



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION/WATER QUALITY **CEQ/NEPA**

On February 19, the Council on Environmental Quality (CEQ) issued a pre-publication notice for an interim final rule to remove its regulations implementing the National Environmental Policy Act (NEPA). The rule will remove all iterations of CEQ's NEPA implementing regulations. Although the rule seeks public comment for a period of 30 days, the effective date will be 45 days after publication in the Federal Register.

The rule comes in response to President Trump's Executive Order 14154 ("Unleashing American Energy"), which rescinded President Carter's 1977 order directing CEQ to promulgate NEPA regulations (EO 11991). Trump's order directed CEQ to rescind its NEPA implementation regulations and issue new implementation guidance within 30 days of the order (Special Report #2646).

CEQ said Trump's order had "removed CEQ's prior asserted basis for issuing and maintaining its NEPA regulations." It also noted recent court rulings against CEQ's authority to promulgate binding regulations on federal agencies (WSW #2638, Special Report #2648), "Furthermore, CEQ has concluded.... that it may lack authority to maintain its NEPA regulations in the absence of E.O. 11991. In light of these considerations, and as exacerbated by the fact that the most recent amendment to its regulations has been vacated by a district court after it concluded that CEQ has no rulemaking authority, CEQ is concerned that agencies and the public are confused as to the status and legitimacy of its NEPA regulations." CEQ argued that, due to the need to "expeditiously resolve this period of confusion while still allowing for public participation," issuing a final rule and providing 30 days for public comment is the "most appropriate mechanism to carry out the President's dual direction."

CEQ stated that the need for expedited rulemaking satisfied the "good cause" exception of the Administrative Procedure Act (APA) requirements and clarified the nature of the public comment period. "To the extent that public comment may inform CEQ as to whether it has legal authority to make a different choice than the one it

has taken in this interim final rule, CEQ's solicitation of public comment for 30 days following the publication of the rule is intended to accommodate that possibility. The President has revoked CEQ's authority to issue or maintain its NEPA implementing regulations and has instructed CEQ to propose rescinding its existing regulations. And though CEQ seeks comments to obtain the public's views, such comments could not alter the President's decision."

CEQ said that in addition to its "good cause" basis, the interim final rule falls within the APA exception for interpretive rules, general statements of policy, or rules of agency organization and posited "this interim final rule is a procedural and ministerial step to implement the President's directive." CEQ also addressed the implications of EO 13132 ("Federalism"), requiring meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications: "CEQ does not anticipate that this interim final rule has federalism implications because it applies to Federal agencies, not States."

CONGRESS/WESTERN GOVERNORS **Senate**

On February 19, the Senate Environment and Public Works Committee held a hearing to discuss permitting reform. Chairman Shelley Moore Capito (R-WV) said in her opening statement: "For too long, critical projects such as energy and infrastructure projects, along with industrial projects as well, have been trapped in a cycle of redundant reviews, shifting goalposts, and regulatory uncertainty.... West Virginia water line extensions, broadband projects, bridge replacements, have all faced federal permitting delays, and I'm sure my state is not unique.... Durable and implementable environmental review and permitting process reform must be bipartisan to be successful.... Let me be clear, modernizing these processes does not mean cutting corners or weakening environmental and public health protections. It means making the processes more efficient, more predictable, and more transparent so that the processes are not stuck in bureaucratic purgatory or endless litigation."

Ranking Member Sheldon Whitehouse (D-RI) emphasized the importance of renewable energy resources. Whitehouse also issued a warning. “Democrats will not agree to permitting reform until the Trump administration ends its lawless disregard for congressional authority and judicial orders.” He noted the growth in energy demand and the possibility of a shortfall: “What would reduce the risk of a shortfall? Better permitting. We need to build out a grid to meet current and future demand.”

The Western Governors’ Association (WGA) submitted policy recommendations for the record, open until March 21, 2025: “Current permitting processes governing land management activities and infrastructure development can negatively affect the pace and scale of critically important projects, such as wildfire mitigation, habitat improvements, energy systems investments, and housing construction. Western Governors urge Congress to consider how to improve and streamline these processes while still providing meaningful opportunities for public input and promoting a safe and healthy environment.”

CONGRESS/WSWC **House**

On February 11, the Western States Water Council (WSWC) submitted testimony to the House Water and Power Subcommittee Hearing, “America Builds: Clean Water Act Permitting and Project Delivery” (WSW #2648). WSWC supported development of critical infrastructure while emphasizing the need to protect state authority over water resources. WSWC highlighted States’ responsible implementation of Clean Water Act (CWA) Section 401 and cautioned against frequent policy changes, which “create uncertainty for co-regulators and the regulated community, often leading to unreliable results, indecision, inconsistency, and lawsuits.” The testimony cited issues with the 2020 CWA Section 401 Certification Rule (85 FR 42210), stating that the inflexible deadlines had caused an increased number of denials by not accommodating state public engagement laws. It also expressed concern over the CWA Section 401 Water Quality Certification Improvement Rule (88 FR 66558). “WSWC encourages EPA to consult with affected states regarding certifying authority in national parks designated as ‘lands of exclusive federal jurisdiction’ in order to resolve any jurisdictional disputes in a manner that upholds the CWA’s direct grant of Section 401 certifying authority to States and its intent to empower States to protect water quality within their boundaries.”

WSWC supported clarifications to NPDES permitting rules, stating that water transport through constructed conveyances should not trigger federal permitting unless pollutants are added and reaffirmed

States’ authority to regulate water transfers. WSWC stressed the importance of cooperative federalism in defining Waters of the United States (WOTUS), urging meaningful state consultation in rule development. Additionally, WSWC raised concerns about EPA’s handling of Section 404 vetoes and called for improved regulatory clarity, better communication between federal and state agencies, and adherence to established permitting processes.

WATER RESOURCES **Arizona/Groundwater**

On January 22, a group of home builders filed a lawsuit against the Arizona Department of Water Resources (ADWR) in the Maricopa County Superior Court (*Home Builders Association of Central Arizona v. ADWR*). In June 2023, the State released an updated study of groundwater conditions, which predicted a shortfall. ADWR determined it would not approve new determinations of Assured Water supply within the Phoenix Active Management Area (AMA). See WSW #2561. In November, 2024, ADWR updated its Phoenix Active Management Area Groundwater Model to consider projected water levels across the entire management area, precluding the issuance of Assured Water Supply determinations if there is unmet demand or exceedances of the 1,000-foot depth-to-water limit anywhere in the AMA. According to ADWR, “The 2024 model update does not support the issuance of Assured Water Supply determinations based on groundwater.” The complaint challenged ADWR’s AMA-Wide Unmet Demand Rule and AMA-Wide Depth-to-Water-Rule, asserting that both rules are illegal because they were promulgated without formal rulemaking or legislative authorization.

ADWR Director Tom Buschatzke argued that the lawsuit seeks to undermine consumer protections that guarantee reliable water, and inaccurately portrays ADWR’s policies as anti-growth: “Under my watch, no homeowner in an Active Management Area should ever feel concerns for future water supplies, even in an age of chronic drought and climate change.... ADWR is accused of acting aggressively in defense of Arizona homeowners who accepted the state’s most sacred pact with its homebuying residents: That if you buy a new home in a region protected by Arizona’s Assured Water Supply Program, you can count on an assured water supply.... To this day, ADWR continues to process and issue assured water supply determinations where conditions allow.... The department has enthusiastically supported market-based reforms, such as permitting the movement of water supplies from legislatively approved groundwater basins.... Growth is essential to the state’s economy, and it is accelerated by the guarantee of a reliable water supply.” (AZ Central, 02/20/25)

The WESTERN STATES WATER COUNCIL is a government entity of representatives appointed by the Governors of Alaska, Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.