Natural Resources and Legal Policy Update:

National Environmental Policies Act

Dennis Cakert
Manager of Regulatory Affairs and Markets Policy
The National Hydropower Association
• Signed into law on January 1, 1970 by President Nixon
• NEPA imposes procedural requirements on federal agencies:
  1. Consider the effects of federal actions on the environment
  2. Inform the public of the effects of federal actions
• NEPA does not mandate outcomes or results
NEPA requires federal agencies to prepare a detailed statement on:

1. The environmental impact of the proposed action
2. Any adverse effects that cannot be avoided
3. Alternatives to the proposed action
4. The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity
5. Any irreversible and irrevocable commitments of resources that would be involved in the proposed action.
Timeline for NEPA NOPR

- **November 3, 2020:** Presidential Election
- **January 20, 2021:** Presidential Inauguration
- **May, 2020:** CRA Safe Zone
- **March 10, 2020:** NOPR Comments Due
- **July 22, 2019:** CEQ Report: Length of EIS
- **June 20, 2018:** CEQ ANOPR
- **December 14, 2019:** CEQ Report: EIS Timelines
- **January 2020:** CEQ NOPR
- **July 22, 2019:** CEQ Report: Length of EIS
- **November 3, 2020:** Presidential Election
Comments on ANOPR:

“The States urge CEQ to seriously consider whether it is appropriate to amend its NEPA regulations at all. If CEQ does decide to revise the NEPA regulations, it must first collect detailed data on NEPA's implementation and evaluate the effect any revisions would have on future federal actions, public health, and the environment. Any revisions to the regulations, if warranted and supported by substantial evidence, must continue to prioritize protection of public health and the environment, and to ensure public participation in accordance with NEPA, over mere administrative expedience.”

- State Attorneys General, including Washington and Oregon

12,500 total comments

“The Agency has failed to show that amending these regulations are helpful or necessary or will have a positive benefit. There is little or no research on delays caused by the regulatory process of environmental reviews, just questionable anecdotes.”

- The Natural Resources Defense Council
CEQ Reasons for NEPA Reform

- CEQ Regulations recommend 150 pages for an EIS or 300 pages for complex projects.
  - only 7% were 150 pages or shorter and 25% were less than 300

**December 14, 2018 – CEQ Report: EIS Timelines (Years)**

<table>
<thead>
<tr>
<th>Document</th>
<th>Average</th>
<th>Median</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final EIS and ROD</td>
<td>4.5</td>
<td>3.6</td>
</tr>
</tbody>
</table>

**July 22, 2019 - CEQ report: Length of Environmental Impact Statements (Pages)**

<table>
<thead>
<tr>
<th>Document</th>
<th>Average</th>
<th>Median</th>
<th>1st Quartile</th>
<th>4th Quartile</th>
</tr>
</thead>
<tbody>
<tr>
<td>Draft EIS</td>
<td>586</td>
<td>403</td>
<td>&lt; 288</td>
<td>&gt; 630</td>
</tr>
<tr>
<td>Final EIS</td>
<td>669</td>
<td>445</td>
<td>&lt; 299</td>
<td>&gt; 729</td>
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CEQ Areas of Reform:

1. Cooperating agencies
2. Page limits and time limits
3. Economic and technical considerations
4. Alternatives
5. Baseline
6. Scoping/studies
7. Cumulative Effects
Cooperating Agencies

- Does not change agencies statutory obligations
- Requires federal agencies to consider proposals where a lead agency develops a schedule and a single EIS or EA
- Requires lead agency to accept other agencies with jurisdiction as cooperating agencies and allows the lead agency to accept non-jurisdictional federal agencies, states, and tribes that have expertise in the subject
- Requests cooperating agencies get involved early in the process
- Does not address whether agencies can participate in the NEPA process and intervene later on
### Page Limits and Time Limits:

<table>
<thead>
<tr>
<th>NEPA Documents</th>
<th>Environmental Assessments</th>
<th>Environmental Impact Statements</th>
<th>Categorical Exclusions</th>
</tr>
</thead>
<tbody>
<tr>
<td>CEQ proposal</td>
<td>1 year, 75 pages</td>
<td>2 years, 150 or 300 pages</td>
<td>N/A</td>
</tr>
<tr>
<td>FERC Actions</td>
<td>Development of non-powered dams</td>
<td>- New licenses</td>
<td>License amendments that do not alter project works or operations</td>
</tr>
<tr>
<td></td>
<td>License amendments that disturb project works or operations</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Relicensing of an existing project</td>
<td></td>
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</tr>
</tbody>
</table>

A Senior Agency Official can waive the page limits or time limits for complex projects.
Economic and Technical Considerations:

Sec 1501.2(b)(2): “Identify environmental effects and values in adequate detail so they can be appropriately considered along with economic and technical analyses. Agencies shall review and publish environmental documents and appropriate analyses at the same time as other planning documents.”

Sec 1502.16(a)(10): “Where applicable, economic and technical considerations, including the economic benefits of the proposed action.”
Alternatives:

“It is CEQ's view that NEPA's policy goals are satisfied when an agency analyzes reasonable alternatives, and that an EIS need not include every available alternative... The discussion of environmental effects of alternatives need not be exhaustive, but must provide information sufficient to permit a reasoned choice of alternatives”

And again, economic and technical considerations, not only environmental:

Sec 1505.2(b) “Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors, including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.”
Baseline:

CEQ did not address the issue of environmental baseline

Current FERC practice is to consider the environment in its current circumstance as the baseline, but to consider project removal as an alternative.
“Agencies should use reliable existing information and resources and are not required to undertake new scientific and technical research to inform their analyses.”

“The proposed... regulations are intended to ensure that relevant environmental information is identified and considered early in the process in order to ensure informed decision making by Federal agencies.”
Cumulative Effects:

“effects must be reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives”

“CEQ proposes to strike the definition of cumulative impacts and strike the terms “direct” and “indirect” in order to focus agency time and resources on considering whether an effect is caused by the proposed action... CEQ's proposed revisions to simplify the definition are intended to focus agencies on consideration of effects that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action.”

“In addition, CEQ proposes a change in position to state that analysis of cumulative effects, as defined in CEQ's current regulations, is not required under NEPA.”
Sen. Cantwell (WA): NEPA has provided generations of Americans a say in federal decisions that impact the air we breathe, the water we drink, and the public lands we cherish. This NEPA rewrite favors big polluters and corporate profits over balanced, science-based decision making and would prevent Washingtonians from voicing their views on proposals ranging from siting a new fossil fuel pipeline in their backyard to building an open-pit mine that could destroy the world’s largest sockeye salmon fishery. We need to make smarter environmental decisions, not roll back the safeguards we already have.”
“The American Wind Energy Association supports improving the National Environmental Policy Act review process. While America’s wind energy industry supports the fundamental goals of NEPA to appropriately consider potential environmental and climate impacts, the NEPA process has not been revised in decades. As a result, infrastructure projects, including land-based and offshore wind energy and transmission development, have encountered unreasonable and unnecessary costs and long project delays. It is time to update and modernize the permitting process, which would both strengthen our economy and enhance environmental stewardship. We look forward to reviewing the proposed rule and working with the Administration to advance infrastructure permitting reform.

- The American Wind Energy Association
Questions?

Dennis Cakert
Manager of Regulatory Affairs and Markets Policy
The National Hydropower Association
Dennis@hydro.org
(202) 697-2404