money is transferred?
- **Other resources re: funding issues**
  - Office of General Council
  - Grants & Agreements folks
  - Formal instrument (an MOU, for example) will have sideboards

I still stick to those 3 questions (mentioned earlier). I am involved with a group with a similar situation regarding Forest Service money. In this case, the state is acting as a fiscal agent for the collaborative group. When the money was initially being transferred I sat down with the attorneys, because I found out the people partnership people and contracting people involved aren't always tuned in to FACA. It was at the money stage that I got the attorneys involved to figure out how we could write the co-share agreement and the MOU so that it was clear that the FS did not control the organization.

**Phil Chang:** Regarding the structure of the groups: Do FS representatives with groups stay intentionally in some status other than "member" to show that they're there only to listen and provide information? Or can they be formal members of the group? Can FS participate in decision making about what the group recommends or are they there to primarily receive information?

**Julia Riber:** As an example, the Montana Forest Restoration Committee's steering committee (meets monthly, fixed membership) works closely with FS personnel to provide advice on projects and implementation of the principles mentioned above. It is very clear the FS representatives are not members but only advisors to provide information. So when voting comes up or we look to see if there is a quorum to vote on something, FS members do not vote. When the steering committee talks about how to organize and get things done, the FS gives advice and their opinions are included, but they are not involved with developing the agenda or addressing membership issues. The bottom line is that they are not members, but only present at meetings by request to provide advice. With regard to the full Montana Forest Restoration Committee, the FS members were very involved in developing the principles.

**Ann Roberts:** *If a committee has a fixed membership/formal structure, what makes a fixed membership FACA vs. non FACA?*

**Julia Riber:** The test is if you meet all three of criteria. Fixed membership comes into play if you sense the perception that you are excluding others. **Ask:** Is the agency accepting advice from everyone?

**Ann Roberts:** We have a collaborative group, run by the Tribe (they make the agenda) and we have been advertising the meetings in the paper. Should we not be doing that (because it looks like we're running it)? And is that what is making it not a FACA violation, by having it open to the public?

**Julia Riber:** Is the group they seeking to give consensus advice or to hear from all individuals? If it is open to everyone and all viewpoints and you're not seeking consensus, then that is another test (and is not a FACA violation).

**Ann Roberts:** Sometimes the group has consensus recommendations. At the same time, anyone at the meeting can give their opinion and "vote" to give their piece. So it's not really a closed membership.

**Julia Riber:** Go back to the test. The group has formal structure, but doesn't have a fixed membership. It does have a specific purpose and sometimes seeks to reach position of the group. So on a sliding scale, since it doesn't have a fixed membership, yes it is a group or committee. You still have to pay attention to: whether or not the FS controls it. I try to avoid having meetings in FS buildings and FS-sponsored advertisements.

**Peter Williams:** *Is it helpful to differentiate between meetings about sharing information opposed to ones reaching consensus of a group?*

**Julia Riber:** While the agency can express appreciation for advice from a group who represents diverse views when they've reached consensus, we have to let them know we'll be seeking input of everyone. One group, diverse or not, does not have the right to give exclusive advice.

**Ree Brannon:** *What do you think the perception issue would be if the FS takes notes and distributes them or helps facilitate a meeting to keep people on track, time-wise, and following protocols they set-up?*

**Julia Riber:** Groups don't always have the capacity to perform these functions on their own. Regarding facilitation, as long as the group isn't controlled by the FS, if it's what you've got to do to continue-DO IT. It's better to collaborate to try to address problems than to avoid because of fear of FACA. Take notes and send them to a steering committee and have them look so there is group involvement vs. just the agency handling it.

**Ree Brannon:** *What are your thoughts on these small communities where one collaborative might dominate them?*

**Julia Riber:** It's important that the FS makes it clear they take the advice from everyone. The FS has the responsibility to touch base with groups that are not members of the collaborative to sense what others think, such as national groups and people in other places. It's the agency's job to represent all of them.