



July 8, 2024

**Submitted via email (usbr_ce@usbr.gov)
(Docket No. RR83530000, 234R5065C6, RX.59389832.1009676)**

Bureau of Reclamation
Attn: USBR CE
1849 C Street NW, Suite 7069
Washington, D.C. 20240

RE: Comments on Notice of Proposed Revisions, “National Environmental Policy Act Implementing Procedures for the Bureau of Reclamation,” 89 Fed. Reg. 48674 (June 7, 2024), Docket No. RR83530000

The Western Urban Water Coalition (WUWC)¹ appreciates this opportunity to comment on the Bureau of Reclamation’s (Reclamation’s) proposal to revise seven categorical exclusions (CEs) under the National Environmental Policy Act (NEPA) in Reclamation’s NEPA implementing procedures, Departmental Manual (DM) at part 516, chapter 14. 89 Fed. Reg. 48674 (June 7, 2024). Reclamation proposes to clarify existing CEs on certain financial assistance funding, water-related contracting, and use authorization actions to support consistent interpretation and more efficient review. As discussed in these comments, WUWC supports Reclamation’s proposal.

Introduction

WUWC was established in 1992 to address the West’s unique water supply and water quality challenges that threaten the economic sustainability and growth of the western population centers. WUWC consists of the largest urban water utilities in the West, which together serve more than 40 million urban water consumers in 21 major metropolitan areas across eight states. Some of these utilities also operate wastewater, stormwater, natural gas, and electric, including hydroelectric, facilities for their customers.

¹ WUWC consists of the following members: **Arizona** (Central Arizona Project, City of Phoenix and Salt River Project); **California** (Eastern Municipal Water District, East Bay Municipal Utility District, City of Los Angeles Department of Water and Power, The Metropolitan Water District of Southern California, San Diego County Water Authority, Santa Clara Valley Water District, and City and County of San Francisco Public Utilities Commission); **Colorado** (Aurora Water, Colorado Springs Utilities, and Denver Water); **Idaho** (City of Boise); **Nevada** (Las Vegas Valley Water District, Southern Nevada Water Authority, and Truckee Meadows Water Authority); **New Mexico** (Albuquerque Bernalillo County Water Utility Authority); **Utah** (Salt Lake City Public Utilities and Washington County Water Conservancy District); and **Washington** (Seattle Public Utilities).

WUWC members are public utilities dedicated to providing a reliable, high-quality urban water supply for present and future generations. As operators of urban water supply systems, WUWC members serve the health, environmental, and economic needs of their communities around the clock, every day of the year. WUWC advocates for effective and practicable approaches to the implementation of environmental protection programs in a time when water sources are being diminished by climate change and other factors and the development of sustainable supplies is vital. The replacement of aging water systems and the development of new water infrastructure is critical to complement the significant water conservation steps already being taken by western municipal water users to meet the challenges of climate-related events like droughts, wildfires, and floods, as well as the public safety threats of seismic events and facility failures. Regulatory reform, particularly pertaining to NEPA, is needed to promote the sustainability and resiliency of water supply infrastructure and improve and protect our nation's water supplies.

WUWC has historically been, and continues to be, in full support of the goals of NEPA as the federal law that strives to ensure the effective and environmentally responsible use of the nation's water resources. WUWC has consistently recognized the importance of comprehensive environmental review and public participation in advancing large-scale infrastructure projects. Such review results in better decisions and better projects and provides important protection for the environment. To meet NEPA's goals, WUWC supports improving NEPA procedures to make them more efficient, timely, and effective. As Reclamation works to review and reform its NEPA implementing procedures, WUWC appreciates this opportunity to provide comments and recommendations to help improve Reclamation's NEPA procedures to ensure a more efficient, timely, and effective NEPA process.

Throughout its 29-year history, WUWC has extensive experience working with various federal agencies on initiatives related to NEPA. WUWC members engage regularly with federal agencies in obtaining authorizations for facilities and operations requiring federal approval on or adjacent to federal lands and waters. As a result, WUWC members are active collaborating partners with federal agencies and a variety of stakeholders. WUWC members have decades of experience participating in NEPA and related environmental analyses. WUWC is prepared to assist Reclamation in this regulatory process, most specifically on how refined CEs can support water providers in the West while protecting the environment. The comments set forth in this letter are offered in furtherance of these general goals.

Specific Comments

WUWC shares Reclamation's concern that some existing CEs in Reclamation's NEPA implementing procedures inappropriately limit CEs, allow for inconsistent interpretation, and increase the time of environmental review. WUWC agrees with Reclamation that its NEPA implementing procedures need to be updated for NEPA to fulfill its statutory role and to reduce delays and uncertainty in the NEPA process. WUWC supports Reclamation's proposed revisions to its CEs.

A. Water-related contract CEs

Reclamation's proposal would revise the current D4 and D14 CEs (water-related contract CEs) into one proposed D4 CE: "Approval, execution, administration, and implementation of water-

related contracts and contract renewals, amendments, supplements, and assignments, and water transfers, exchanges, and replacements, for which one or more of the following apply: (a) for minor amounts of long-term water use, where impacts are expected to be localized; (b) for temporary or interim water use where the action does not lead to long-term changes and where the impacts are expected to be localized; or (c) where the only result will be to implement an administrative or financial practice or change. A “water-related” contract is any legally binding agreement to which Reclamation becomes a party, pursuant to its authority under Federal law that (1) makes water available from or to the United States; (2) allows water to be stored, carried, or delivered in facilities Reclamation owns, manages, operates, or funds; or (3) establishes operation, maintenance, and replacement responsibilities for such facilities.”

This revision would include more types of water-related contracts than previously considered under D4 and D14 CEs. Instead of limiting CE application based on legal or financial characteristics of contracts and contract actions, the proposed D4 CE contains *impact*-based constraints on CE application. WUWC supports this revision as it is consistent with the intent of 40 C.F.R. § 1501.4, which encourages the use of CEs for those categories of actions that normally do not have a significant effect on the environment.

B. Use authorization CEs

Reclamation’s proposal would revise the current D8 and D10 CEs (use authorization CEs) into one proposed D8 CE: “Issuance or renewal of use authorizations (as defined in 43 CFR 429.2, including crossing agreements which provide rights-of-way) that provide right-of-use of Reclamation land, facilities, or waterbodies where one or more of the following apply: (a) work is minor and impacts are expected to be localized; (b) the action does not lead to a major public or private action; (c) the only result of the authorization will be to implement an administrative or financial practice or change; or (d) the level of use or impacts to resources is not increased.”

This revision would not expand the scope of actions covered under current D8 and D10 CEs. The purpose is to clarify the actions that fall under “use authorizations” and list the impact-based constraints on application of the proposed D8 CE. WUWC similarly supports this revision as it is consistent with the intent of 40 C.F.R. § 1501.4, which encourages the use of CEs for those categories of actions that normally do not have a significant effect on the environment.

WUWC’s members would benefit from this revised CE, as several members have plans to replace aging infrastructure as water demand continues to grow, or to expand water pipelines to connect existing property and infrastructure. Where the impacts are minimal and localized, a CE should be available to support use authorization for these infrastructure improvements.

C. Financial assistance CEs

Reclamation’s proposal would revise the current E1, E2, and E3 CEs (financial assistance CEs) into one proposed E1 CE: “Financial assistance, cooperative agreements, grants, loans, contracts, or other funding, where the underlying actions being funded (a) would be covered by another Reclamation CE if Reclamation were implementing the action itself, or (b) where the work to be done is confined to areas already impacted by farming or development activities, work is considered minor, and where the impacts are expected to be localized.”

This revision expands the type of financial assistance actions covered to include financial assistance, cooperative agreements, grants, loans, contracts, and a catch-all “other funding” and does not tie the CE to particular authorities (as under the existing E1 CE). This revision allows the proposed E1 CE to be potentially applicable to all financial assistance types, as long as the financial assistance action is consistent with the underlying financial assistance actions and impacts-based constraints defined in the proposed E1 CE. Because the financial assistance authorities assigned to Reclamation by law are subject to change, and in order to avoid obsolescence, the proposed E1 CE focuses on the underlying financial assistance activity funded rather than the funding program authority, allowing for application consistent with current and future authorities.

WUWC supports this revision. WUWC’s members would benefit from the revised CE. A CE should be available for financial assistance decisions from Reclamation where the activity is one that Reclamation has already categorically reviewed or where the work is minor and confined to areas already impacted by farming or development. This change will support a more efficient NEPA process and avoid unnecessary analysis for a project that Reclamation has already determined does not have a significant effect on the environment.

Changes to CE Checklists

WUWC encourages Reclamation to review its CE Checklists and modify them as appropriate to address the revised CEs. Reclamation’s proposal makes several references to the CE Checklists in use by Reclamation, however, there is no mention that these Checklists will require modification. The Checklists will need to be revised to incorporate the proposed broadening of the CEs.

Conclusion

Thank you for the opportunity to provide these comments. If you have any questions regarding these comments, please contact me at 303-739-7378 or mbrown@auroragov.org, or WUWC’s national counsel, Ted Boling at 202-661-5872 or tedboling@perkinscoie.com.

Very truly yours,



Marshall P. Brown
WUWC Chair

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