ADMINISTRATION/CEQ/NEPA

On January 13, the Council on Environmental Quality (CEQ) released a notice of proposed rulemaking to update its National Environmental Policy Act (NEPA) regulations, which were issued in 1978. The NEPA process of assessing the environmental impacts of major federal actions can impact the construction of roads and water infrastructure, conventional and renewable energy projects, and management of lands, forests, and fisheries. Following President Trump’s Executive Order 13807 establishing a One Federal Decision policy, CEQ issued an advanced notice of proposed rulemaking in 2018, and received over 12,500 comments that informed CEQ’s new rule.

CEQ’s fact sheet says: “CEQ has found that the average length of an EIS is over 600 pages, and that the average time for Federal agencies to conduct these NEPA reviews is four and a half years. However, reviews for some projects have taken much longer. NEPA analyses are frequently challenged in the courts, and while Federal agencies ultimately prevail in many cases, litigation can unnecessarily delay and increase costs for important projects such as needed transportation, water, and other infrastructure that benefit States, Tribes, and local communities. The increased costs and complexity of NEPA reviews and litigation make it very challenging for large and small businesses to plan, finance, and build projects in the United States.”

The new rule establishes a 2-year time limit to complete environmental impact statements (EISs) and one year to complete environmental assessments (EAs), along with limiting the number of pages and requiring joint reviews with a lead agency where multiple federal agencies are involved. It provides direction for whether NEPA reviews are necessary as a threshold matter, and clarifies that NEPA reviews are not required for non-discretionary decisions or for non-federal projects with minimal federal funding or involvement. It promotes the use of modern technologies to improve information sharing and public outreach, requires earlier public input, and requires agencies to summarize alternatives and information submitted by commenters. It modifies the definition of environmental effects, requiring them to be reasonably foreseeable and to have a close causal relationship to the proposed action, and clarifies that an analysis of cumulative effects is not required. It requires “reasonable alternatives” to be technically and economical feasible to be considered. It promotes the use of NEPA-compliance documents prepared by states, tribes, and local agencies to improve coordination and reduce duplication. It emphasizes consultation with affected tribes. It facilitates the use of categorical exclusions (CEs) and EAs for more efficient reviews, and allows agencies to establish procedures to adopt other agencies’ CE. It allows applicants and contractors to assume a greater role in preparing an EIS under federal agency supervision.


ADMINISTRATION/WATER SUPPLY
Precipitation/Drought/Flooding

On January 8, the National Oceanic and Atmospheric Administration (NOAA) announced that 2019 was the 2nd wettest year on record for the U.S., behind 1973. For some states, including North Dakota and South Dakota, it was their wettest year ever recorded. “In April, drought conditions had reached a low of 2.3%, the smallest drought footprint in the 20-year history of the U.S. Drought Monitor.” However, by the end of 2019, 11% of the contiguous U.S. was in drought. Governor Greg Abbott (R-TX) declared exceptional drought conditions in 53 counties across central and southeastern Texas in November 2019, and continued the disaster declaration for 17 counties on January 3, 2020. Some of those Texas counties were still under continuing disaster declarations from Hurricane Harvey (2017). Governor Jay Inslee (D-WA) declared a drought emergency in April 2019, expanding it to nearly half the state in May, and the declaration is still active. Nearly all of Oregon (98%) was designated as abnormally dry by the end of 2019, with 25% of that area designated as moderate drought. The Four Corners region started 2019 in exceptional drought conditions that gradually improved through the spring and summer, but by August, abnormally dry conditions were spreading, and areas of severe drought returned in the fall.
NOAA noted that there were 14 weather and climate disasters with losses exceeding $1B, including wildfire, tropical cyclones, severe storms, and inland floods on the Arkansas, Mississippi, and Missouri Rivers, with losses totaling approximately $45B. “The extreme weather with the most widespread impact was the historically persistent and destructive U.S. flooding across more than 15 states.” The combined cost of just the river basin flooding was $20B. There is an increasing trend of billion-dollar weather and climate disasters, with 59 such events between 2000-2009 and 119 events between 2010-2019. See https://www.noaa.gov/news/2019-was-2nd-wettest-year-on-record-for-us.

CONGRESS/WATER RESOURCES
Corps/WRDA

On January 9, the House Transportation and Infrastructure Subcommittee on Water Resources and Environment held a hearing on Proposals for a Water Resources Development Act (WRDA). Witnesses included R.D. James, Assistant Secretary of the Army (Civil Works), and Lt. General Todd Semonite, Chief of Engineers and Commanding General, U.S. Army Corps of Engineers (Corps).

Committee Chair Peter DeFazio (D-OR) and Subcommittee Chair Grace Napolitano (D-CA) both emphasized the bipartisan nature of the WRDA bills, which have been enacted biennially since 2014. DeFazio said: “Enacting WRDAs on a predictable timeline is good for non-federal sponsors as they work with the Corps in developing projects. It provides strong oversight on the critical role of the U.S. Army Corps of Engineers in the management of our water resources. It also allows for Congress’ timely consideration of important water infrastructure projects across the nation... [and] to continue to address lingering policy concerns with implementation of Corps’ projects.” Napolitano added that the Subcommittee members have the opportunity to evaluate the Chief’s Reports to Congress, which include projects for flood risk management, hurricane and storm damage reduction, navigation, and ecosystem restoration. The Corps will submit its annual report to Congress in February, and the Committee plans to consider a new WRDA bill in the Spring.

The written testimony of R.D. James and Lt. General Semonite emphasized the importance of enabling stronger partnerships with non-federal interests, by encouraging more non-federal leadership, leveraging a broader range of financial resources for infrastructure investment, and removing barriers that impede the ability of non-federal parties “to move forward on their own with investments in water resources infrastructure they deem priorities.” They said: “Given the large number of authorized projects that have not been started or completed, new project and study authorizations should focus on those most likely to address a significant risk to public safety within the three main mission areas of the Army Civil Works program: flood and storm damage, commercial navigation, and aquatic ecosystem restoration.”

The Corps proposed several reforms, including: (1) extending the authority of Section 1043(b) of WRDA 2014, which authorized a pilot program to evaluate the cost effectiveness and project delivering efficiency of allowing non-federal interests to carry out various projects, and transferring federal appropriations to non-federal sponsors to construct projects on their own; and (2) streamlining permit processes and eliminating duplicative reviews. “We have streamlined permissions for modifications to completed Corps projects that has eliminated weeks of review time and reduced pending permissions by as much as 50% in many Districts.”

They provided a brief update to the Subcommittee on the pending report to Congress on future water resources development. Last April, the Corps published a notice in the Federal Register requesting proposals by non-federal interests for proposed feasibility studies. They received 52 proposals through the August submission deadline. The Corps is looking for ways to improve this project solicitation process through “better public notification and education regarding the information required by the proposal.”

The Corps has signed 17 Chief’s Reports since the 2018 WRDA, which are currently under the Administration’s review. Ten of those reports are for projects in western states, including: Arizona, two in California; Colorado; New Mexico; North Dakota; Oregon; and three in Texas. They have also signed nine post-authorization change reports, seven of which are for projects in western states: two in Alaska; two in California; Idaho; Oregon; and Washington.

MEETINGS
WestFAST Webinar - Presidential Memorandum

On Wednesday, January 29, 2020, at 10:00 am MST, WestFAST will host a webinar entitled: “Presidential Memorandum on Promoting the Reliable Supply and Delivery of Water in the West, October 19, 2018,” which will provide an overview of the Presidential Memorandum, Action Plans developed by participating Federal Agencies in response to the Memorandum, current activities, and next steps. Please note, the Webinar is limited to 100 ports that will be filled on a first come, first serve basis. Where possible, please “buddy-up.” For further information please see: https://www.westernstateswater.org/westfast/westfast-webinars/.

The WESTERN STATES WATER COUNCIL is an organization 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.