

Western Water Users Should Keep a Sharp Eye on New NEPA Regs

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Western Members of Congress have introduced legislation that would prevent the National Environmental Policy Act (NEPA) from being used as a vehicle to advance climate regulations. This legislative measure comes after the White House Council on Environmental Quality (CEQ) in February issued draft guidance that would require federal agencies to consider greenhouse gas emissions and climate change when carrying out NEPA reviews. The new NEPA rulemaking is just one of many federal administrative processes underway that could carry the risk of real potential harm for Western irrigators.

In addition to developing draft guidance on the consideration of greenhouse gases, CEQ claims that it wants to clarify the appropriateness of “Findings of No Significant Impact” (FONSI) and specifying when there is a need to monitor environmental mitigation commitments. CEQ has also attempted to clarify the use of categorical exemptions (CEs).

Many in the regulated community believe the NEPA effort is driven by a small but influential group of extreme environmentalists, who want to slow down or stop major projects solely on claims that they may accelerate global warming or climate change.

A “categorical exclusion” describes a category of actions that do not typically result in individual or cumulative significant environmental effects or impacts. When appropriately established and applied, CEs serve a beneficial purpose. They allow Federal agencies to expedite the environmental review process for proposals that typically do not require more resource-intensive environmental documentation.

Applying for a new CE, for example, can potentially ease the Federal Energy Regulatory Commission permitting requirements for irrigators who want to install small hydroelectric projects in existing canals and ditches. These projects have minimal environmental impacts and offer over 50,000 opportunities to create new, clean, renewable sources of U.S. energy.

The use of CEs and FONSI’s are both important tools in operating and maintaining federal water projects in the West. Western water managers often use these time-tested NEPA mechanisms in conjunction with annual operations and maintenance activities on ditches or major rehabilitation and repair projects on existing dams.

Unfortunately, there are activist groups who use NEPA to delay and/or block efforts of some Western water users to perform the most routine (yet essential) actions. CEQ’s new rules appear to place more emphasis on monitoring and reporting requirements for

NEPA-excluded activities and “frontloaded” environmental mitigation where FONSI’s or exclusions have traditionally been used.

As written, the draft White House directives would definitely impact Western agricultural water users by adding costs and uncertainty to traditionally less-expensive NEPA activities and analyses.

These proposed FONSI and CE draft rules obviously did not get the same level of political and media attention generated by the greenhouse gas rules. And – admittedly- I understand that these rules are so boring and bureaucratic in nature that you might want to easily dismiss them. However, I strongly recommend that you and other Western producers keep an eye on them as they are finalized.

If unchecked, they could generate additional risks to long-term efforts to provide reliable water supplies to your operations.