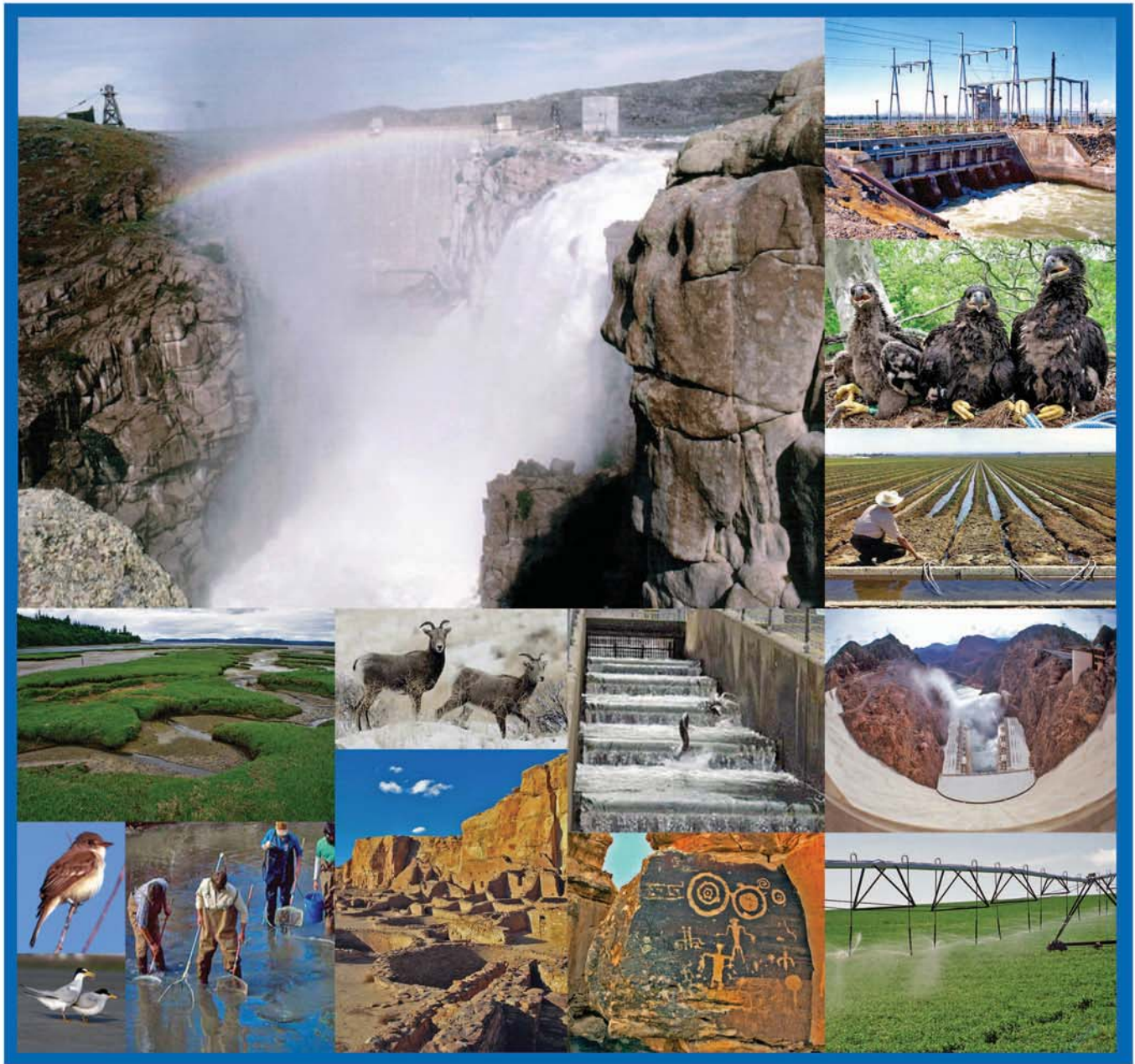


# RECLAMATION

*Managing Water in the West*

## Reclamation's NEPA Handbook



## **MISSION STATEMENTS**

The U.S. Department of the Interior protects America's natural resources and heritage, honors our cultures and tribal communities, and supplies the energy to power our future.

The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

## **DISCLAIMER**

This handbook is intended as an introduction to its subject matter and as a reference tool. It does not create or alter any policy or otherwise implement any law and should not be cited as a source of authority.

# Reclamation's NEPA Handbook



## Abbreviations and Acronyms

ACHP	Advisory Council on Historic Preservation
APE	area of potential affect
ARPA	Archaeological Resources Protection Act
BA	biological assessment
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
BON	basis of negotiation
CAA	Clean Air Act
CBD	Center for Biological Diversity
CD	compact disc
CE	categorical exclusion
CEC	categorical exclusion checklist
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
Councils	regional fishery management councils
CWA	Clean Water Act
DEIS	draft environmental impact statement
DM	Departmental Manual
EA	environmental assessment
ECC	environmental commitments checklist
ECP	environmental commitments plan
EFH	essential fish habitat
EIS	environmental impact statement
EO	Executive order
EPA	U.S. Environmental Protection Agency
ER	environmental review
ESA	Endangered Species Act of 1973
ESM	environmental management system
FEIS	final environmental impact statement
FOIA	Freedom of Information Act
FONSI	Finding of No Significant Impact
FR	Federal Register
FWCA	Fish and Wildlife Coordination Act
Interior	U.S. Department of the Interior
IPM	invasive species/integrated pest management program
IQA	Information Quality Act
IQG	Information Quality Guidelines

ITA	Indian trust assets
M&I	municipal and industrial
Magnuson Act	Magnuson Fishery Conservation and Management Act
Magnuson-Stevens Act	Magnuson-Stevens Fishery Conservation and Management Act
MBTA	Migratory Bird Treaty Act
MOA	memorandum of agreement
MOU	memorandum of understanding
National Register	National Register of Historic Places
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NNL	national natural landmark
NOA	Notice of Availability
NOAA-NMFS	National Oceanic and Atmospheric Administration – National Marine Fisheries Service
NOI	Notice of Intent
NPS	National Park Service
NRCS	Natural Resources Conservation Service
O&M	operation and maintenance
OEPC	Office of Environmental Policy and Compliance
P&G	Economic and Environmental Principles and Guidelines for Water and Related Water and Related Land Resources Implementation Studies
P.L.	public law
PR/EIS	planning report/environmental impact statement
Reclamation	Bureau of Reclamation
RMP	resource management plan
ROD	Record of Decision
RPA	reasonable and prudent alternatives
Secretary	Secretary of the Interior
Service	U.S. Fish and Wildlife Service
SHPO	State Historic Preservation Officer
SIR	supplemental information report
SOD	safety of dams
T&E	threatened and endangered
THPO	Tribal History Preservation Officer
TSC	Technical Service Center
U.S.C.	United States Code
USACE	U.S. Army Corps of Engineers
WCP	water conservation plan

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## Attachments

## Chapter 1

# Introduction to the Handbook

This edition of the Bureau of Reclamation's (Reclamation) National Environmental Policy Act (NEPA) Handbook has been developed in response to the Council on Environmental Quality's (CEQ) and the U.S. Department of the Interior's (Interior) implementing regulations on NEPA. These regulations state that each agency will interpret the provisions of NEPA as a supplement to its existing authority and as a mandate to view its policies and missions in the light of its national environmental objectives.

## 1.1 Who It's For

This handbook has been designed as a guidance tool for use by all Reclamation staff. It should also be useful to applicants, contractors, tribal representatives, the general public, and others who may be involved in Reclamation's NEPA process, or those who develop environmental reports for Reclamation's use in preparing NEPA documents.

## 1.2 What It Does

This handbook describes Reclamation guidance for implementing the National Environmental Policy Act of 1969 (42 United States Code [U.S.C.] 4321, et seq.), CEQ's Regulations for Implementing the Procedural Provisions (40 Code of Federal Regulations [CFR] Parts 1500–1508), Interior's NEPA Regulations (43 CFR Part 46), and the Departmental Manual (DM) Chapter 516. This handbook draws these requirements together and provides guidance on how to apply them to Reclamation programs and activities. The Reclamation Manual NEPA Policy (ENV P03) refers to this handbook as the source of additional information on NEPA compliance for Reclamation. The handbook also presents and summarizes other related environmental laws and Executive orders (EO) which should be addressed during NEPA compliance.

This handbook provides an overview of NEPA in chapter 2. Chapter 3 contains a general description of the requirements and procedures of NEPA. Chapter 4 provides information on integrating NEPA with other Reclamation activities. Specific information on categorical exclusion checklists (CEC), environmental assessments (EA), and environmental impact statements (EIS) can be found in chapters 5, 6, and 7, respectively. This organizational structure has been selected to allow the user to quickly locate specific, step-by-step information on the different levels of NEPA compliance. Chapter 8 addresses EIS content, and chapter 9 discusses the requirements of a record of decision (ROD). Chapters 10

and 11 present other information that can be useful in the various situations that arise in applying NEPA to Reclamation's Federal actions. Chapter 12 concludes the handbook with information on gaining additional assistance on NEPA issues.

In addition, various issues and special problems are discussed throughout the handbook. Where possible, solutions that have worked historically, or approaches that seem most reasonable, are recommended.

### **1.3 What It Does Not Do**

The handbook does not replace the law, including case law, CEQ regulations, Interior regulations, the DM, or the Reclamation Manual for appropriate policy and procedures. Although this handbook has been written with these authorities in mind, if a conflict should be found between the handbook and these authorities, the authorities take precedence.

This handbook will not answer every potential NEPA compliance question. Reclamation's activities can lead to situations that do not fit "classic" NEPA definitions. Regulatory, social, and political realities can complicate the application of NEPA to unusual situations. The handbook cannot, and does not try to, address every possible situation. It should be useful as a starting point in any situation, but there is no substitute for discussions of complex situations with experienced environmental staff within Reclamation, whether at the area, regional, or Denver offices. The regional offices and Solicitor's Office can also provide assistance when NEPA compliance issues or questions arise.

### **1.4 Modifications to the Handbook**

This handbook is issued by the Policy and Administration Office of the Bureau of Reclamation. It will be reviewed periodically, modified, and reissued (in part or whole) by this office to reflect changes in environmental, Interior, and/or Reclamation regulations and policy.

Reclamation staff and managers should let Policy and Administration staff know if there are areas in the handbook that are not clear or not helpful. Revisions can occur any time there is an identified problem with the existing text. Mandated changes from higher level authorities and minor updates can be made quickly, as appropriate, and without extensive reviews. The most recently updated handbook is available at [www.usbr.gov/NEPA](http://www.usbr.gov/NEPA). Hard copies will be made available only on a limited basis, upon request to Policy and Administration.

## **1.5 Figures, Links, and Attachments**

Most of the figures located at the end of chapters are examples of the various documents discussed in the chapter. These figures are intended to be guides. Reasonable deviation from these examples is sometimes an option, but such changes should be discussed with appropriate staff. For example, the format of the Federal Register (FR) notices and other process requirements are often determined outside Reclamation and are not subject to change by Reclamation.

A list of useful links is located at the end of most chapters. These links pertain to information discussed in that chapter. In some cases, linked items are also included as attachments.

Attachments to this NEPA Handbook are contained on a compact disc (CD) issued with the handbook.

## **1.6 Disclaimer**

This handbook is a guidance document and, as such, is for informational purposes only. It does not create any responsibility or obligation regarding NEPA activities performed by Reclamation or Interior. It does not create any right of action for failure to perform NEPA activities as described herein. The provisions of this handbook should be construed in harmony with applicable statutes, regulations, and Interior manuals to the extent possible and do not affect the provisions of these authorities. In the event of a conflict between this handbook and applicable authorities, the applicable authorities shall control.



# Chapter 1 Useful Links

Departmental Manual – Part 516 (Environmental Quality Programs)

<http://elips.doi.gov/elips/browse.aspx>

National Environmental Policy Act of 1969, 42 U.S.C 4321, et seq.

[http://ceq.hss.doe.gov/laws\\_and\\_executive\\_orders/the\\_nepa\\_statute.html](http://ceq.hss.doe.gov/laws_and_executive_orders/the_nepa_statute.html)

Reclamation Manual

<http://www.usbr.gov/recman/index.html>

Reclamation Manual Policy - ENV P03

<http://www.usbr.gov/recman/env/env-p03.pdf>

40 CFR Parts 1500 – 1508

[http://ceq.hss.doe.gov/ceq\\_regulations/regulations.html](http://ceq.hss.doe.gov/ceq_regulations/regulations.html)

43 CFR Part 46

<http://www.doi.gov/oepec/nepafr/docs/Federal%20Register%20October%202015,%2002008%20NEPA.pdf>

## Chapter 2

# Overview of NEPA

## 2.1 The Purpose of NEPA

When NEPA was signed into law in 1970, Congress and the President established a new environmental policy for Federal agencies. This new policy became part of each agency's mission. NEPA states its purposes (NEPA Section 2, 42 U.S.C. § 4321) as follows:

To declare a national policy that will encourage productive and enjoyable harmony between man and his environment;

To promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man;

To enrich the understanding of the ecological systems and natural resources important to the Nation; and

To establish a Council on Environmental Quality.

In addition, NEPA states in Section 101, 42 U.S.C. § 4331(b):

In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources . . .

In other words, Reclamation must be environmentally aware in looking at the relationship its planning actions, projects, and programs have with the human environment now and in the future.

In order to make NEPA effective, Congress directed that all "policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act" (Section 102, 42 U.S.C. § 4332). NEPA established the CEQ to promulgate regulations to implement the Act.

## **2.2 Federal Agencies' NEPA Responsibilities**

To the fullest extent possible, Federal agencies are required to use all practicable means (NEPA Section 101(b)) to implement the policy expressed in NEPA. Section 102 of NEPA addresses how agencies are to integrate consideration of environmental values into planning and decisionmaking (i.e., through use of a systematic interdisciplinary approach, development of methods and procedures, and preparation of EISs on major Federal actions significantly affecting the quality of the human environment). Federal agencies must also consult with other Federal agencies having jurisdiction or expertise regarding the environmental effects of proposed Federal actions and make EISs available for public review and comment.

## **2.3 The NEPA Process**

The NEPA process is defined by the CEQ NEPA Regulations (40 CFR, Section 1508.21) as “all measures necessary for compliance with the requirements of Section 2 and Title I of the Act.” The NEPA process applies primarily to the steps leading up to and including the preparation of environmental documents, required in Section 102(2)(C) of the Act. This environmental information is integrated into the planning process (see section 4.2 in chapter 4) and supports agency decisionmaking. The CEQ Regulations allow Federal agencies to supplement the NEPA procedures with agency procedures describing how compliance will be carried out for specific agency programs and activities. Interior’s regulations (43 CFR 46) provide additional specific requirements and are further supplemented by DM Part 516.

Within Reclamation, NEPA compliance is the responsibility of all Reclamation employees, not just management or the environmental staff. Failure to carry out the NEPA process creates a risk of legal action. Most of the suits brought against Federal agencies related to NEPA are for infractions of NEPA procedures under the Administrative Procedures Act.

### **2.3.1 What NEPA Does**

Compliance with NEPA is a Federal responsibility and involves the participation of Federal, State, tribal, and local agencies, as well as concerned and affected public in the planning process. NEPA requires full disclosure of the potential effects of major actions proposed by Federal agencies and accompanying alternatives, impacts, and possible mitigation. NEPA also requires that environmental concerns and impacts be considered during planning and decisionmaking so that steps may be more easily taken to correct or mitigate the impacts of an action. Once a project is implemented, it may be too late or too difficult to avoid or mitigate environmental effects without a substantial increase in the cost and the manageability of the project (i.e., irretrievable commitment of

resources). Compliance with NEPA results in more informed decisions and the opportunity to avoid or mitigate for potential environmental effects before an action is implemented.

### 2.3.2 What NEPA Does Not Do

The following list is intended to dispel some of the misconceptions about NEPA. Compliance with NEPA does not:

- **Decide which alternative to choose.**—The NEPA process provides for the development of reasonable alternatives and evaluates their impacts so that the decisionmaker can make an informed decision.
- **Prevent environmental impacts from occurring.**—NEPA compliance requires only that impacts and potential mitigation be disclosed before decisionmaking. NEPA does not require that potential mitigation be implemented.
- **Guarantee how information will be utilized by the decisionmaker.**—NEPA compliance provides information for consideration in the decisionmaking process. It does not guarantee how the decisionmaker will act upon the information.
- **Justify a predetermined action.**—The NEPA process is intended to identify and evaluate alternatives in an impartial manner.
- **Apply to non-Federal entities.**—NEPA applies only to discretionary actions by a Federal agency, including actions dependent upon Federal approval or Federal funding, where the Federal agency retains sufficient control and responsibility over the use of the funding.

## 2.4 Other Parts of NEPA (Section 102 (F), (G), and (H))

Section 102 contains several sections that are rarely referenced but may be applicable to special situations, including:

- Paragraph (F) recognizes the worldwide and long-range character of environmental problems and authorizes Federal agencies to lend appropriate support to activities maximizing international cooperation and preventing declines in the world environment.
- Paragraph (G) authorizes Federal agencies to make assistance available to State and local governments in restoring, maintaining, and enhancing the environment.

- Paragraph (H) authorizes Federal agencies to initiate and use ecological information for the planning and development of resource-oriented projects.

## **2.5 Council on Environmental Quality and U.S. Environmental Protection Agency**

### **2.5.1 Council on Environmental Quality**

NEPA created CEQ in the Executive Office of the President as an advisory body. The specific functions of CEQ related to the NEPA process include:

- Promulgating regulations implementing NEPA (40 CFR Parts 1500-1508) and guidance. (See NEPA's Forty Most Asked Questions by CEQ.)
- Overseeing Federal agency implementation of NEPA and CEQ regulations, including approving agency NEPA regulations.
- Providing assistance in developing environmental policies and proposed legislation as requested by the President.
- Interpreting NEPA and CEQ regulations for agencies and citizens.
- Providing consultation with Federal agencies regarding legislation and litigation.
- Mediating interagency disputes.
- Acting on referrals to CEQ (40 CFR Part 1504).

### **2.5.2 U.S. Environmental Protection Agency**

The U.S. Environmental Protection Agency (EPA) has a unique responsibility to review the environmental effects of other Federal agencies' actions under the authority of Section 309 of the Clean Air Act (CAA). Section 309 requires EPA to review and publicly comment on the environmental impacts of any matter related to the duties, responsibilities, and authorities of EPA's administrator, including actions to which Section 102(2)(C) of NEPA applies. EPA has developed a rating system for these reviews (figure 2.1). If EPA's administrator determines that a proposed action is unsatisfactory from the standpoint of public health, welfare, or environmental quality, Section 309 requires that the determination be made public (generally in the FR) and referred to CEQ.

EPA's review is carried out to ensure that an independent review of the environmental effects of Federal proposals occurs. EPA's reviews emphasize consultation with the lead agency and public disclosure of EPA actions and concerns. EPA does not have the authority to require changes to a NEPA document. However, Reclamation should work closely with EPA to resolve any issues that may result in less than adequate ratings.

Section 309 generally requires that EPA review and comment on the adequacy of the analysis, the environmental impacts of the proposed action, issues related to its duties and responsibilities, and potential violations of, or inconsistencies with, national environmental standard. The major elements of the Section 309 review are:

- If the action is a Federal project to be located in a specific area, the appropriate EPA regional office has the jurisdiction and delegated responsibility for carrying out the Section 309 CAA review and working with the lead Federal agency to resolve any problems. If the action is legislative or regulatory, the Section 309 review will generally be conducted directly by EPA headquarters.
- If the regional or original reviewing office finds the proposed action in a draft EIS is "environmentally unsatisfactory" or that the information in the draft EIS is "inadequate" to assess the potentially significant environmental impacts of the proposed action, EPA headquarters and CEQ will be notified. These findings indicate that the reviewed draft EIS is a prime candidate for referral to CEQ if the deficiencies are not corrected in the final.
- If the EPA region finds that the subsequent final EIS is "environmentally unsatisfactory," the region recommends to the EPA administrator that the matter be referred to CEQ for resolution. At this time, EPA headquarters becomes significantly involved in the factual determination and judgment concerning the EIS.

EPA has other NEPA-related duties. In accordance with a memorandum of agreement between EPA and CEQ, EPA carries out the operational duties associated with the administrative aspects of the EIS filing process. The Office of Federal Activities, at EPA headquarters, has been designated the official EPA recipient of all EISs prepared by Federal agencies. EPA's filing guide was published in the FR on March 7, 1989.

## **2.6 Interior's NEPA Regulations (43 CFR 46)**

In October 2008, Interior published final regulations for the implementation of NEPA (43 CFR Part 46). These regulations are to be used in conjunction with,

and supplementary to, the other existing authorities (CEQ regulations, Executive orders, etc.). These regulations provide greater visibility to the material previously contained within the DM and enhance cooperative conservation by highlighting opportunities for public engagement and input in the NEPA process.

Environmental Impact of the Action

## LO — Lack of Objections

EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

## EC — Environmental Concerns

EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

## EO — Environmental Objections

EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

## EU — Environmentally Unsatisfactory

EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to CEQ.

Adequacy of the Impact Statement

## Category 1 — Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

## Category 2 — Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion would be included in the final EIS.

## Category 3 — Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of that action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review and, thus, should be formally revised and made available for public scoping comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to CEQ.

**Figure 2.1.—Summary of EPA rating definitions and followup action.**  
(from EPA's Environmental Impact Statement Rating System Criteria Web site).



## Chapter 2 Useful Links

Administrative Procedures Act

<http://www.archives.gov/federal-register/laws/administrative-procedure/>

Clean Air Act Section 309

[http://ceq.hss.doe.gov/laws\\_and\\_executive\\_orders/clean\\_air\\_act.html](http://ceq.hss.doe.gov/laws_and_executive_orders/clean_air_act.html)

Departmental Manual – Part 516 (Environmental Quality Programs)

<http://elips.doi.gov/elips/browse.aspx>

EPA's Federal Register Filing Guide

<http://www.epa.gov/compliance/resources/policies/nepa/amended-eis-filing-guidance-pg.pdf>

National Environmental Policy Act of 1969 42 U.S.C 4321, et seq.

[http://ceq.hss.doe.gov/laws\\_and\\_executive\\_orders/the\\_nepa\\_statute.html](http://ceq.hss.doe.gov/laws_and_executive_orders/the_nepa_statute.html)

NEPA's Forty Most Asked Questions – CEQ

<http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm>

Policy and Procedures for the Review of Federal Actions Impacting the Environment

[http://www.epa.gov/compliance/resources/policies/nepa/nepa\\_policies\\_procedures.pdf](http://www.epa.gov/compliance/resources/policies/nepa/nepa_policies_procedures.pdf)

Summary of EPA Rating Definitions and Followup Action

<http://www.epa.gov/compliance/nepa/comments/ratings.html>

40 CFR Parts 1500 – 1508

[http://ceq.hss.doe.gov/ceq\\_regulations/regulations.html](http://ceq.hss.doe.gov/ceq_regulations/regulations.html)

43 CFR Part 46

<http://www.doi.gov/oepc/nepafr/docs/Federal%20Register%20October%202015,%202008%20NEPA.pdf>

## Chapter 3

# The NEPA Process

The NEPA process is intended to clarify whether an action proposed by a Federal agency is a major Federal action significantly affecting the quality of the human environment, and, if so, to disclose the potential impacts to the public and to agency decisionmakers. Action may be addressed by categorical exclusions (CE), while Federal actions that are clearly major require an EIS. An EA addresses those situations that are neither covered by CEs nor clearly require an EIS.

Compliance with Section 102(2)(c) of NEPA is carried out through a formal process (see figure 3.1). When the courts find NEPA compliance to be inadequate, it is frequently because of procedural errors by the Federal lead agency. The courts will determine if Reclamation complied with the required process but will usually defer to Reclamation on issues of analysis and technical knowledge, provided that differing opinions are documented.

### **3.1 Types of Environmental Reviews: Categorical Exclusion, Environmental Assessment and Finding of No Significant Impact, Environmental Impact Statement**

NEPA compliance is triggered by a discretionary Federal action that is subject to Reclamation control and responsibility (40 CFR 1508.18). The nature of the Federal action may be construction of a project, granting a permit, providing Federal funding, or any other action where a Federal decision is required. If no Federal action is being taken or proposed by Reclamation, no NEPA document is required.

Once it has been established that there is a proposed Federal action, the next step is to determine relevant environmental issues, the potential magnitude of environmental impacts, and the appropriate level of NEPA documentation. Based on an early evaluation of a proposed action's environmental effects, the documentation for the action can be placed in one of the following three categories.

#### **3.1.1 Categorical Exclusions (40 CFR 1508.4, 43 CFR 46. 205, 43 CFR 46.210, 43 CFR 46.215, and 516 DM 14)**

The first (and simplest) type of environmental review is the CE. A CE applies to actions that have been determined not to individually or cumulatively have a

significant effect on the human environment. A CE excludes categories of Federal actions from further NEPA review because the actions within these defined categories have been determined to generally have no significant effect on the environment, have no unresolved conflicts concerning alternative uses of available resources, or have no extraordinary circumstances that are applicable. Reclamation recommends a completed CEC for every use of a Reclamation-specific CE. If all the questions on the CEC can be checked “no” (see chapter 5, figure 5.2), no further NEPA documentation is necessary. If “uncertain” or “yes” is checked, an EA or EIS would be necessary.

Development of a new CE category must be approved by CEQ and published in the FR for public review and comment before it is finalized. There may be cases in which a CE appears to apply but, because of particular circumstances such as controversy, action-specific environmental circumstances, or cumulative effect in relationship to other actions, NEPA analysis and documentation in an EA or EIS may be necessary. Interior’s CEs and list of exceptional circumstances are included in 43 CFR 46.210 and 46.215. Reclamation’s CEs are listed in 516 DM 14.5.

A CE can only be used for actions specifically defined by the exclusion category. The CEs and the procedures for using them, including actions for which a CEC is and is not necessary, are discussed in chapter 5.

### **3.1.2 Environmental Assessment and Finding of No Significant Impact**

**(40 CFR 1501.3 and 1508.9, 43 CFR 46.300-325, 516 DM 1.13, 516 DM 3.4 A, and 516 DM 4.4 B)**

The purpose of an EA is to allow the decisionmaker to determine whether to prepare an EIS or a finding of no significant impact (FONSI). An EA is written for any action that may have effects that are uncertain, and for which it is uncertain whether an EIS may be required. An EA is used to identify the issues and the environmental effects. Based on the EA, a FONSI may be prepared if the EA has demonstrated that there are no significant impacts resulting from the proposed action; if not, an EIS will be initiated. In addition, an EA may be used for evaluating any potential agency action to assist in planning and decisionmaking.

An EA is a concise document prepared with input from various disciplines and interested parties that provides sufficient evidence and analysis for determining whether to prepare an EIS or a FONSI. This conclusion cannot be reached without having knowledge of what the issues are, as determined by appropriate Federal, tribal, State, local, and public entities, as well as the general public. The decision to conduct the next level of evaluation (an EIS) can be made any time there is enough information to indicate that significant impacts may occur or that sufficient controversy (disputes over scientific conclusions or impacts of the action) about the impacts exists. Mere opposition is not controversy.

If a decision has already been made to prepare an EIS, then an EA is not necessary. More detail on circumstances when an EA is appropriate and a detailed discussion of EA procedures and the FONSI can be found in chapter 6.

### **3.1.3 Environmental Impact Statement (40 CFR 1502.1 through 1502.25, 43 CFR 46.400 through 46.450, 516 DM 1.13, 516 DM 3.3, 516 DM 3.4, 516 DM 4.4 D through G, and 516 DM 14.4)**

An EIS is normally required for a major Federal action where environmental effects are potentially significant. Reclamation actions normally requiring the preparation of an EIS are listed in 516 DM 14. The nature of an action, and its environmental effects, may be apparent from the beginning of the study, and these factors may call for an EIS without the preparation of an EA. Some latitude exists in determining those actions which require an EIS. The determination is the result of many factors, including controversy (disputes over scientific conclusion or impacts of the action), environmental considerations, project history, and the language in the regulations (see also 40 CFR 1502.4, 40 CFR 1508.18, 40 CFR 1508.23, and 40 CFR 1508.27).

Chapters 7 and 8 discuss EIS requirements in detail.

## **3.2 When to Apply NEPA**

Section 102 of NEPA indicates that a “detailed statement” (i.e., an EIS) shall be included with “proposals for legislation and other Federal actions significantly affecting the quality of the human environment.” NEPA is required when a discretionary Federal action is proposed. The regulations (40 CFR 1508.18(a)) define a Federal action as including new and continuing activities, actions partly or entirely financed by Federal agencies (where some control and responsibility over the action remain with the Federal agency [43 CFR 46.100]), actions conducted by Federal agencies, actions approved by Federal agencies, new or revised agency rules or regulations, and proposals for legislation.

## **3.3 When NEPA Documentation Is Not Required (40 CFR 1508.18 and 43 CFR 46.100)**

No NEPA documentation is needed if there is no Reclamation action or no Federal discretion. If there is a Reclamation discretionary action and it is not on the list shown below, it will likely require some NEPA documentation. If a proposed action is on the list, environmental concerns should still be considered in decisionmaking, and regional and other environmental staff should be consulted as appropriate before the decision is made that an action is exempt from NEPA documentation. The following activities are exempt from NEPA:

- Congressional legislation expressly exempting specific projects or actions from NEPA compliance (note that other environmental laws may still apply, depending upon the specific situation)
- Funding assistance solely in the form of general revenue sharing funds (unrestricted block grants under the State and Local Fiscal Assistance Act of 1972) with no Federal control over the subsequent use of such funds
- Judicial or administrative civil or criminal enforcement actions such as levying fines or sentencing
- Internal administrative actions, including standard materials acquisition and use, as well as organization and administrative changes
- Actions by others that do not involve Federal monies, facilities, or approval
- Operational decisions on ongoing Reclamation projects where there would be no major changes in existing operations or no new information relevant to potentially significant effects (i.e., maintenance of the status quo)
- Federal funding assistance where there is no Federal agency control and responsibility as to the expenditure of funds by the recipient

Be aware that NEPA compliance documents are generally required for every other action. When questions arise, consult your area office environmental staff, regional environmental staff, and/or solicitor.

### **3.4 Apply NEPA Early (40 CFR 1501.2, 1502.5, and 43 CFR 46.200)**

CEQ regulations state that: “Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts” (40 CFR 1501.2).

Environmental considerations should be taken into account as soon as a proposal is identified (40 CFR 1502.5). In some cases, the activity may be already covered by previous NEPA documentation, but this assumption should be confirmed early in the process. Area office and/or regional environmental staff should determine whether any changes have occurred in environmental conditions and if the previous NEPA documentation is still accurate.

Reclamation personnel should begin developing environmental information at the earliest reasonable time so that environmental data are used in the decisionmaking process. Consideration of environmental information and issues should begin with the identification of a need that Reclamation contemplates addressing.

### **3.5 Scoping (40 CFR 1500.4, 1501.7, and 516 DM 1.11)**

The purpose of scoping is to obtain information that will focus the NEPA analysis (whether an EA or EIS) on the potentially significant issues and deemphasize insignificant issues (40 CFR 1500.4(g)). Information should come from a variety of sources, and reasonable effort should be made to contact all parties who may have information on the proposed action. Scoping (required by NEPA implementing regulations at 40 CFR 1501.7) is similar to, and closely related to, public involvement. Information gathered either identifies or can be used to identify:

- Significant resource issues
- Interested parties
- Study participants
- Resources available for the study
- Study constraints
- Alternatives to be considered
- The potentially affected geographical area
- Potential effects

#### **3.5.1 Scoping Defined**

Scoping is required by NEPA regulations (40 CFR 1501.7). It is to be “an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action.” It includes all types of information-gathering activities and should not be viewed as a process limited only to a public meeting forum. Information can be obtained in a variety of ways: contacts with other agency personnel, water districts, citizens groups, and other interested individuals and parties are all scoping activities.

Scoping activities should be flexible and tailored to the action being considered. For example, scoping activities for a CE may be limited to intra-agency (environmental, technical services, planning, water operations, etc., groups or staff within Reclamation) and interagency contacts such as those with the U.S. Fish and Wildlife Service (Service), U.S. Army Corps of Engineers (USACE), and the State Historic Preservation Officer (SHPO). If warranted by the action, it may be beneficial to contact additional individuals and groups for information.

Scoping activities can be tailored to a project's needs. For example, scoping activities for an EA would likely include the intra- and interagency contacts routinely made for a CE. Public scoping is not required for an EA, but if a project is more complex, it may warrant a media program to solicit input from the general public, using newspaper articles or Web site information. Some Reclamation regions, recognizing the benefits of involving the public early in the scoping process, require a public notice for the development of an EA. The action should dictate scoping activities, and if a public notice and/or public meetings facilitate information gathering, such activities are encouraged.

Scoping activities associated with an EIS may include any of the activities previously described and any others necessary to gather relevant information. For highly visible actions, a newsletter, or even a home page on the World Wide Web, may facilitate information gathering. According to NEPA regulations, a notice of intent (NOI) to prepare an EIS must be published in the FR prior to initiating scoping. However, some information gathering is usually necessary before publication of the NOI to ensure that the interested publics understand the action and can effectively provide additional information. Depending on the action, an NOI may be an effective tool to facilitate scoping at other levels of compliance, such as an EA.

### **3.5.2 Public Meetings**

Public meetings for scoping activities are not required. However, public meetings can be effective communication tools, as well as effective mechanisms for gathering information. The use of public meetings as a scoping tool is strongly encouraged. Scoping generally involves a series of intra-agency, interagency, and public meetings, or it may consist of a series of smaller meetings with interested groups, agencies, or even individuals, including those opposed to the proposed action. Scoping meetings should, to the extent practicable, be held in the project impact area. Interested Federal, tribal, State, and local agencies; interested citizens; and environmental groups should be invited to participate.

### **3.5.3 Benefits of Scoping**

At the beginning of this section, the purpose of scoping was described as information gathering. Scoping should also be viewed as a "value-added" interdisciplinary process. Effective scoping identifies the public's concerns and, together with agency considerations and input from technical staff, defines significant resource issues. Reclamation can then focus on the defined issues and avoid encyclopedic discussions of topics that are irrelevant to the proposed action. The more an analysis can be focused on significant resource issues, the better the exchange between the public and the decisionmakers. Issues that are not significant, or that have been covered in the other documents, should be handled by reference, or the depth of coverage should be reduced. Often, it is just as important to understand which resource issues are not significant as it is to identify which resource issues are.

Scoping aids in identifying issues defined in other environmental laws (i.e., Endangered Species Act of 1973 (ESA), National Historic Preservation Act (NHPA), the Clean Water Act (CWA), Fish and Wildlife Coordination Act (FWCA), etc.). Staff can begin to lay the groundwork for coordinating and consulting with other Federal agencies with jurisdiction and expertise in these areas and integrating these analyses into the NEPA process. This helps prevent delays later in the NEPA process. Scoping is an especially important consideration whenever endangered species or cultural resources is involved. These issues can become major considerations with proposed actions, and the constraints associated with such considerations should be identified and addressed early in the scoping process. It is important that the Federal agency staff attending scoping (or cooperating agency) meetings are able to describe the requirements of all Federal laws within their jurisdiction.

Scoping activities help to identify interested and/or potentially affected parties. Where applicants are involved, it can bring them into the process to identify information needs, how other environmental reviews may be integrated into the NEPA document, and any major obstacles that could cause delays. Detailed records of contacts made during scoping activities become part of the project files and can become an important reference. Scoping can also assist in identifying resources for the study, including staff time, data, and funding.

By defining significant resource issues, scoping activities help identify the geographical area potentially affected by the proposed action. Issues can often be associated with physical areas, although impact areas may vary by resource. For example, changes in dam operations may affect biological resources for many miles downstream, but the same changes could affect hydropower in several States. In some cases, scoping may reveal a new alternative to the project that was not previously considered by the agency.

In situations in which a non-Federal action involves a Reclamation decision that is the only Federal decision involved, and in which Reclamation's decision affects only a small portion of the overall action, it may be within reasonable agency discretion to limit the NEPA review to those parts of the action directly related to Reclamation's decision. This recognition of the overwhelmingly private nature of the action avoids the "federalization" of the action. Such a situation could, for example, involve proposals to cross Reclamation properties that are merely a link in a transportation or utility transmission project. Great care should be taken to ensure that the entire Federal relationship with the action (not just Reclamation's) has been analyzed before concluding that the appropriate scope of the NEPA analysis will not include the entire project. It is important to realize that the type of actions under discussion (where Reclamation's analysis could be limited) would not involve Reclamation project operations or Reclamation project water.



More information on scoping is provided by CEQ in its 1981 (NEPA's Forty Most Asked Questions, March 23, 1981, and Memorandum for General Counsels, NEPA Liaisons, and Participants in Scoping, April 30, 1981) and 1983 (Guidance Regarding NEPA Regulations) memoranda.

### **3.6 Public Involvement (40 CFR 1506.6, 43 CFR 46.110, 43 CFR 46.305, 43 CFR 46.430-435, and 516 DM 1.7)**

Public involvement activities are required by CEQ regulations (40 CFR 1506.6(a)), which state: "Agencies shall: Make diligent efforts to involve the public in preparing and implementing their NEPA procedures." The public should be involved as much as possible, on a continuing basis throughout project planning, to build consensus for the final decision. It is not always easy to seek out those with differing viewpoints, but it is an important part of the process to be aware of all points of view and to work with all concerned individuals and the public. Initial efforts spent listening and being open to other ideas should prevent many headaches later in the process.

Public involvement means effective involvement of the affected and interested individuals and/or groups in planning and the decision process. It centers on effective two-way communication among the partners, agencies, organizations, and all the various stakeholders.

Often, interested parties do not understand the NEPA process or how they may get involved. Reclamation, like other agencies, has a responsibility to ensure that parties directly affected by an action are informed about the NEPA process. This may be as simple as distributing NEPA fact sheets or other information at public meetings; in newspapers or other media resources, including Reclamation's Web site; or more involved, such as providing NEPA training or workshops.

#### **3.6.1 Public Notification (40 CFR 1506.6(b), 40 CFR 1501.7(a)(1), 43 CFR 46.305, and 43 CFR 46.435)**

Reclamation shall involve the appropriate public in preparing NEPA documents. It will provide public notice of NEPA-related hearings, public meetings, EAs, FONSIIs, NOIIs, and the availability of EISs. Notices will include appropriate tribal, local, and State government entities in any distribution, as well as other parties upon request.

The requirement for public notice varies by the level of NEPA compliance. No public notice is required for a CE, although in unusual circumstances, some notice may be advisable.

Public notice of the availability of EAs and FONSI is required, though the requirements depend upon the proposed action, potential issues, and public interest. Noticing may include posting to a regional Internet Web site, posting to community bulletin boards, direct mailings, or other methods.

In the case of an EIS, Reclamation must publish a notice of intent (NOI in the FR when the EIS is initiated). Reclamation will issue the FR, regional, and local notices, as appropriate, for draft, final, and supplemental EISs and RODs. Additional information on the ROD can be found in section 9.5 of this handbook.

Public involvement continues throughout the planning and implementation of the action and, thus, includes all scoping activities. After a major scoping activity, Reclamation should implement some means of informing the public participants of the decisions made. It may be appropriate to prepare a public document that identifies how the issues raised by the public will be handled and how data will be developed. The document (perhaps a newsletter or scoping report) should be distributed to all individuals who participated in the scoping meetings and to the news media.

### **3.6.2 A Continuing Process**

Reclamation's public involvement program should begin early so that environmental concerns can be discussed with the public as the plans are developed and evaluated. Early meetings may need to focus on how the NEPA process works and how the public can most effectively participate in that process. Consensus-based management, if appropriate, should be initiated at the earliest possible opportunity (43 CFR 46.110) (see Section 8.6, Description of Alternatives). Training on how to effectively participate in the NEPA process and discussion of any applicable adaptive management components may also be appropriate early in the public involvement process.

When working with Indian tribal governments, it should be kept in mind that Indian tribes are not just another stakeholder or member of the public. They are sovereign entities. Please see more on working with tribes in the next section.

There are many ways to continuously involve the public in the NEPA process. None will answer all the concerns for involvement that the public may express. The greater the degree of public interest, the more expansive the continuing scoping efforts should be. Briefings, Web sites, newsletters, special issue groups, and regular attendance at local governmental meetings are just some of the many techniques that are available.

Reclamation environmental personnel and other relevant disciplines (the interdisciplinary team) should be involved early in the planning process. They can help identify important resources, opportunities, and potential difficulties and any known environmental constraints so conflicts can be avoided. For example,

there may be endangered species or sensitive wetland areas that should be avoided, or there may be a nonstructural way to accomplish the project purpose and satisfy the identified needs.

After Reclamation's environmental personnel are involved, other agencies with environmental expertise and/or legal jurisdiction (i.e., potential cooperating agencies) and potential partners should be identified and involved. When the project purpose and need have been defined, all appropriate publics should be contacted to identify their questions and concerns and to begin NEPA documentation.

The participation of project sponsors, cooperating agencies, tribes, and partners in the public involvement process is encouraged. They should be present at important scoping meetings, public hearings, and other events to provide information concerning non-Reclamation objectives associated with the proposed action.

To the extent possible, Reclamation should encourage community representatives and stakeholders to reach consensus on issues at critical points throughout the NEPA process. This is not always practicable and feasible, especially on large and complex projects where there may be many diverse and competing interests. Reclamation has the responsibility to keep the NEPA process on track and make the final decision on a proposed action. However, an approach that encourages consensus (consensus-based management) may help avoid problems later on if interested parties are on board with the decisionmaking process. See also 43 CFR 46.110, ESM 10-21, and Reclamation memo entitled, "Guidance on Use of Consensus-Based Management in the National Environmental Policy Act Process."

### **3.7 Coordination, Consultation, and Cooperation (40 CFR 1500.2(c), 1501.6, 1502.25, 1506.6, 43 CFR 46.155, and 516 DM 1.6)**

Coordination is closely related to scoping and public involvement and continues throughout the process. The NEPA process is an open one, integrating the provisions of other environmental statutes and the needs of interested parties. While the extent and formality of the coordination will vary, the need to coordinate with other interested parties is a constant feature of NEPA. The NEPA regulations define a special relationship for some agencies (i.e., a cooperating agency) (40 CFR 1501.7, 1508.5, and 43 CFR 46.225).

Coordination also includes Federal, tribal, State, and local entities that are not cooperating agencies, and any appropriate public. Such entities with a potential interest in the proposed action should be notified early in the process and given opportunity to provide input. NEPA activities should be coordinated with other

environmental requirements so that their requirements are, when possible, met concurrently rather than consecutively. This specifically includes FWCA, CWA, NHPA, ESA, and other environmental review laws and Executive orders. (See EO 13352, Cooperative Conservation, and ESM 10-19, Procedures for Implementing Integrated Analyses in the National Environmental Policy Act Process).

The United States Government has a unique legal and political relationship with Indian tribal governments, established by the Constitution of the United States, treaties, statutes, judicial decisions, and Executive orders. EO 13175 (November 6, 2000) specifically addresses “Consultation and Coordination with Indian Tribal Governments.” Meetings with tribal governments should follow protocols appropriate for a government-to-government consultation. Reclamation has prepared guidance to assist in working with Indian tribes: Protocol Guidelines: Consulting with Indian Tribal Governments (this document can be found under the “NAAO Policy” link at [www.usbr.gov/native/](http://www.usbr.gov/native/)). The focus of a scoping meeting is to initiate a thorough identification and review of the issues prior to preparation of a decision and not to debate the ultimate decisions. The scoping meeting should also identify areas that need further research and gather input from tribal leaders about how the consultation process should proceed.

### **3.8 Lead and Cooperating Agencies (40 CFR 1501.5, 1501.6, 1501.7, 1508.5, 1508.16, 43 CFR 46.220, 46.225, 46.230, 516 DM 1.9, and 516 DM 1.10)**

The lead agency has ultimate responsibility for the content of any NEPA document prepared. The lead agency also is responsible for basic scope, definition of purpose and need, alternative development, final document approval, and other decisions within the process. It is recommended that there always be a sole Federal lead agency. If joint Federal lead agencies are selected, one agency should be designated as responsible for printing and filing the document.

If more than one Federal agency either proposes or is involved in the same action, or is involved in a group of actions directly related to each other, the action agencies will select a lead agency to administer the preparation of the NEPA document (EIS or EA). If the action agencies cannot agree on who should be the lead agency, either agency may request that CEQ make the determination.

Reclamation, when acting as lead agency in the preparation of an EIS, will request the participation of any Federal agency or other eligible government entity with jurisdiction by law or with special expertise to be a cooperating agency. Federal agencies with closely related decisions having the same general scope may also be invited to be cooperators, and an agency may request

Reclamation to designate it as a cooperating agency. Non-Federal governmental entities, such as Indian tribes, local governmental entities, or States, can also be cooperators. It is advantageous to invite eligible governmental entities to become cooperators at the earliest opportunity. Reclamation must also respond to any requests for cooperating agency status. (See January 30, 2002, CEQ Memoranda, Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act.) Reclamation may invite qualified agencies to be cooperators in an EA as well. Appendix II of CEQ's regulations (40 CFR Chapter V) lists Federal and State agencies with jurisdiction by law or special expertise on environmental quality issues.

A cooperating agency is normally expected to fund its own participation (40 CFR 1501.6(b)(5)). Reclamation should use the environmental analysis and recommendations of the cooperating agencies to the maximum extent possible.

A Federal agency with jurisdiction by law is normally expected to become a cooperating agency (40 CFR 1501.6). However, CEQ and other qualified agencies may be a cooperating agency. CEQ Regulations (40 CFR 1501.6(c)) allow a Federal agency to decline to participate. A copy of such a reply shall be sent to CEQ (40 CFR 1501.6(c)) with a copy to the Office of Environmental Policy and Compliance (OEPC) of Interior. See also section 8.10.2 for additional detail on cooperating agencies.

### **3.8.1 Reclamation as a Lead or Joint Lead Agency**

When Reclamation is a joint lead with one or more other Federal agencies, each lead agency should sign a separate ROD, although special circumstances may make one ROD, signed by all leads, appropriate.

Reclamation, as lead agency, should always develop a memorandum of understanding (MOU) with each cooperating agency, defining the roles, funding sources, assignments, staff commitments, and schedule. Such MOUs must be used in the case of non-Federal agencies and must include a commitment to maintain confidentiality of documents reviewed prior to the public release of any NEPA document, including drafts (43 CFR 46.225(d)). Where potential conflicts exist with State public disclosure laws, consult your solicitor.

Cooperating agencies, as defined in the applicable MOU, may help identify issues; arrange, collect, and analyze data; develop and evaluate alternatives; and carry out any other mutually agreed-upon task. Cooperating agencies are normally expected to use their own funds, and only rarely should Reclamation provide funding for the participation of cooperating agencies. Situations in which such funding may be appropriate include special studies to be carried out by the cooperating agency, extraordinary travel requests, or other special circumstances (e.g., effective tribal participation, when dealing with Indian Trust Assets, may justify Reclamation funding).

When Reclamation agrees to participate in a joint lead agency situation, it is recommended that an MOU among all parties be developed to clearly identify the schedule, respective responsibilities, and funding commitments. The appropriate Solicitor's Office should review MOUs before they are signed.

### **3.8.2 Reclamation as a Cooperating Agency**

When requested by a lead agency, Reclamation will consider the request to be a cooperating agency based on jurisdictional responsibilities, project effects, and any special expertise (40 CFR 1501.6). Reclamation should actively seek cooperating agency status on other agencies' EAs or EISs where the activities or the impacts associated with these activities may affect Reclamation lands, waters, facilities, or programs.

Reclamation should enter into an MOU with the lead agency(s), describing what Reclamation's commitment is in the NEPA process (i.e., indepth analysis, writing sections of the document, and/or review of the document at various stages of its development). As noted above, where Reclamation is the lead (or joint lead) agency, the appropriate Solicitor's Office should review MOUs before they are signed.

It is to Reclamation's benefit that it provide adequate input into the NEPA process and associated documents (i.e., EA and EIS) when Reclamation is a cooperating agency so that all effects of the proposed action are presented in a complete, accurate, and unbiased manner. Reclamation may then adopt the document for follow-on Reclamation actions without further in-depth scoping, analysis, or public review as long as its NEPA requirements, comments, and suggestions have been satisfactorily addressed. Reclamation would have to prepare its own ROD or FONSI. See also 40 CFR 1506.3 (C) and CEQ's NEPA's Forty Most Asked Questions, No. 30.

Figure 3.2 is an example of an MOU between Reclamation and a cooperating agency (the content of an MOU with a lead or joint lead would be similar).

## **3.9 Interdisciplinary Approach (Section 102(2)(a) NEPA; 40 CFR 1502.6)**

Reclamation will use an interdisciplinary approach in preparing an EIS or EA, including entities with NEPA, planning, operations, construction, and/or land management expertise, as appropriate. In achieving this broad interdisciplinary approach, Reclamation may use agency staff, other agencies, or public groups with special interest or expertise, and/or prepared studies and other documented sources.

In addition, Reclamation may wish to contract with public or private entities for studies and reports on special and unique issues discovered during the scoping process.

In accordance with Section 102(2)(a) of NEPA, the documents shall be prepared to ensure the integrated use of the natural, social, and environmental sciences. The disciplines of the preparers should be appropriate for the scope and issues identified in the scoping process.

Lengthy discussions in the text on methodologies of the various disciplines should be avoided unless absolutely necessary to understand the analysis and its conclusions. Otherwise, explanations of methodologies may be either appended, if determined to be necessary for adequate review of the document, or filed and referenced in the document, to be available upon request.

### **3.10 Analysis (Section 102(2)(C)NEPA; 40 CFR 1502.16)**

NEPA requires that every EIS include analysis of:

- The environmental impacts of the proposed action
- Any adverse environmental effects which cannot be avoided should the action be implemented
- Alternatives to the proposed action and their impacts
- The relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity
- Any irreversible and irretrievable commitments of resources which would result from implementation

The analysis must also discuss direct and indirect impacts, conflicts with existing land use plans, energy requirements, mitigation, historic and cultural resources, natural or depletable resource requirements, and conservation potential (40 CFR 1502.16). See section 8.8 for more information on EIS content.

#### **3.10.1 Appropriate Level of Analysis**

Different types of NEPA compliance (EA and EIS) will likely present different levels of analysis. Both require a “hard look” at the potential impacts, but an EA is intended to be a “concise” document, while an EIS is required to be a “detailed statement.” The analysis should be of sufficient detail in an EA to allow a determination of significance, while the analysis in an EIS should support the full

display of potential impacts, with an emphasis on potentially significant impacts and reasonable mitigation. This level of analysis will vary not only between the two document types, but also within the documents, depending upon the potential issues related to different potential impacts.

### **3.10.2 Incomplete or Unavailable Information (40 CFR 1502.22 and 43 CFR 46.125)**

Reclamation will obtain the information necessary to fully evaluate all reasonably foreseeable, significant adverse impacts in NEPA documents, unless the information cannot be obtained because the costs are too great or the means of getting it are not available. Data and new information needs should be identified early enough in the process to enable timely completion of required studies and integration of the information.

The determination of costs being too great (i.e., exorbitant) is the responsibility of the deciding official. In addition to the monetary costs of obtaining the information, consideration of other nonmonetary costs, such as social costs, delays, opportunity costs, and nonfulfillment or nontimely fulfillment of statutory mandates, is appropriate.

Reclamation should carefully evaluate whether to move ahead on proposals for which limited relevant information may prevent meaningful analysis of alternatives, impacts, or the means to mitigate impacts. If information cannot be obtained, the NEPA document will make it clear that such information is lacking and why, discuss how that information would be relevant to the analysis, provide a summary of relevant existing data, and provide Reclamation's evaluation of potential impacts based upon generally accepted approaches, methods, or models.

Some information may not be available to Reclamation because it is proprietary information maintained by an applicant (i.e., a non-Federal entity requesting Reclamation to take some action). The CEQ regulations in 40 CFR 1502.21 state that "Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference." Reclamation should work closely with the applicant on questions that deal with proprietary issues or information.

## **3.11 Environmental Commitments (40 CFR 1505.3)**

Environmental commitments are written statements of intent made by Reclamation to monitor and mitigate for potential adverse environmental impacts of an action associated with any phase of planning, construction, and operation and maintenance (O&M) activities. It is a term used by Reclamation to reflect the concept addressed in 40 CFR 1505.3. Environmental commitments are actions that:



- Reduce or avoid impacts
- Restore or enhance environmental quality
- Are directly controlled by Reclamation
- Are indirectly controlled via a written agreement with another party to carry out the action

Reclamation is obligated to fulfill and appropriately fund all monitoring and mitigation measures that it commits to implementing in its final decision. For NEPA documents, these commitments generally appear in the ROD and other decision documents.

Environmental commitments may be documented in any NEPA compliance activity through the use of a CEC, EA, FONSI, EIS, or ROD. Commitments may state how Reclamation will comply with applicable statutes, regulations, and other obligations, including:

- Clean Water Act
- Clean Air Act
- Endangered Species Act
- National Historic Preservation Act
- Executive orders
- Tribal, State, and local laws, rules, and regulations

Reclamation will:

- Budget and allocate funds necessary to carry out the commitments as scheduled
- Monitor and evaluate the effectiveness of environmental commitments
- Document the results

The implementation of environmental commitments can be delegated to a third-party contractor or required as a condition for a permittee, lessee, or loan recipient for individual projects or actions. Any delegation of responsibility will be in writing. However, compliance with any environmental commitments program (see section 9.7.1) remains the responsibility of the appropriate Reclamation manager.

When Reclamation has the main financial responsibility, program activities should normally be budgeted and allocated in project or program accounts. However, the main financial responsibility may often fall on an applicant, permittee, or lessee.

### **3.12 Quality of Information (Public Law (P.L.) 106-554, 40 CFR 1502.24, and 40 CFR 1506.5)**

In response to a directive of Congress in Section 515(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (P.L. 106-554), Reclamation published Information Quality Guidelines (IQG) (<http://www.usbr.gov/main/qoi>). These guidelines are intended to meet requirements for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information). The guidelines also provide a mechanism for the public to seek and obtain correction of any erroneous information disseminated by the agency. NEPA documents and any other environmental documents that Reclamation distributes or makes available to the public are covered by these guidelines.

To ensure the quality of data in NEPA documents, information should be accurately documented and verified to the extent possible (40 CFR 1502.24). NEPA analyses may be peer reviewed any time there is a need. Peer review may be conducted using experts within other Reclamation offices (other regions, Technical Service Center [TSC], Policy and Administration, etc.) or outside of Reclamation.

The NEPA comment process may be utilized as the mechanism for parties seeking correction of information that is not consistent with the IQGs (quality, integrity, utility, and objectivity). Requests for information correction which cite the Information Quality Act (IQA) must be submitted in a certain format outlined in the IQG. The Reclamation office responsible for the NEPA document would respond to these comments as it would for any response to comments on NEPA documents. There is no process to appeal Reclamation's response to public comments on EISs under NEPA. However, under the IQA, a party may appeal a Federal agency response to the head of the agency if they remain dissatisfied with the quality of the data after the agency's corrections (if any). This has the potential to delay completion of the NEPA process, so it is important to respond clearly and fully to requests for correction under the IQGs.

### **3.13 Emergency Actions (40 CFR 1506.11 and CFR 46.150)**

CEQ and Interior regulations provide for emergency situations in which circumstances make it necessary to take actions without following the usual NEPA procedures. Emergencies are unexpected events that occur suddenly—not events that develop over weeks or months. The responsible official may immediately take actions necessary to control an emergency situation and mitigate harm to life, property, or important natural, cultural, or historic resources. When taking such actions, the responsible official must consider the potential

environmental consequences of these actions and mitigate potential adverse effects to the extent practicable while acting immediately to address the emergency.

The responsible official shall document that an emergency exists and describe the actions taken to address that emergency. Immediate preparation of a project file may be advisable.

Further actions to address the emergency will require NEPA compliance, or where proposed actions are required prior to the completion of a NEPA document, consultation with Interior's OEPC. The consultation with OEPC will address alternative arrangements, consultation with CEQ, and approval by the Assistant Secretary – Policy, Budget, and Management. These emergency events are rare, and there are always unique twists; so while this is the “formally approved” process, there is room for flexibility in practice.

Some emergency actions may be so limited in intensity and duration that the effects would be insignificant. Reclamation may be able to utilize an Interior or Reclamation CE if one is available for the type of action being undertaken. It is advisable to document the findings in a CEC and include it as part of the administrative record.

### **3.14 Adoption of Other Documents (40 CFR 1500.4(n), 43 CFR 46.120, 43 CFR 46.135, 43 CFR 46.140, and 43 CFR 46.320)**

CEQ and Interior regulations (40 CFR 1500.4(n) and 43 CFR 46.120(d)) indicate that Federal agencies should reduce duplication by adopting appropriate environmental documents prepared by other agencies.

#### **3.14.1 Adoption of Federal Documents (40 CFR 1506.3 and 43 CFR 46.120)**

The adoption of other Federal environmental documents is encouraged to avoid duplication. However, one basic premise of adopting documents is that the adopting agency must make its own independent review of the document and take full responsibility for its scope and content.

An EIS prepared by another agency may be adopted by Reclamation if, upon independent evaluation by the regional or area office, it is found to comply with Reclamation policy, Interior regulations, and CEQ regulations. In general, there are three situations in which adoption of an EIS may be appropriate:

- Reclamation participated as a cooperating agency. In this case, Reclamation, upon reviewing the document and ensuring that its

NEPA procedures have been satisfied, simply adopts the final environmental impact statement (FEIS) and issues its own ROD.

- Reclamation was not a cooperating agency but is undertaking an activity that was the subject of an EIS. In this rare case, Reclamation, after reviewing the document and ensuring that its NEPA procedures have been satisfied, would adopt the EIS, recirculate it as an FEIS, and then issue its own ROD.
- Reclamation's proposed action is not substantially the same as that covered in the EIS. In this case, Reclamation may adopt an EIS or portions of the EIS and recirculate it as a draft prior to completing an FEIS and issuing a ROD.

Adoption of EAs is addressed in 43 CFR 46.320 and is similar to the procedures to adopt EISs. The decisionmaker may adopt EAs prepared by other agencies as long as the following have been satisfied:

- Reclamation independently reviews the document for compliance with all of Reclamation's NEPA procedures, including public involvement.
- When appropriate, augment the environmental document to be consistent with Reclamation's action.
- Cite the environmental document.
- Once these requirements have been met, Reclamation may adopt the document for its own EA.

### **3.14.2 Use of Non-Federal Environmental Documents**

While the use of non-Federal environmental documents in Reclamation's NEPA compliance activities is encouraged, the distinction should be kept in mind between environmental documents and documents prepared pursuant to NEPA. In general, non-Federal environmental documents may be used as a basis for preparing NEPA documents, incorporated by reference, or, in certain cases, adopted as EAs.

There is no provision in CEQ regulations for adopting a non-Federal document as an EIS. If a non-Federal document had been prepared comparably to an EIS, Reclamation could use that document as a draft environmental impact statement (DEIS) after first ensuring that the document meets all NEPA and Reclamation procedural requirements. All requirements for completing an EIS would need to be met, including issuing an NOI and scoping. In effect, the non-Federal

document would be the equivalent of a DEIS prepared under contract for Reclamation and, from a procedural aspect, would need to be treated in the same manner.

Concerning EAs, a non-Federal document may be adopted after independent review by Reclamation to ensure that all NEPA and Reclamation procedures relating to EAs have been met. Reclamation would take full responsibility for its scope and content. Upon completion of this review, Reclamation may issue a FONSI. It is recommended, in this situation, that the EA and FONSI be publicly available for 30 days before a final decision is made.

### **3.14.3 Eliminate Duplication with Tribal, State, and Local Agencies (40 CFR 1506.2 and 43 CFR 46.120)**

CEQ's NEPA regulations require Federal agencies to cooperate with tribal, State, and local agencies to reduce duplication of NEPA and comparable requirements unless specifically barred from doing so by law. Such cooperation includes joint planning, joint environmental research and studies, joint public hearings, joint EAs, and joint EISs. In these instances, one or more Federal agencies and one or more tribal, State, or local agencies could be joint lead agencies (see section 3.8 of this chapter). Depending on the circumstances, Reclamation could be the NEPA lead agency, and the other agencies would take the lead on tribal/State/local requirements.

In instances where tribal or State laws or local ordinances have environmental compliance requirements in addition to, but not in conflict with, NEPA, Reclamation shall, to the fullest extent possible, cooperate in fulfilling these requirements, as well as those of Federal law, so that one document will comply with all applicable laws and regulations.

Reclamation will discuss any inconsistencies between a proposed action and approved tribal, State, or local plans and laws in an EIS or EA. Where inconsistency exists, the document should describe the extent to which Reclamation will modify its proposed action to reconcile it with the approved tribal, State, or local plan or law.

## **3.15 Integrating Related Environmental Legislation and Requirements (40 CFR 1502.25)**

To the fullest extent possible, the NEPA process will integrate the requirements of other statutes, such as the FWCA, NHPA, ESA, and other laws and EOs. The analytical process under these laws and concepts of no action, impacts, and scope may be described differently than under NEPA. It is important to recognize these differences and resolve them early in the process so that the environmental requirements are effectively addressed in one process with minimal redundancy. Environmental staff in the region, Policy and Administration, and the Solicitor's

Office can provide assistance to the Reclamation program offices in determining which laws apply to specific actions and how consultation and analyses may be incorporated into the NEPA process.

Where possible, the analysis of impacts required by these other laws should be included in or appended to the NEPA document. A section should also be included in the document describing the consultation and coordination that took place with the agencies overseeing these laws. If compliance with these other laws is treated as a separate action, delays could occur, possibly leading to additional costs and damage to public relations. At a minimum, the status of compliance should be documented in any EA or EIS.

Following is a list of examples, of which some or all may be identified for a given action. There may be other laws and Executive orders that also apply. Note that for all applicable laws and Executive orders, full and appropriate compliance is required and will be completed for any action, regardless of integration into the NEPA process.

### **3.15.1 Endangered Species Act (P.L. 93-205, as amended; 50 CFR 402; and 40 CFR 1502.25)**

Special attention should be given to the integration of NEPA and the ESA. Section 7(a)(2) of the ESA requires consultation with the Service and/or NOAA-NMFS for any Reclamation action which may affect a species federally listed as threatened or endangered (listed species). This consultation process may result in the Service and/or NOAA-NMFS issuing a biological opinion containing actions to be undertaken to avoid jeopardizing a species or to reduce the level of take associated with the proposed action. Reclamation shall, to the fullest extent possible, integrate ESA and NEPA analyses and schedules. There are several areas where, typically, issues have arisen that may not allow this integration of analyses. These are discussed below. The requirement to invite the Service as a cooperating agency (for an EIS), and the recommended MOU, should help integrate the respective schedules.

The initiation of Section 7 consultation requires the identification of a proposed Federal action. Therefore, consultation often is not initiated until the later stages of the NEPA process and usually only on the preferred alternative. This can create conflicts and delays in completing the NEPA process. Accordingly, it is important to provide a well-developed preferred alternative to the Service in a timely fashion. Consulting on multiple alternatives is not recommended because it can significantly increase the consultation timeframes. It is also useful, as appropriate, to maintain communications with the Service during the consultation process to address any questions that may arise.

A second consideration is that some of the actions emanating from an ESA consultation (i.e., agency commitments, reasonable and prudent alternatives [RPA], etc.) may require significant changes to alternatives; thus, a biological

opinion received late in the NEPA process can confound the NEPA process by presenting actions that have not been fully evaluated. Ongoing communication with the Service and/or NOAA can assist in understanding these outcomes earlier in the process. It is possible that Reclamation may modify the proposed action as a result of a late biological opinion and be required to supplement the NEPA document. The integration of NEPA and ESA in a timely manner is best accomplished by close and careful coordination and cooperation between Reclamation and the Service and/or NOAA-NMFS as early as practical in the NEPA process.

Another consideration is the definition and use of the term “baseline.” The Section 7 implementing regulations state that the effects of a proposed action are added to the baseline to determine if the species is jeopardized by the totality of actions that may affect it. If a species would be jeopardized by the proposed action (in addition to all other actions), a jeopardy biological opinion would be issued. “Environmental baseline” is defined in Section 7 regulations (50 CFR 402.02): “The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process.” This definition is similar to the “affected environment” under the NEPA regulations. The environmental baseline sets the stage for determining potential effects upon listed species under ESA. The environmental baseline is not the same thing as the “No Action Alternative” under NEPA.

Finally, both ESA and NEPA must address cumulative effects, but the regulations for the two acts define the term differently. Under NEPA, the cumulative effects analysis includes the reasonably foreseeable effects of both Federal and non-Federal actions. Under ESA, cumulative effects include the effects of the proposed action and those future tribal, State, local, and private actions that are also reasonably certain to occur, but they do not include future Federal actions. This difference is another factor making true integration of NEPA and ESA analyses difficult.

It is advised that the terminology being used in connection with NEPA and ESA on a particular project be clarified early on in the environmental compliance activities so as to meld these two processes as much as possible and to avoid unnecessary confusion. (See also Reclamation’s ESA Policy, ENV P04, at <http://www.usbr.gov/recman/env/env-p04.pdf>).

Endangered species actions that involve Indian tribal rights are further addressed in Secretarial Order 3206.

There have been a number of recent ESA court cases which are, and may be, changing ESA interpretations. It is advisable, in situations where ESA issues are

significant, to consult with Policy and Administration and the Office of the Solicitor for the most recent guidance on compliance requirements.

### **3.15.2 Magnuson-Stevens Fishery Conservation and Management Act (P.L. 94-265, 16 U.S.C. 1801 et seq.)**

In 1976, the Magnuson Fishery Conservation and Management Act (Magnuson Act) established a management system to more effectively utilize the marine fishery resources of the United States. It established eight regional fishery management councils (Councils), consisting of representatives with expertise in marine or anadromous fisheries from the constituent States. As amended in 1986, the Magnuson Act required Councils to evaluate the effects of habitat loss or degradation on their fishery stocks and take actions to mitigate such damage. In 1996, this responsibility was expanded to ensure additional habitat protection.

On October 11, 1996, the Sustainable Fisheries Act (P.L. 104-297) became law, which, among other things, amended the habitat provisions of the Magnuson Act. The renamed Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) calls for direct action to stop or reverse the continued loss of fish habitats. Toward this end, Congress mandated the identification of habitats essential to managed species and measures to conserve and enhance this habitat. The Magnuson-Stevens Act requires cooperation among NOAA-NMFS, the Councils, fishing participants, Federal and State agencies, and others in achieving the essential fish habitat (EFH) goals of habitat protection, conservation, and enhancement.

EFH means those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity (Magnuson-Stevens Act, 16 U.S.C. 1801 et seq.). For the purpose of interpreting the definition of essential fish habitat: “Waters” include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; “substrate” includes sediment, hard bottom, structures underlying the waters, and associated biological communities; “necessary” means the habitat required to support a sustainable fishery and the managed species’ contribution to a healthy ecosystem; and “spawning, breeding, feeding, or growth to maturity” covers a species’ full life cycle (EFH Final Rule, 67 FR 2343).

Consultation and coordination for EFH under the Magnuson-Stevens Act should be consolidated with interagency coordination procedures required by other statutes, such as NEPA, FWCA, ESA, and the Federal Power Act to reduce duplication and improve efficiency (50 CFR 600.920(f)). The use of existing environmental coordination and/or review procedures to meet the EFH consultation requirements is the preferred approach for EFH consultations. In Reclamation NEPA documents (EAs and EISs), an evaluation of impacts to



essential fish habitat of anadromous or marine fisheries should be included under a separate subheading, either in the discussion of fisheries or, if there are listed anadromous fish in the project area, under the discussion of threatened and endangered species.

Compliance with the Magnuson-Stevens Act could be done by submitting draft EAs and EISs to NOAA-NMFS specifically requesting consultation pursuant to the Magnuson-Stevens Act.

### **3.15.3 Migratory Bird Treaty Act (16 U.S.C. 703-711)**

Under the Migratory Bird Treaty Act (MBTA), it is unlawful “by any means or manner to pursue, hunt, take, capture or kill” any migratory bird, except as permitted by regulations issued by the Service. “Take” is not defined in the MBTA, but the Service’s regulations in 50 CFR 10.12 define it as meaning: “to pursue, hunt, shoot, wound, kill, trap, capture, or collect. . .” any wildlife or plants, including any migratory bird or any part, including nest or egg. MBTA does not distinguish between intentional or unintentional take resulting from lawful activities. The Service has developed a system of permits for activities involving intentional take of migratory birds but has no regulations for unintentional take.

Federal agencies are liable for both intentional and unintentional take of migratory birds under the MBTA. Court cases which have affirmed this include: *Humane Society v. Glickman*, 217F. 3d 882 (D.C. Cir 2000) and *Center for Biological Diversity (CBD) v. Pirie*, 191 F.Supp.2d 161 (D.D.C. 2002).

In January 2001, EO 13186, entitled “Responsibilities of Federal Agencies to Protect Migratory Birds,” was issued to promote the conservation of migratory birds and assist Federal agencies in complying with the MBTA. The EO lists 15 actions that Federal agencies “taking actions that have or are likely to have a measurable negative effect on migratory bird species” should implement to the extent practicable. Among the actions listed in the EO, agencies are to ensure that their NEPA analyses include an evaluation of potential effects on migratory birds. In light of the prohibitions under the MBTA and the goals of the EO, Reclamation should informally consult with the Service on proposed actions that could significantly impact migratory birds. Consultation should be initiated beginning with the planning of a proposed action and throughout the NEPA process in order to identify potential impacts on migratory birds and ways to avoid/minimize effects.

### **3.15.4 Fish and Wildlife Coordination Act (P.L. 85-624, as amended, and 40 CFR 1502.25)**

Section 2 of the FWCA of 1958 states that fish and wildlife conservation shall receive equal consideration with other project purposes and will be coordinated

with other features of water resources development projects. The specific wording of Section 2, which is the trigger mechanism for consultations under the FWCA, is as follows:

... whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or any public agency or private agency under Federal permit or license, such department or agency first shall consult with the United States Fish and Wildlife Service and with the head of the agency exercising administration over the wildlife resources of the particular State.

The FWCA specifically identifies the Service as a point of consultation. However, Reclamation should also consult with the National Oceanic and Atmospheric Administration - National Marine Fisheries Service (NOAA-NMFS) for activities falling under the purview of the FWCA that affect species under their jurisdiction (in most Reclamation actions, these species will be anadromous fish). Generally, consultation with the applicable State agency is through the Service, although it can be separate.

Compliance with the FWCA should be initiated early in the NEPA process. If the proposed action triggers compliance with the FWCA, the Service will have legal jurisdiction and special expertise and must be invited to be a cooperating agency (43 CFR 46.225). If the Service declines the invitation, reasonable effort should be made to include them in the analysis of fish and wildlife impacts and mitigation. The draft NEPA document should be circulated to them during the public review period for comments related to their jurisdiction and expertise.

**3.15.5 Section 404 of the Clean Water Act  
(P.L. 92-500, as amended; 33 U.S.C. § 1344; and  
40 CFR Part 230)**

When undertaking a NEPA-triggering activity that may result in the discharge or placement of dredged or fill material into jurisdictional waters of the United States or otherwise requiring a Section 404 permit from the USACE, it is imperative that the development and consideration of alternatives for the NEPA process address the requirements of the Guidelines for Specification of Disposal Sites for Dredged or Fill Material (40 CFR 230). The guidelines are used by USACE in determining whether or not the proposal is consistent with Section 404 and whether or not to issue a 404 permit. EPA also uses them in its oversight responsibility when reviewing USACE's decisions. The most essential element of the guidelines, when neither a nationwide nor a regional general permit is appropriate, is the concept of the "practicable alternatives analysis."

This should be addressed early in the NEPA process and is especially true if the proposed activity is not a water-dependent activity.<sup>1</sup>

According to the guidelines, no discharge of dredged or fill material within waters of the United States will be permitted if there is a practicable alternative that would have a less adverse impact on the aquatic ecosystem. The term “waters of the U.S.” is a heavily litigated term that frequently changes meaning. Practitioners should consult with the Office of the Solicitor if the Reclamation activity involves the discharge of dredged or fill material. An alternative is considered to be practicable if it is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of the overall project purpose. An alternative is not considered to be practicable if it would result in other significant adverse environmental consequences (40 CFR 230.10 a.2.).

Before USACE completes its evaluation of an individual 404 permit application for compliance with the 404(b)(1) guidelines to determine whether or not to issue a permit, a public notice is issued providing interested agencies and persons an opportunity to comment on the application.<sup>2</sup> In practice, what may be considered a “significant adverse environmental consequence” by one reviewing agency may not be considered significant, or even adverse, by another agency. This may result in some agencies either not concurring with the elimination of alternatives considered to be not practicable or insisting upon the consideration of other alternatives in the late stages of the process. The detailed information needed to prepare a 404 permit application is typically not available until a preferred alternative has been identified and the NEPA process is nearing completion. Being required to consider other alternatives (either new or previously eliminated alternatives) as a result of the public notice review process can cause delays in the project schedule. Therefore, it is imperative to engage the participation of key resource agencies in coordinating NEPA compliance activities (especially as they relate to the evaluation of alternatives). Resource agencies that routinely review 404 permit application public notices (State fish and game departments, EPA, the Service, and USACE) should be encouraged to participate in the preparation of the NEPA document as cooperating agencies so that 404 permit-related issues can be resolved in a timely manner. This opportunity should be investigated early in the process.

Section 404(r) of the Clean Water Act provides for the exemption of a Federal project from the requirement of obtaining a 404 permit for the discharge of dredged or fill material when the project has been specifically authorized by

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<sup>1</sup> Water-dependent activities are those activities requiring access or proximity to, or location within, waters to fulfill their basic purpose (40 CFR 230.10 a. 3). These include activities such as construction of river crossings, boat ramps, and dams.

<sup>2</sup> Some types of dredge or fill activities do not require public notice (see Nationwide Permits (33 CFR 330)).

Congress after certain requirements are met. This exemption is allowed as long as information on the effects of the discharge, including consideration of the 404(b)(1) guidelines, are included in the EIS. The EIS, along with EPA's and USACE's evaluation of the 404(b)(1) analysis, must be submitted to Congress before the actual discharge of dredged or fill material and prior to either authorization of project construction or appropriation of funds for such construction.

### **3.15.6 Cultural Resources Compliance (P.L. 89-665, as amended; 36 CFR Part 800)**

NEPA establishes a national policy by which to consider the environmental impacts of Federal actions. Among the responsibilities of the Federal Government established by NEPA is preservation of “. . . important historic, cultural and natural aspects of our national heritage . . .” (Section 101(b)(4), 42 U.S.C. § 4331).

Reclamation's responsibility for protecting cultural resources is primarily based on the NHPA; P.L. 89-665, as amended; its implementing regulations (36 CFR Part 800); and Reclamation Policy (LND P01) and Directives and Standards (LND 02-01). Section 106 of NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties. These properties are defined as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places (National Register).

The steps for complying with Section 106 are defined in 36 CFR Part 800 and are commonly referred to as the Section 106 process. Briefly, steps include: identifying the area of potential effect (APE) of an undertaking; identifying historic properties through inventories, as needed; evaluating the significance of cultural resources within the APE; assessing the effect of the proposed undertaking on historic properties; and, if there is an effect, determining whether it is adverse. If adverse effects are identified, Federal agencies must evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate the adverse effects. A finding of adverse effect on a historic property does not necessarily require the preparation of an EIS under NEPA.

A key component of the Section 106 process involves consultation with the appropriate SHPO or, for projects occurring on or affecting historic properties on tribal lands, the Tribal Historic Preservation Officer(s) (THPO). When an Indian tribe has not assumed the responsibilities of the SHPO for Section 106 on tribal lands, the Federal agency must consult with a tribal government representative. Federal agencies must also provide adequate opportunities for public involvement and identify other parties with whom to consult throughout the process. Indian tribes must be consulted when they attach religious and cultural significance to historic properties that may be affected by an undertaking. Tribes must be

provided a reasonable opportunity to identify their concerns and articulate their views on possible effects and proposed mitigation measures. The consultation process can be time consuming and complex, depending on the nature of the undertaking.

Reclamation cultural resources management policy (LND P01) is to preserve historic properties in place to the fullest extent possible and attempt to avoid adverse effects to them. However, in some cases, Reclamation and the consulting parties may agree that no mitigation measures are possible and that the public benefits of proceeding with an undertaking outweigh the adverse effects to historic properties. In accordance with 36 CFR Part 800.6, resolution of adverse effects (and any agreed to mitigation) would be documented in a memorandum of action (MOA) signed by Reclamation, the SHPO/THPO, and other invited signatories. The Advisory Council on Historic Preservation (ACHP), an independent Federal agency that promotes the preservation, enhancement, and productive use of our Nation's historic resources, may choose or be invited to join the consultation process. It is important to note that title transfers are subject to the Section 106 process and that under 36 CFR Part 800.5(a)(2)(vii), the "transfer, lease, or sale of a historic property out of federal control without adequate and legally enforceable restrictions or conditions to ensure the long term preservation of the property's historic significance constitutes an adverse effect."

Although the Section 106 process is independent of the NEPA process, 36 CFR Part 800.8 addresses the need for coordination between the two to reduce duplication of effort. Federal agencies are instructed to "consider their Section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner." Reclamation should include cultural resources in EAs and EISs by referencing the relevant cultural resource consultation processes and, if completed, referencing the finding of "no historic properties affected" if 36 CFR 800.4 applies, or the finding of adverse effect or no adverse effect if 36 CFR 800.5 applies. If all steps in the Section 106 process are not completed prior to finalization of NEPA documentation, the latter must contain commitments for Reclamation to fulfill its Section 106 responsibilities, generally in either an MOA or a programmatic agreement. In summary, the key to successfully integrating NHPA and NEPA is to address cultural resources at the earliest stages of planning an undertaking. Under amendments made to 36 CFR Part 800 in 1999, a Federal agency may use the NEPA process to comply with Section 106 if certain standards echoing its key components are met. This provision is intended to permit streamlining without sacrificing the main elements of the Section 106 process. If Reclamation selects this alternate process for meeting its Section 106 requirements, it must notify the SHPO/THPO and the ACHP in advance.

Even if an action is categorically excluded from NEPA review, Reclamation cultural resource staff must still determine if it qualifies as an undertaking requiring review under Section 106 (36 CFR 800.3). See chapter 5 for more information.

In addition to the NHPA, there are numerous other Federal laws that exist to preserve and protect the Nation's cultural heritage and with which Reclamation must comply. Among these laws are the American Indian Religious Freedom Act (P.L. 95-341), Archaeological Resources Protection Act (ARPA) (P.L. 96-95), Antiquities Act, and the Native American Graves Protection and Repatriation Act (P.L. 101-601).

Reclamation will consult with appropriate Indian tribes when there are planned excavations on, and removal of, cultural items of tribal concern from Reclamation lands. All archaeological activities conducted by non-Federal entities and their employees require an ARPA permit prior to beginning the activity. In situations where the archaeological activities are on tribal lands, tribal consent and proof of consultation are required. In addition, an ARPA permit, issued by the Bureau of Indian Affairs (BIA), is required prior to beginning the activity on tribal lands.

Section 110 of the NHPA requires special consideration of National Historic Landmarks, including consultation with the ACHP and the Secretary of the Interior (Secretary) when a landmark is to be adversely affected. When applicable, the identification and consideration of National Historic Landmarks should be incorporated into NEPA documents.

Reclamation has a programmatic agreement in place with the ACHP and the National Council of SHPOs to deal with responses to major natural disasters or national security emergencies. If an emergency occurs and cultural resources are implicated, consult with the appropriate Reclamation cultural resources specialist.

### **3.15.7 Indian Trust Assets (512 DM 2)**

Indian Trust Assets (ITA) are legal interests in property held in trust by the United States for Indian tribes or individuals. Interior's policy is to recognize and fulfill its legal obligations to identify, protect, and conserve the trust resources of federally recognized Indian tribes and individual Indians, to the extent required by relevant statutes and regulations; and to consult with tribes on a government-to-government basis whenever plans or actions affect tribal trust resources, trust assets, or tribal health and safety (512 DM 2). Under this policy, Reclamation is committed to carrying out its activities in a manner that avoids adverse impacts to ITAs, when possible, and mitigates or compensates for such impacts when it cannot avoid the impacts. All impacts to trust assets, even those considered nonsignificant, must be discussed in the trust analyses in NEPA documents and appropriate compensation or mitigation implemented.

Reclamation's requirements for land use authorizations (such as easements, leases, licenses, and permits), which allow others to use Reclamation lands and interests in its lands, facilities, and water surfaces, also require that ITAs must not be adversely affected. In the event they are, the grantee shall bear the costs associated with mitigation or compensation (Directives and Standards LND 08-01).

Required procedures for assessing and documenting potential impacts to ITAs are discussed in the appropriate sections of this handbook. These include, but are not limited to:

- An ITA question in the CEC.
- Required sections in EAs and EISs. When no ITAs are identified in or near the potentially affected area, a statement to this effect must be included.
- Public involvement activities.
- Consultation with potentially affected and interested Indian tribes and individuals (when dealing with individual ITAs) in the review and distribution of EAs and EISs.
- Required narrative in the FONSI or ROD.

Additional information concerning ITAs can be found in the attachments, including 303 DM 2, 512 DM 2, environmental compliance memorandum (ECM) 97-2, Departmental Responsibilities for Indian Trust Resources and Indian Sacred Sites on Federal Lands, Reclamation's ITA policy, and Indian Trust Asset Policy and Guidance, which provides an introduction to considering potential ITA impacts.

ITA assessments should be carried out in consultation with the potentially affected tribal and other trust beneficiaries. Reclamation has prepared guidance to assist in this effort, Protocol Guidelines: Consulting with Indian Tribal Governments (this document can be found under the "NAAO Policy" link at [www.usbr.gov/native/](http://www.usbr.gov/native/)).

### **3.15.8 Indian Sacred Sites**

Reclamation is required by EO 13007, to the extent practicable permitted by law, and not clearly inconsistent with essential agency functions, to: (1) accommodate access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners; and (2) avoid adversely affecting the physical integrity of such sacred sites. When adverse impacts cannot be avoided, alternative access and protection should be considered in consultation with the potentially affected

Indian tribe(s). It may be noted that EO 13007 includes all potential impacts to the physical integrity of covered sacred sites, not just significant ones.

In accordance with Interior and Reclamation procedures and guidance implementing the EO, any NEPA analysis should address Indian sacred sites by either: (1) clearly stating in the affected environment section that neither Indian sacred sites nor access to such sacred sites will be affected, or by (2) presenting, in the appropriate section, analysis of impacts to Indian sacred sites and access to such sacred sites.

In addition, Reclamation's requirements for land use authorizations (such as easements, leases, licenses, and permits), which allow others to use Reclamation lands and interests in its lands, facilities, and water surfaces, require that where an Indian sacred site is located on or near a use location, the grantee must accommodate access to, and ceremonial use of, the sacred site by Indian religious practitioners and must avoid adversely affecting the physical integrity of such sacred sites. Often, the locations of sacred sites are not known and/or may not be shared. In these cases, the grantee will be provided direction from the authorized official where access will be allowed and physical effects to the land will be restricted (Directives and Standards LND 08-01).

When appropriate, Reclamation shall, to the greatest extent possible, maintain the confidentiality of sacred sites. This may mean, in some cases, that the specific location of the sacred site should not be included in the NEPA document, even if impacts to the site or to access may occur.

The key terms required to implement EO 13007 are specifically defined in the EO and further explained in Reclamation's Guidance for Implementing Indian Sacred Sites Executive Order, included in the attachments. These definitions should be referred to when sacred sites are a potential issue. Additional information concerning ITAs can also be found in 512 DM 3 and ECM 97-2—Departmental Responsibilities of Indian Trust Resources and Indian Sacred Sites on Federal Lands, also included in the attachments.

Sacred site assessments will include consultation with the potentially affected Indian tribes. Reclamation has prepared guidance to assist in this effort, Protocol Guidelines: Consulting with Indian Tribal Governments (this document can be found in the "NAAO Policy" link at [www.usbr.gov/native/](http://www.usbr.gov/native/)).

### **3.15.9 Environmental Justice**

Executive Order 12898 requires Federal agencies to make achieving environmental justice part of their mission, as practicable and permitted by law. When carrying out its programs, policies, and activities, Reclamation must identify and address any disproportionately high and adverse human health and environmental effects on low income and minority populations. A discussion of



potential effects to these entities must be included in the NEPA document. A line has been included in the CEC to ensure environmental justice considerations in actions that may qualify for a CE.

The affected environment discussion in an EA or EIS should contain a separate, titled section identifying potentially affected minority and low-income communities. The document should explicitly state if no such communities exist in the affected area or none are expected to be affected in a disproportionate way. If the potential for effects exists, the environmental consequences section should identify what, if any, human health or environmental effects would be disproportionately high and what mitigation options exist to avoid or reduce the effects.

In conducting the analysis, the following should be considered:

- The composition of the affected area to determine whether substantial minority and low-income populations are located there. The U.S. Bureau of Census and local city and county data bases can be helpful in identifying these populations within the affected environment.
- Existing conditions in these communities, including multiple or cumulative exposure to human health or environmental hazards and historical exposure to hazards.
- Whether interrelated cultural, social, occupational, historical, or economic factors would amplify the physical environmental effects of a proposed action.
- How scoping and public involvement activities should be carried out to ensure adequate opportunity for minority and low-income populations in the affected area to participate in the NEPA process. The participation of these groups can be particularly important when assessing the significance of impacts and the adequacy of contemplated mitigation measures.
- Obtaining data outside of the affected area when determining whether a “minority population” is present or if the possible impacts would be “disproportionate.” In such cases, it is important to select appropriate units of analysis and baseline measurements and to document the reasons for the selection.

For additional guidance, see references identified in EO 12898, ECM 95-3, and CEQ’s Guidance on Environmental Justice, December 10, 1997, in the attachments.

### **3.15.10 Pollution Prevention**

CEQ has prepared guidance (Memorandum to Heads of Federal Departments and Agencies Regarding Pollution Prevention and the National Environmental Policy Act, 12 January 1993, in the attachments) to Federal agencies on how to incorporate pollution prevention principles into planning and decisionmaking and on how to evaluate and report those efforts in NEPA documents. This guidance does not include new requirements for the NEPA process but does suggest ways that pollution prevention should be incorporated into existing procedures.

CEQ suggests that pollution prevention be specifically addressed when an EIS is scoped. This would encourage the identification of means to prevent pollution associated with an action.

Pollution prevention is defined in the guidance as any reasonable mechanism that avoids, prevents, or reduces pollutant releases other than traditional treatment at the discharge end of a pipe or stack. This definition is consistent with the definition in CEQ regulations for mitigation (40 CFR 1508.20). Accordingly, pollution prevention should be a component of early planning and decisionmaking on proposed Federal actions and addressed in NEPA documents. Each alternative should include pollution prevention measures, as appropriate and practicable, and these considerations should be discussed in the environmental consequences section of the EIS.

CEQ regulations require the ROD to include a statement of whether or not all practicable means to avoid or minimize environmental harm have been adopted, and if not, why not, as well as a discussion of a monitoring and enforcement program, if appropriate (40 CFR 1505.2(c)). The ROD is viewed by CEQ as an appropriate means to inform the public of the extent to which pollution prevention is included as a component of Federal action.

CEQ guidance focuses mostly on the appropriate discussion of pollution prevention in an EIS but also makes the point that a discussion of pollution prevention may also be appropriate in an EA. This is especially critical when pollution prevention measures contribute to a FONSI and are thus required to be part of the action.

## **3.16 Administrative Record**

In carrying out the NEPA process (either a CEC, FONSI, or ROD), Reclamation should maintain an administrative record to support its findings. Although the record may vary, it is commonly a chronological paper/computer trail tracing the NEPA process as it follows CEQ regulations for a particular action. The record may include, but is not limited to: planning documents, notices, documentation of scoping meetings, EA/EIS documents (draft and final) with supporting documents

and studies, correspondence (letters, memoranda, and email), public comment and agency responses, CEC/FONSI/ROD, and an implementation/monitoring program including environmental commitment plans.

Creation and maintenance of the administrative record as a discrete data set has positive advantages for ready access. The record facilitates Freedom of Information Act (FOIA) requests on agency actions. The record is an information resource for preparation of new NEPA documents and a source for elements to be tiered to, or incorporated by, reference. The administrative record also plays an important role in NEPA litigation. Sometimes, NEPA lawsuits involve challenges to an agency's decision not to prepare an EIS or the adequacy of an EIS. A plaintiff and reviewing court are generally not entitled to discover evidence or extend review beyond the administrative record if the record contains sufficient information to respond to the plaintiff's allegations.

### **3.17 Reclamation Repository**

There are many benefits to having all finalized NEPA documents generated in a particular region sent to one central location in that region. In most cases, the most logical place for the repository would be in the regional office. It is recommended that each region establish a procedure that would place a copy of every EIS and every EA produced in the region in one location within the regional office. The inclusion of CECs would also be useful.

FOIA requests are becoming commonplace, necessitating the efficient handling of substantial amounts of information. The regional offices are often given the responsibility to process these requests and, therefore, would benefit greatly from having the applicable NEPA documents readily available. Similarly, most legal actions are handled at the regional level, and the availability of applicable NEPA documents will facilitate any Reclamation involvement.

The regional offices generally take the lead on developing large-scale programmatic NEPA documents such as EISs. These documents often result in tiering (see section 7.3) and incorporation by reference of several related NEPA documents. Having a repository of all NEPA documents in one central location in the region would substantially facilitate these efforts.

Finally, a clearinghouse is a valuable tool for all regional employees involved with the NEPA process. Using a regional repository as a source for pertinent reference materials and previously finalized NEPA documents would contribute greatly to making the NEPA process more efficient.

### **3.18 Limitations on Actions Before Decisions (40 CFR 1506.1 and 43 CFR 46.160)**

NEPA requires that no actions that have adverse impacts or that limit the choice of alternatives occur until the appropriate NEPA process is completed. These actions include committing funds, personnel resources, or materials that will advance the proposal to a point where alternatives are constrained, where impacts to the environment begin to occur, or where retreat may be impossible or impractical. These actions do not include the reasonable commitment of resources to carry out the necessary studies upon which the EIS and decision document will be based.

Applicants for Reclamation permits, grants, and other approvals are also subject to these limitations. If Reclamation becomes aware that a non-Federal applicant is about to take action within Reclamation's jurisdiction (e.g., permitting authority) that would result in an adverse effect or limit the choice of reasonable alternatives before Reclamation has completed the NEPA process, it should notify the applicant that this is a violation of NEPA. Reclamation should then take whatever additional steps are necessary to ensure that the objectives and procedures of NEPA are achieved.

### **3.19 Supplemental Information (40 CFR 1502.9)**

In the NEPA process, situations may occur in which a determination must be made concerning the effect of additional information upon the process. This can result in a need for the responsible official to determine if a supplement to an EIS or revision is warranted. It has become Reclamation practice to call this analysis a supplemental information report (SIR).

The SIR should focus on the analysis of any new information in cases where there is a change to a proposed action analyzed in a DEIS or FEIS or when new information relevant to the action becomes available. A SIR does not satisfy NEPA. Rather, it documents whether additional NEPA analysis is warranted when the need for a supplement to an EIS is unclear. It is recommended that the information used for this decision be included in the record.

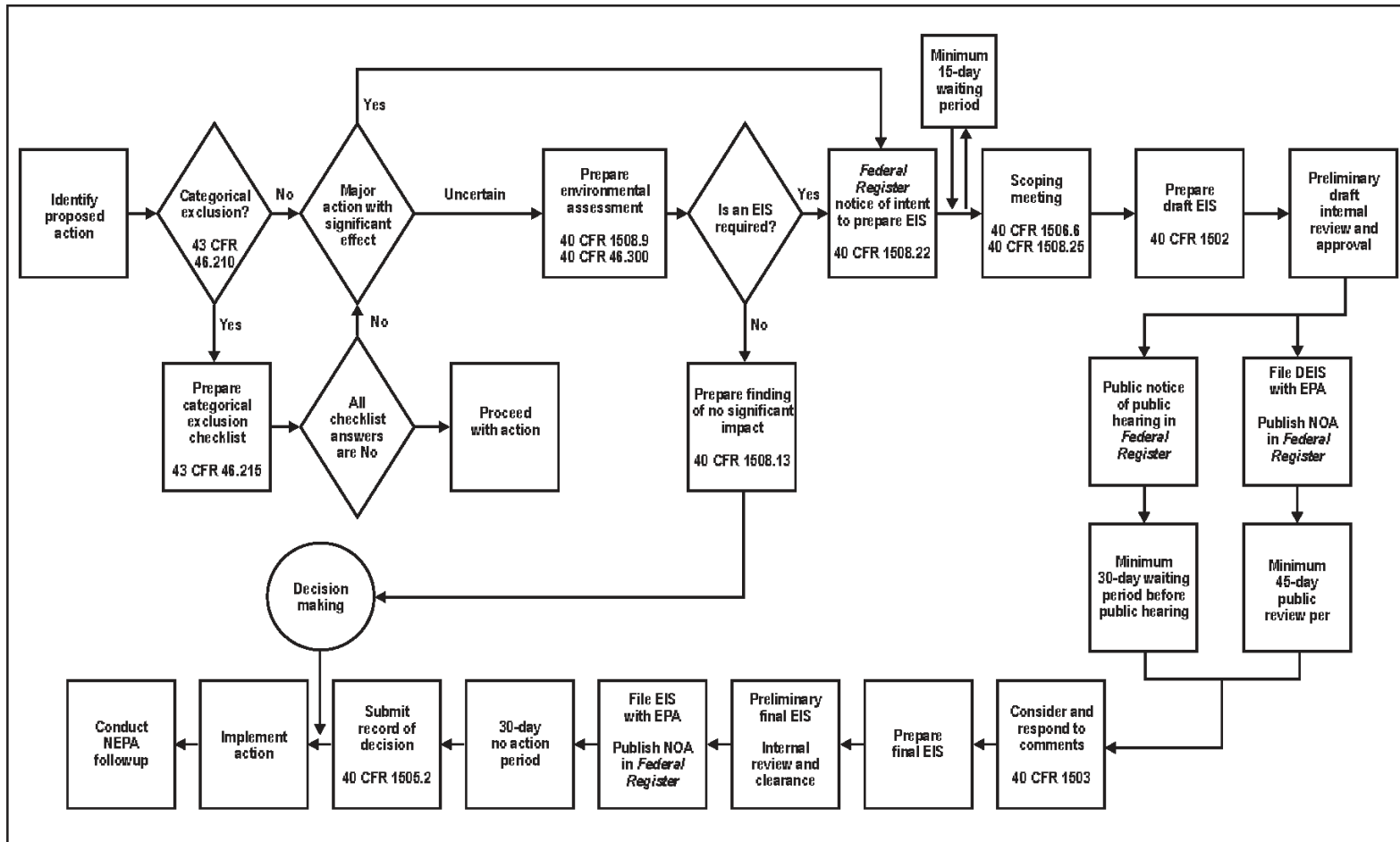


Figure 3.1.—NEPA process flowchart.

Memorandum of Understanding  
Between  
the U.S. Bureau of Reclamation  
and  
the Western Area Power Administration  
for the Environmental Impact Statement for Adoption of a  
Long-Term Experimental Plan for the Future Operation of  
Glen Canyon Dam and Other Associated Management Activities

**Introduction**

Pursuant to the National Environmental Policy Act (NEPA), the Bureau of Reclamation (Reclamation or lead agency) is preparing an environmental impact statement (EIS) for adoption and implementation of a long-term experimental plan for the future operation of Glen Canyon Dam and other associated management activities. Reclamation is the lead agency and the Western Area Power Administration (or cooperating agency) along with others has agreed to serve as a cooperating agency. The purpose of this Memorandum of Understanding (MOU) is to outline the responsibilities of the lead and cooperating agencies.

**Background**

In conjunction with the announcement of a Glen Canyon Dam Adaptive Management Work Group (AMWG) meeting, Reclamation published an advance Notice of Intent in the *Federal Register* on November 6, 2006 (71 FR 64982-64983). That notice announced Reclamation's intent to prepare and consider an EIS on a long-term experimental plan for the future operation of Glen Canyon Dam, Arizona. Pursuant to the Council on Environmental Quality's regulations implementing NEPA (40 CFR 1508.22), Reclamation published a Notice of Intent in the *Federal Register* on December 12, 2006 (71 FR 74556-74558), that described the proposed action and possible alternatives and announced the dates of scoping meetings.

The proposed action for this EIS is to develop, adopt, and implement a long-term experimental plan that will include a structured program of experimentation (possibly including dam operations, modifications to Glen Canyon Dam intake structures, and other non-flow management actions such as removal of non-native fish species) in the Colorado River below Glen Canyon Dam.

Pursuant to Council on Environmental Quality regulations (40 CFR 1502.14), Reclamation will develop an appropriate range of alternatives for this EIS. Comments and suggestions from cooperating agencies and the public will be evaluated by Reclamation in developing or modifying the alternatives. In addition, Reclamation will utilize information developed through prior meetings of the Glen Canyon Dam Adaptive Management Program as well as any future recommendations developed through the AMWG process in determining the scope of the analysis and developing or modifying the alternatives for

**Figure 3.2.—Example of a cooperating agency MOU.**

this EIS. Through the NEPA process, Reclamation will evaluate the impacts of each of the alternatives on downstream resources and on all of the purposes and benefits of Glen Canyon Dam.

**Purpose**

This MOU defines the relationship and duties of the lead and cooperating agencies in completing all environmental compliance for the project and in particular, to work together for completion of NEPA compliance.

By signing this MOU, the parties agree that this MOU provides the framework to fulfill compliance requirements for NEPA and other applicable environmental resource laws and regulations. Completion of NEPA compliance does not imply that there will be a favorable decision to authorize the project as planned by Reclamation or the cooperating agencies.

This MOU does not apply to permitting, construction, maintenance, or operation of Lake Powell or other water facilities.

**Agency Designee**

Each cooperating agency will designate a liaison(s) to act as a point of contact for the EIS. A cooperating agency may change its point of contact at any time by providing written notice to Reclamation and the other cooperating agencies.

**Authority**

The authority of the lead and the cooperating agencies to participate in this agreement is provided by the National Environmental Policy Act, 42 USC 4321 *et seq.* NEPA allows agencies to be designated as a cooperating agency when that agency has jurisdiction by law or special expertise (40 CFR 1508). Activities contemplated under this MOU are specifically authorized under:

- A. Title I of the National Environmental Policy Act of 1969 (NEPA, 42 USC 4331) as amended;
- B. Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act," 40 CFR 1500-1508, Council on Environmental Quality (in particular 40 CFR 1501.6, Cooperating Agencies);
- C. Department of the Interior NEPA Implementing Procedures in the Departmental Manual at 516 DM 2.5, Cooperating Agencies (40 CFR 1501.6).

Figure 3.2.—Example of a cooperating agency MOU (continued).

### Lead Agency Responsibilities

Due to its authority for Glen Canyon Dam operations, Reclamation has been designated the lead agency for preparation of this EIS.

As lead agency, Reclamation shall:

- Be responsible for the preparation and overall direction of the EIS and for arranging coordination with cooperating agencies.
- Ensure compliance with federal environmental and related statutes including, but not limited to NEPA, the Clean Water Act, the National Historic Preservation Act, the Grand Canyon Protection Act, and the Endangered Species Act.
- Be responsible for identifying the purpose and need for the project, scope of analysis, and decisions to be made. Make the final decision on the content of all EIS-related documents, including the Record of Decision.
- Prepare a Public Involvement Plan and establish a public involvement process that meets EIS requirements of Section 102(2)(c) of NEPA as defined in the President's Council on Environmental Quality regulations at 40 CFR 1500-1508 and Section 106 of the National Historic Preservation Act.
- Implement the 2002 Council on Environmental Quality requirements for cooperating agency involvement.
- Sponsor meetings of cooperating agencies, as appropriate, either individually or as a group, and provide advance information for discussions at these meetings whenever possible. Reclamation will conduct cooperating agency meetings near the same location and date of AMWG meetings as one way to interact with cooperating agencies. This should most efficiently accomplish our goals and minimize the financial impact of cooperating agency involvement. No additional financial support will be provided to cooperators.
- Ensure, through the adaptive management process, that cooperating agency proposals, comments (including divergent views), environmental analysis, and technical expertise are appropriately utilized in completion of the EIS.
- Provide advance copies (normally 30 days) of the draft and final EIS and related compliance documents for review by cooperating agencies.
- Conduct consultation meetings at the outset of the process and throughout the process as needed.
- Provide separate Government-to-Government meetings for affected tribes (Executive Order 13175 of November 6, 2000).

Figure 3.2.—Example of a cooperating agency MOU (continued).



### **Cooperating Agency Responsibilities**

Federal agencies, state and quasi-state organizations, and tribal governments with appropriate expertise or jurisdiction, per Section 1501.6 of the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, have been invited to participate. Reclamation may, at any time during the course of the project, invite additional agencies to participate in the process.

The Western Area Power Administration shall:

- Provide a representative to serve on the Hydropower Team established to evaluate impacts associated with the alternatives considered in the EIS.
- On request of Reclamation, assume, where possible, the responsibility for developing information and preparing environmental analyses in areas that the cooperating agency has special expertise. Specifically:
  - It is anticipated that analyses related to the impact of the alternatives related to the operation of the Salt Lake City Area Integrated Projects (SLCA/IP) electrical power system will be conducted by or with Argonne through Western's underlying agreement with that entity. Any direction to Argonne on the performance of such analyses will be approved by Reclamation, in writing, in advance of accomplishing such work. It is understood that the scheduling of this work will have priority over any other work assignments made to Argonne by Western. Reclamation may communicate with Argonne on technical matters but will work through Western on changes in the scope of work. All Argonne prepared data/work products associated with the EIS will be provided to Reclamation, concurrent with transmittal to Western.
  - Western will complete analyses on the impact of the alternative to the SLCA/IP firm electrical power rate
  - Western will collaborate with the Hydropower Team on the analyses of the economic impact of the alternatives related to the operation of Glen Canyon Dam and the effect on the operation of the SLCA/IP electrical power system and the marketing of SLCA/IP electrical power
  - Make staff available, if funds allow, to enhance the interdisciplinary capability of the EIS team.
- Use their own funds for staff and expenses.
- Provide timely review (normally within 30 days of receipt) of draft documents when requested.

**Figure 3.2.—Example of a cooperating agency MOU (continued).**

- As appropriate and practicable, attend cooperating agency meetings and public meetings and hearings on the EIS process.
- Retain the right to comment on all issues related to the EIS through the normal EIS public review and comment process.
- Promptly advise the lead agency of concerns related to the EIS process.

#### **Joint Responsibilities**

- The lead agency and cooperating agencies will not release any pre-decisional draft documents to the public or other parties unless mutually agreed to by Reclamation and the cooperating agency or required through the Freedom of Information Act. This is not intended to interfere with cooperating agency representatives seeking input from the agency that they represent. Draft documents can be provided to such organizations as long as the cooperating agency abides by these non-release terms and comments are directed back to the cooperating agency representative.
- Reclamation may meet separately with any one or more cooperating agencies to discuss specific topics.
- This MOU does not affect funding agreements either already in place or to be executed among the parties regarding Reclamation's completion of NEPA compliance. For costs not explicitly covered under such agreements, it is understood that the respective agencies are responsible for their own costs with regard to completion of tasks outlined herein such as attendance at meetings, assembling data, analyzing effects, writing sections of the EIS, etc.
- All parties agree that because of the need for timely completion of NEPA compliance, work will proceed as expeditiously as possible including data gathering, analysis, and document review. However, all parties agree that sufficient time must be allowed to ensure thorough document review. It is anticipated that there will be a minimum of 30 days to review the draft and final EIS.

#### **Resolution of Disputes**

Reclamation is responsible for all decisions involving the EIS and will make all final decisions on disputes arising during the NEPA process. Reclamation will document for the administrative record the nature of any dispute and the resolution process used. For disputes involving different interpretations of information, Reclamation agrees to consider different interpretations if such interpretations are supported by sufficient credible data, as determined by Reclamation. For other disputes, Reclamation and the cooperating agency will use their best efforts to resolve issues in a manner agreeable to both parties. If a disputed issue cannot be resolved in a collaborative and timely manner,

**Figure 3.2.—Example of a cooperating agency MOU (continued).**

Reclamation will make a final decision. The cooperating agency retains the right to comment on all issues related to the EIS, including those in dispute, through the normal EIS public review and comment process.

**Implementation, Amendment, and Termination**

- A. This agreement will become effective on the date of the last signature and may be subsequently amended through written agreement of all signatories. Reclamation or the cooperating agency may terminate their cooperative status by providing 30 days written notice of termination to the other party. Otherwise, the cooperative status will terminate when a Record of Decision is issued.
- B. Status as lead or cooperating agency will not abridge or amend the authorities and responsibilities of Reclamation or the cooperating agency.
- C. The lead or cooperating agencies do not waive their sovereign immunity, and each fully retains all immunities and defenses provided by law with respect to any action under federal or state law or based on or occurring as working cooperatively on the EIS.
- D. Nothing in this agreement may be construed to require either Reclamation or the cooperating agency to obligate or pay funds or in any other way take action in violation of the Anti-Deficiency Act (31 USC 1341).

**Signatures**

The parties hereto have executed this Memorandum of Understanding as of the dates shown below.

**BUREAU OF RECLAMATION**

\_\_\_\_\_  
Dave Sabo  
Assistant Regional Director

Date \_\_\_\_\_

**WESTERN AREA POWER ADMINISTRATION**

\_\_\_\_\_  
Bradley S. Warren  
CRSP Manager

Date \_\_\_\_\_

**Figure 3.2.—Example of a cooperating agency MOU (continued).**

## Chapter 3 Useful Links

American Indian Religious Freedom Act – Public Law 95-341  
[http://www.nps.gov/history/local-law/fhpl\\_indianrelfreact.pdf](http://www.nps.gov/history/local-law/fhpl_indianrelfreact.pdf)

Antiquities Act  
<http://www.nps.gov/history/local-law/anti1906.htm>

Appendix II of CEQ's (40 CFR Chapter V)  
<http://ceq.hss.doe.gov/nepa/regs/ceq/iii-7app2.pdf>

Archaeological Resources Protection Act – Public Law 96-95  
[http://www.nps.gov/history/local-law/fhpl\\_archrsresprot.pdf](http://www.nps.gov/history/local-law/fhpl_archrsresprot.pdf)

CEQ's Guidance on Environmental Justice  
<http://ceq.hss.doe.gov/nepa/regs/ej/ej.pdf>

CEQ's Memoranda on Cooperating Agencies  
<http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html>

CEQ's 40 Most Asked Questions  
<http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm>

Clean Water Act  
<http://epw.senate.gov/water.pdf>

Cultural – NHPA Public Law 89-665  
<http://www.achp.gov/docs/nhpa%202008-final.pdf>

Departmental Responsibilities of Indian Trust Resources and Indian Sacred Sites on Federal Lands – ECM 97-2  
<http://oepec.doi.gov/ECM/ECM97-2.pdf>

Directives and Standards - LND 02-01  
<http://www.usbr.gov/recman/lnd/lnd02-01.pdf>

Directives and Standards LND 08-01  
<http://www.usbr.gov/recman/lnd/lnd08-01.pdf>

DM 516, Chapter 14  
<http://elips.doi.gov/ELIPS/DocView.aspx?id=1727&dbid=0>

ECM 95-3

<http://www.doi.gov/oepc/ECM%2095-3.pdf>

Endangered Species Act

<http://www.fws.gov/endangered/esa-library/pdf/ESAall.pdf>

Environmental Justice – EO 12898

<http://www.archives.gov/federal-register/executive-orders/pdf/12898.pdf>

EO 13007 - Indian Sacred Sites

<http://www.achp.gov/EO13007.html>

EO 13175 Consultation and Coordination with Indian Tribal Governments

<http://ceq.hss.doe.gov/nepa/regs/eos/eo13175.html>

EO 13186 Migratory Birds

<http://ceq.hss.doe.gov/nepa/regs/eos/eo13186.html>

EO 13352 – Facilitation of Cooperative Conservation

[http://ceq.hss.doe.gov/nepa/regs/Executive\\_Order\\_13352.htm](http://ceq.hss.doe.gov/nepa/regs/Executive_Order_13352.htm)

ESM 10-19 – Procedures for Implementing Integrated Analyses in NEPA

<http://oepc.doi.gov/memo.cfm?type=ESM>

ESM 10-21 – Consensus Based Management

<http://oepc.doi.gov/memo.cfm?type=ESM>

ESM 11-2 – Approving and Filing of Environmental Impact Statements

<http://oepc.doi.gov/memo.cfm?type=ESM>

Essential Fish Habitat Interim Final Rule

<http://www.nero.noaa.gov/hcd/efhfinalrule.pdf>

Fish and Wildlife Coordination Act

<http://www.usbr.gov/power/legislation/fwca.pdf>

Guidance Regarding NEPA Regulations Memoranda

<http://ceq.hss.doe.gov/nepa/regs/1983/1983guid.htm>

Indian Trust Assets – 512 DM 2

<http://elips.doi.gov/ELIPS/DocView.aspx?id=1701&dbid=0>

Information Quality Act - Public Law 106-554

[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106\\_cong\\_public\\_laws&docid=f:publ554.106](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_public_laws&docid=f:publ554.106)

Magnuson-Stevens Fishery Conservation and Management Act

<http://www.nmfs.noaa.gov/sfa/magact/>

Memorandum for General Counsels, NEPA Liaisons and Participants in Scoping,  
April 30, 1981

<http://ceq.hss.doe.gov/nepa/regs/scope/scoping.htm>

Migratory Bird Treaty Act

<http://www.fws.gov/laws/lawsdigest/MIGTREA.HTML>

National Historic Preservation Act

<http://www.achp.gov/docs/nhpa%202008-final.pdf>

Native American Graves Protection and Repatriation Act – Public Law 101-601

[http://www.nps.gov/history/local-law/fhpl\\_nagpra.pdf](http://www.nps.gov/history/local-law/fhpl_nagpra.pdf)

Policy - LND P01 – Cultural Resources Management

<http://www.usbr.gov/recman/lnd/lnd-p01.pdf>

Pollution Prevention – CEQ Memorandum

<http://ceq.hss.doe.gov/nepa/regs/poll/ppguidnc.htm>

Public Law 92-500 – Federal Water Pollution Control Act

<http://www.glin.gov/view.action?glinID=67980>

Public Law 104-297 - Sustainable Fisheries Act

[http://www.nmfs.noaa.gov/sfa/sustainable\\_fishereries\\_act.pdf](http://www.nmfs.noaa.gov/sfa/sustainable_fishereries_act.pdf)

Section 102(2)(c) NEPA

[http://ceq.hss.doe.gov/laws\\_and\\_executive\\_orders/the\\_nepa\\_statute.html](http://ceq.hss.doe.gov/laws_and_executive_orders/the_nepa_statute.html)

Section 404 of the Clean Water Act

<http://epw.senate.gov/water.pdf>

33 CFR 330 Nationwide Permits

<http://www.gpo.gov/fdsys/pkg/CFR-2011-title33-vol3/xml/CFR-2011-title33-vol3-part330.xml>

36 CFR Part 800 National Historic Preservation Act Regulations

<http://www.achp.gov/regs-rev04.pdf>

40 CFR 1500-1508

[http://ceq.hss.doe.gov/ceq\\_regulations/regulations.html](http://ceq.hss.doe.gov/ceq_regulations/regulations.html)

40 CFR Part 230 CWA Section 404

<http://water.epa.gov/lawsregs/guidance/wetlands/sec404.cfm>

43 CFR 46 – Implementation of NEPA, Final Rule

<http://www.doi.gov/oepec/nepafr/docs/Federal%20Register%20October%202015,%202008%20NEPA.pdf>

50 CFR 10.12 - Definitions

<http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=50&PART=10&SECTION=12&YEAR=2001&TYPE=PDF>

50 CFR 402 Interagency Cooperation—Endangered Species Act of 1973, as Amended

[http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title50/50cfr402\\_main\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title50/50cfr402_main_02.tpl)

50 CFR 600.920 (f)

<http://www.gpo.gov/fdsys/pkg/CFR-2010-title50-vol8/pdf/CFR-2010-title50-vol8-sec600-920.pdf>

303 DM 2 – Principles for Managing Indian Trust Assets

<http://elips.doi.gov/ELIPS/DocView.aspx?id=954&dbid=0>

## Chapter 4

# NEPA and Other Reclamation Activities

## 4.1 Integrating NEPA with Other Reclamation Activities

Reclamation carries out a number of processes and activities. Integrating NEPA into these may require special considerations. It is important to remember that the intent of NEPA is to ensure consideration of the environment in all processes and activities.

## 4.2 The Planning Process

Reclamation uses variations of a general planning process to support and facilitate its decisionmaking. NEPA ensures that any Federal planning process considers environmental effects. A general planning process is described in the Decision Process Guidebook – How to Get Things Done, 2002 ([www.usbr.gov/pmts/economics/guide/](http://www.usbr.gov/pmts/economics/guide/)), and specific planning procedures are described in various program-specific guidance documents. When appropriate, Reclamation also follows the Executive Branch policy, Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (P&G) ([www.usace.army.mil/CECW/PlanningCOP/Documents/library/Principles\\_Guidelines.pdf](http://www.usace.army.mil/CECW/PlanningCOP/Documents/library/Principles_Guidelines.pdf)), which contains NEPA-related guidance.

## 4.3 The Principles and Guidelines

The latest procedures for implementing the Water Resources Planning Act of 1965 were developed in 1983 as the P&G. Copies are available from Policy and Administration. Note, however, that, as of the issuance of this handbook, the P&Gs are currently under revision. Following is a link with the most recent information: <http://www.whitehouse.gov/administration/eop/ceq/initiatives/PandG>.

The P&G evaluation criteria must be used in studies justifying authorization or reauthorization of federally funded water and related land resources implementation projects. The P&G evaluations are not required for common resource management decisions such as:

- Water service or repayment contracts
- Resource management plans



- Annual operation plan
- Mitigation activities
- Changes in operation of existing projects
- Basinwide or ecosystem management studies

In essence, if funding to implement a project is not being requested from Congress, the P&G are not required. Although not required, the P&G evaluation method is often used because of its acceptance and consistent application throughout the Federal water resources community.

The P&G are followed for implementation studies (e.g., dam construction), which are conducted for projects authorized by Congress. Applying the P&G ensures proper and consistent planning by Federal agencies in formulating and evaluating water resources studies. The P&G and NEPA have a common goal—to “examine all reasonable alternatives during project planning to provide the greatest public benefit and the least adverse environmental effect.” Reclamation integrates the P&G and NEPA to plan and evaluate projects in an organized and environmentally responsible manner. In this way, the purpose and policies of NEPA become a part of the planning process and are considered along with economic and engineering factors.

#### **4.4 Special Investigations and Reports**

Special investigations and reports may include water management studies and fish and wildlife investigations that result in recommendations for construction or changes in management. Special investigations should include sufficient study of environmental aspects to make viable recommendations for either further study or for implementation of plans of action. If the special report only recommends further study, it would come under an Interior CE (43 CFR 46.210(e)), and no CEC is necessary. When a special report or investigation results in recommendations for action, an appropriate CEC, EA/FONSI, or EIS should be prepared. The level of environmental detail should be commensurate with the level of detail for other study aspects. When appropriate, the NEPA compliance document should accompany a special report through all decisionmaking levels.

Status reports may be prepared at any time during a planning investigation. As the name implies, a status report should set forth the status of the investigation and summarize the data collected and analyses made. Such a summary should include a discussion of the environmental data and the analyses to the extent that they have been completed. Since a status report would not include a recommendation for action, no NEPA compliance is required.

## 4.5 Resource Management Plans

Reclamation encourages the development of a resource management plan (RMP) for each significant Reclamation area to assist in future resource decisions. RMPs should include applicable sections on recreation, fish and wildlife, operations, cultural resources, ITAs, agriculture, and other special uses. The purpose of RMPs is to incorporate in one document all information pertinent to future management of the area. Included in the document is an analysis of the resources of the area, the identification of land use suitability and capability, the determination and designation of land use zones, and the development of management policies, objectives, responsibilities, guidelines, and plans. It is also useful to include copies of agreements, laws, EOs, rules and regulations, special reports, special plans, maps, and all other documents relevant to the management area. The refinement and complexity of the material to be included in the plan and its length are governed by the size, complexity, and importance of the area for which the plan is prepared and the alternative management actions being considered. Additional guidance on RMPs is available in Reclamation's Resource Management Plan Guidebook (<http://www.usbr.gov/recreation/publications/RMPG.pdf>).

Since a properly prepared RMP should contain much of the information and analyses required by NEPA, the RMP and NEPA material should be developed concurrently. Much of the initial public involvement and resource inventory information can be used in the NEPA document. Either an EA or an EIS should be prepared, dependent upon the significance of the potential impacts. The draft EA/EIS evaluates all resource management alternatives, including the preferred alternative, and is submitted for public review prior to completion of the RMP. The final RMP and final EA/EIS may either be issued together upon completion of the review process, or the final RMP may be issued later. If there is strong public interest associated with the preferred alternative, it is best to wait to issue the final RMP for at least 30 days following the EA/FONSI or until after a ROD is issued.

On projects that were subject to previous NEPA compliance, no additional compliance may be required for the approval of a new RMP unless there are substantial departures from the original development and management proposals or new data regarding significant effects upon the environment. Where minor changes are proposed after completion of the RMP, normally only those changes are subject to additional NEPA compliance and may qualify as a CE. Often, the original NEPA document is programmatic and indicates that followup NEPA compliance will be carried out for site-specific projects.

## 4.6 Construction Activities

While some construction activities are covered by CECs or EAs, those for major Reclamation projects and programs are ordinarily covered by project or programmatic EISs. From time to time during construction, it is necessary to modify construction features after filing an FEIS. Such structural modifications may result in a different set of environmental impacts. Reclamation shall evaluate the environmental consequences of such structural or location changes. Based on the amount of change and its relationship to the environmental consequences, the appropriate NEPA compliance document shall be completed.

Other construction activities are carried out for regional programs or specific projects and may not have prior NEPA documentation. These could include repair of existing facilities or additions to authorized projects. While some of these activities may be considered as categorically excluded (40 CFR 1508.4), many minor construction activities may not qualify for CEs because the impacts are unknown or may be significant. The CEC should be used to determine if the proposed action qualifies as a CE and to decide if additional NEPA documentation is needed.

## 4.7 Safety of Dams

The modification of existing dams for safety purposes can cause environmental impacts. The impacts can vary from the traditional O&M impacts, which are usually categorically excluded, to impacts associated with repairing, modifying, replacing, or breaching dams. The potential significance of the environmental impacts caused by repairing, modifying, replacing, or breaching would determine if a CE, preparation of an EA, or EIS would be appropriate. If the action does not fit a CE category or extraordinary circumstances exist which would disqualify the action for a CE, then an EA should be prepared to determine the significance of the impacts of the proposed action, unless it is apparent that an EIS is required. It should be noted that many of Reclamation's dams and associated facilities are historic, and NHPA consultations may be needed.

The decision on the type of NEPA compliance document required and the preparation of the NEPA document to accompany the Safety of Dams (SOD) proposals are the responsibility of the region involved. When a safety issue is first identified, solutions should be developed with the use of environmental information, as well as economic and engineering information. If safety concerns require an emergency response action, then emergency NEPA procedures may be applied (40 CFR 1506.11, 43 CFR 46.150; see also section 3.13, Emergency Action, in chapter 3). If it is not an emergency, however, development of solutions should fully integrate environmental concerns into the decisionmaking process regardless of the level of NEPA documentation required. ESA and CWA (Section 404) compliance, for example, must be fully considered.

Care should be taken in developing the purpose and need statement and alternatives for the SOD NEPA document. The purpose and need is usually to correct some safety deficiency at the facility and prevent the loss of life and property that could occur from possible dam failure. At times, Reclamation has received comments from other agencies and parties requesting that it include alternatives that go beyond remedying the safety problems at a facility and address issues such as fish passage as part of dam reconstruction. Any alternatives that would address conditions not associated with the safety concern would not meet the purpose and need for the action. Moreover the Safety of Dams Act authorizes only those Reclamation construction actions needed for dam safety purposes and to maintain existing authorized project purposes.

The procedures for funding SOD activities may appear to force the preparation of a NEPA document before the final details are known. The location or alignment of borrow sites or haul roads, for example, may not be known when funding requests need to go forward. This situation should be avoided; but when it cannot, it is best to include a wide range of components for all the reasonable alternatives. The final selection is then more likely to have been addressed without the need to supplement the NEPA document. Supplementation may be required, however, and this should be considered in scheduling.

## **4.8 Soil and Moisture Conservation Program**

The soil and moisture conservation program, 16 U.S.C. 590a and 606 DM 1.2, authorizes cooperating agreements for the conservation of soils and moisture. Such activities may qualify as categorically excluded from further NEPA requirements under several of Reclamation's CEs (516 DM, Chapter 14). However, such activities will be evaluated by use of a CEC to ensure that there are no extraordinary circumstances that would disqualify it from a CE. If extraordinary circumstances exist, an EA should be prepared, and either a FONSI or EIS will be completed. Alternatively, Reclamation may still determine that an EIS is appropriate without an EA or a CEC.

## **4.9 Routine O&M Activities**

O&M activities which have been routinely, even if infrequently, carried out over long periods of time and do not constitute a change in established O&M procedures generally do not need any NEPA compliance, as they constitute maintenance of the status quo.

Ongoing O&M activities that preceded the enactment of NEPA in 1969 (pre-NEPA) clearly do not need any NEPA compliance. However, new and continuing activities which have never undergone NEPA review and/or are unprecedented or involve changes to past practices or environmental effects, even

if carried out over long periods of time, should be reviewed and evaluated for compliance with NEPA (*Upper Snake River Chapter of Trout Unlimited v. Hodel*, 921 F.2d 232, 234 [9<sup>th</sup> Cir. 1990]).

The regional or area office that is responsible for this evaluation should determine if NEPA is appropriate in any specific situation. The appropriate level of NEPA analysis that may be needed (CE, EA, EIS) is also at the responsible office's discretion.

On many Reclamation projects, O&M is carried out by contract with a private entity (usually a water district). In these situations, it is important to recognize that while the activities may be delegated, Reclamation usually retains responsibility for the action and compliance with NEPA. An examination of the O&M agreement and an exact understanding of the action being considered may be necessary to determine the extent of Federal involvement and the need for NEPA compliance documents. The appropriate Solicitor's Office may be included in this determination. Generally, if Reclamation must approve the O&M action, NEPA applies. Delegated O&M activities would have to go through the same evaluation process described above to determine what level of NEPA is required.

#### **4.10 Land Exchanges, Acquisitions, Withdrawals, and Disposal**

For Reclamation projects that have undergone NEPA compliance at the time of development/construction, no further compliance is needed when land exchange, acquisition, withdrawal, and/or disposal discussed in that NEPA compliance occurs, unless there are significant changes in the action or there is significant new information concerning environmental issues. Significant changes or significant new information may trigger the need to supplement the original NEPA compliance documents.

For Reclamation projects built before NEPA was enacted, or for proposals not previously addressed, land proposals will need to be evaluated to determine appropriate NEPA documentation. A CE would generally be appropriate only if there is no change in land use and the action is only administrative. If the action is not administrative only and/or there is a change in land use, then an EA or EIS will likely be needed. Note that under the regulations implementing NHPA, the transfer, lease, or sale of a historic property out of Federal control, without adequate and legally enforceable restrictions or conditions to ensure the long-term preservation of the property's historic significance, constitutes an adverse effect (36 CFR 800.5 (a) (2) (vii)). Be aware that for land acquisitions or disposals, Interior requires bureaus to conduct a pre-acquisition/disposal environmental site assessment to determine the potential for, and extent of, liability for hazardous substances or environmental remediation for hazardous substances on the lands to

be acquired or disposed of. This assessment may be incorporated into the NEPA analysis. The outcome will determine whether Reclamation may go ahead with the acquisition (see 602 DM 2). For all exchanges, acquisitions, withdrawals, and disposals, other statutes, (such as NHPA, ESA, etc.) may require analyses beyond the NEPA compliance requirement.

## **4.11 Invasive Species/Integrated Pest Management Program**

Integrated pest management (IPM) is a pest control strategy that is called for in several Executive orders and Interior policies. IPM uses information on the life cycles of pests and their interaction with the environment. This information is combined with available pest control methods (mechanical, chemical, cultural, and biological).

IPM is not a single method of pest control but a combination of management decisions, evaluations, and controls. It usually involves four approaches: (1) setting action thresholds (the point at which pests or the environmental conditions indicate action must be taken), (2) identification of the pests and monitoring, (3) prevention, and (4) control. Less environmentally damaging methods are used first. Only if these methods are unlikely to work are additional, more invasive control methods employed. These approaches are usually described in an IPM plan that is prepared for a project or an area office.

NEPA may apply at several different stages in the IPM process. The Reclamation CE in 516 DM 14.5 D (1) may be used if no extraordinary circumstances exist in managing an invasive species or pests. A Reclamation CE for nondestructive types of research and monitoring is found in 516 DM 14.5 A (3). It may apply to certain types of Reclamation pesticide research and IPM activities. A CEC should be completed to determine if a proposed pesticide research activity qualifies as a CE. Many offices elect to do an EA when an IPM plan is prepared. Others choose to initiate the NEPA process when the agency is deciding to take a specific control action.

## **4.12 Negotiations and Water-Related Contracts**

NEPA compliance and negotiation situations, such as any type of water contracting, present a unique set of issues to be considered. The interplay between the discussion and decisions of the negotiators and the NEPA alternative development and disclosure processes, along with other environmental compliance activities, can be complex. Figure 4.1 provides a flowchart illustrating the interaction of these processes. Following are brief descriptions of the contracting process and the associated NEPA process.

#### **4.12.1 Overview of Reclamation's Contracting Process**

Contracting is a dynamic process, and the stages discussed herein may reoccur many times and at any point in the process, as may be dictated by new information. Water-related contracts may be for new or additional water supplies, and amendments to or renewals of existing contracts. Negotiations do not become final until the contract is executed. The Federal action triggering NEPA compliance is contract execution.

Contracts define the respective rights, obligations, privileges, and duties of the United States and the contractor in constructing, financing, operating, and maintaining projects. No government agency or individual can contract on behalf of the United States without specific authority from Congress. Congress has authorized the Secretary to carry out the provisions of Reclamation law and to redelegate this authority to the Commissioner or other officers within Reclamation. Contracting authority for smaller amounts of water and shorter terms has been delegated to Regional Directors. Authority to negotiate and execute contracts for larger amounts of water or longer terms can be delegated to Regional Directors following the Commissioner's approval of a "basis of negotiation" (BON). The BON request is a request for approval to negotiate and execute a contract. The Commissioner's response, referred to as the "approval" memorandum, delegates the contracting authority and provides the negotiating parameters for the contract.

The contracting process may begin with a request from a water user for a contract. At this stage, basic information is collected on the practical, operational, environmental, legal, policy, and political considerations. These categories include such issues as Reclamation's authority to provide the water, the water users' authority to contract, the availability of water, cost of water, updating of the contract's terms (if the contract is being considered for renewal), NEPA, ESA, and other environmental considerations, as well as potential impacts to third parties (i.e., Indian tribes). If a contract appears feasible, technical discussions are held with the water user and other interested parties to gain a broader understanding of the water users' needs and the potential impacts to other water users. The technical discussions are also used to research alternatives to better meet the concerns of all parties having a stake in the contract action. These discussions do not commit Reclamation to any plan or alternative. Following the data collections and technical discussions, the BON is prepared and submitted by the Regional Director to the Commissioner for approval. The BON summarizes the basic information gathered and technical discussions, and recommends a negotiating strategy. Although most basic data have been collected by the time the BON is developed, certain activities such as NEPA and ESA compliance, while they may be ongoing, may not be completed until a definitive project description (i.e., draft contract) is developed. In these instances, the BON will discuss the status of those activities and note that execution of the contract will be

dependent upon the completion and results of those studies. Prior to the Commissioner's signature, the memorandum is reviewed for legal sufficiency by the Office of the Solicitor in Washington, DC.

Following the Commissioner's approval memorandum, the Regional Director negotiates the contract. The time to negotiate a contract can vary greatly depending on a variety of circumstances. Typically, once agreement is reached on a contract, there follows a 60-day public review period, after which the contract is executed by the water user and the Regional Director.

#### **4.12.2 Integration of NEPA with the Contracting Process**

At the very beginning of the contracting process, even before preparation of a BON, Reclamation should engage the NEPA process and include the consideration of environmental factors into development of a BON. This could be in the form of discussions, some type of report or analysis addressing environmental considerations, or a preliminary draft EA identifying the possible contracting alternatives and related environmental impacts. The BON should include a general summary of potential environmental issues.

To be effective in providing information to the negotiators, NEPA documentation and related environmental information should be developed before a final decision is framed. Having the environmental information available early reduces the risk that the NEPA process will uncover some impacts that require renegotiation of the agreement. The actual NEPA documentation should be initiated before the beginning of the negotiation process and should be framed by the positions of the negotiating parties and the no action alternative. As negotiations progress, additional alternatives can be included. The draft NEPA document released for public review should include a preferred alternative. If this is not possible, it must be included in the final NEPA document. A preferred alternative identified in the final NEPA document should be within the range of alternatives analyzed in the draft NEPA document.

The contracting/NEPA process must recognize the differences between executing new contracts and renewing existing contracts. One important distinction relates to the no action alternative. This is important because the no action alternative provides the frame of reference for determining impacts of alternatives. For new contracts, the no action alternative simply represents conditions as they would be with no contract. For renewal of water-related contracts, no action means continuing the existing contract with minor changes to satisfy current legal and contractual requirements. This definition of no action stems from CEQ findings and recommendations on a contract renewal action published in the FR on July 6, 1989. The analysis should describe differences in environmental effects between continuing the existing contract for the proposed contract period compared to the effects of other reasonable alternatives (which may include different contract terms). A renewed contract may implement only administrative/financial changes to an existing contract with no identifiable environmental effects. Reclamation



has a CE for these types of actions (516 DM 14.5 (D) (14)), and a CEC would have to be completed to ensure that no extraordinary circumstances exist which would necessitate preparation of an EA or EIS.

As with any NEPA process, there may be certain legislative or practical reasons for defining the range of alternatives considered in the contracting process. If an alternative would not be implemented because of legal or other substantive reasons, it may be considered unreasonable and eliminated from consideration and analysis.

#### **4.12.3 Warren Act Contracts**

Warren Act contracts are generally agreements entered into to allow the storage or conveyance of nonproject water in Reclamation facilities. These contracts are entered into at times when Reclamation has excess conveyance or storage capacity in its facilities. Briefly, Reclamation must determine the direct and indirect impacts of entering into a Warren Act contract and then complete the appropriate level of NEPA compliance. As with other actions associated with the use or transfer of water, care must be taken to clearly define Reclamation's action and those impacts that may result from the Federal action.

Reclamation's policy is to make excess capacity available for storage and conveyance of nonproject water only after considering whether and how adverse effects can be avoided or mitigated. Mitigation will be considered on a case-by-case basis, and costs are to be borne by parties other than Reclamation (i.e., the party requesting a contract for the use of excess capacity or others, but not a project contractor or O&M contractor unless they voluntarily agree to do it). See Directives and Standards WTR 04-01.

#### **4.12.4 General and Summary Comments**

Scoping of issues and potential alternatives should occur during the development of the BON to provide Reclamation with a broad public review of the issues associated with the existing contract and to provide options for consideration in the development of the BON. Additionally, public involvement can help define the appropriate level of NEPA documentation for the contracting effort. It is expected that an EA is appropriate in many situations, but EISs and CEs may be more appropriate in some situations. This determination should be made as early in the process as possible to allow a reasonable amount of time for the level of documentation that is appropriate.

The preparation of the NEPA document should be initiated as soon as the appropriate level of documentation needed is defined. If possible, it would be most beneficial to provide a preliminary understanding of the environmental consequences in the BON for the Commissioner's consideration. If this is an EA or an EIS, it is helpful to have the draft available at, or shortly after, the start of negotiations. This allows Reclamation, the water users, and the public to

understand the environmental consequences (or lack of them) for the issues being negotiated. This should, in turn, encourage the negotiation of provisions that avoid significant environmental impacts, fulfilling the intent of NEPA.

Before a final decision is made, final NEPA documentation should be coordinated with the required public review of the negotiated contract to allow public disclosure of the environmental consequences (or lack of them) for the provisions in the negotiated contract and to provide Reclamation management with the environmental information required by NEPA.

### **4.13 Changing Water Use**

The concept of a change in water use has a variety of meanings. Water use changes happen when the application of water is moved from one: (1) location to another, (2) entity to another, or (3) purpose (irrigation) to another purpose (municipal and industrial (M&I)) or multiple purposes (flood control and M&I). It can also occur when the quantity of water applied at a specific location is changed. Changing water use may be accomplished by the assignment of contract entitlements, new water service and repayment contracts, subcontracts, or other arrangements as may be provided by law. Regardless of the type of water use change or mechanism for accomplishing the change, Reclamation and other Federal and State law must be followed before the change can occur. Generally, when Reclamation facilities or water rights are involved, Reclamation's approval must be obtained. An exception may occur when water within a contractor's service area is transferred from one user to another, depending upon individual project circumstances.

Since the 1960s, many Reclamation projects have seen significant changes in water use. These changes are the result of the continued trends of greater irrigation efficiencies, retirement of agricultural lands, and increased urbanization. Other water users such as Indian tribes and fish and wildlife have increasingly been recognized as having equal or prior rights to water. Reclamation's policy is to encourage and facilitate the most efficient beneficial use of water when: (1) such change can be accomplished in accordance with applicable State and Federal laws, and (2) it can be accomplished without diminution of service to those parties otherwise being served by such Federal resources.

A NEPA review is required to identify the likely environmental consequences of a change in water use. The information gathered during the NEPA review, such as the potential impacts to an endangered species, must be considered in Reclamation's decision in approving the water use change. Environmental impacts are considered for both the immediate and long-term effects of a water use change. Some of the questions that are asked to determine the immediate and long-term effects are:

- What is the relationship of water supply and urban population growth?
- Is the change growth inducing, or are we simply accommodating already existing demographic trends by providing a relatively impact-free source of water?
- How far, and to what degree, do we follow the impacts that are associated with the newly approved water use?

Reclamation may use a CEC if the proposed water use change qualifies for exclusion. Examples of Reclamation CEs that may apply include:

- Approval, execution, and implementation of water-related contracts for minor amounts of long-term water use or temporary or interim water use where the action does not lead to long-term changes and where the impacts are expected to be localized (516 DM 14.5 (D) (4)).
- Approval, renewal, transfer, and execution of an original, amendatory, or supplemental water service or repayment contract where the only result will be to implement an administrative or financial practice or change (516 DM 14.5 (D) (14)). An example would be an acquisition of one water company by another, where the project water contract is transferred to the new company, which then provides water to the same service area.
- Approval of second party water sales agreement for small amounts of water (usually less than 10 acre-feet) where Reclamation has an existing water sales contract in effect (516 DM 14.5 (D) (15)).

The complete list of CEs is found in 516 DM 14.5. In those situations where a CE does not apply, or when all questions on a CEC cannot be checked no, an EA or EIS will be required.

During any NEPA compliance activity, Reclamation should avoid encroaching on State and local governments' jurisdiction over local planning, zoning, and other issues associated with "growth." This cannot, however, interfere with Reclamation's legal responsibilities under NEPA. It should be recognized that there may be occasions when a Reclamation action may be associated with urban growth.

The U.S. Supreme Court discussed the concept of the need for a reasonably close causal relationship between the Federal action and an environmental effect in *Department of Transportation v. Public Citizen* (541 U.S. 752 (2004)). In this case, the Federal agency discretion over a potential impact (more truck traffic and more air pollution) was limited, and the Court ruled that the NEPA document did

not have to address that potential impact as an effect of the action. Similarly, when Reclamation is involved in a water contracting action, our discretionary control over local growth issues may be very limited.

Consideration of this logic for limiting the scope of analysis in a NEPA document should involve discussions with the Solicitor's Office and management to determine applicability to a particular situation before the NEPA document is drafted.

#### **4.14 Title Transfer**

Title transfer involves transferring title to Reclamation facilities to another entity. The Framework for the Transfer of Title, August 1995, describes Reclamation's title transfer process and addresses policy and criteria for transferring uncomplicated projects (i.e., those without outstanding environmental or other issues). This document should be referenced during evaluation of any title transfer proposal. Copies of the document may be obtained from the title transfer coordinators in the regions or Reclamation's Web site (<http://www.usbr.gov/gp/titleframework.cfm>). Issues and obligations that may come up as part of title transfer include: endangered and threatened species concerns, cultural resources issues, hazardous materials concerns, treaties and compacts (international/Indian and interstate), ITAs, and compliance with a variety of EOs (e.g., wetlands, flood plains, pollution prevention, environmental justice, and others). Note that under the regulations implementing the NHPA, the transfer, lease, or sale of a historic property out of Federal control, without adequate and legally enforceable restrictions or conditions to ensure the long-term preservation of the property's historic significance, constitutes an adverse effect (36 CFR 800.5 (a) (2) (vii)). It is very important to address cultural resources, as well as issues under other laws and obligations (e.g., ESA, ITA) at the outset of any discussions on potential title transfers. Compliance with certain statutes and Federal responsibilities may trigger a series of consultation and analytical steps that could delay completion of the NEPA process and possibly terminate title transfer.

As in any other environmental review, staff will have to review the proposal and determine if compliance with other environmental laws is an issue.

The title transfer process includes a public involvement component. One means of identifying potential environmental problems and controversial issues is to notify stakeholders and interested parties and get them involved early in discussions on title transfer.

If mitigation of potential environmental impacts is appropriate, or if there are prior environmental commitments associated with the project, it is Reclamation's recommendation that these should be fully implemented before title is transferred,

preferably by the party receiving title. Only in unusual, site-specific circumstances would it be appropriate for Reclamation to attach conditions to the property that require action after title has transferred.

## **4.15 Financial Assistance Programs**

Reclamation provides financial assistance through several different types of business instruments. These are used to convey funds to other entities through: (1) cost-share programs such as Title XVI and Title 28, Water SMART grants, and other partnership activities; (2) cost reimbursement for programs such as drought relief assistance; and (3) funding of activities such as FWCA reports.

Appropriate NEPA compliance will depend upon the specific action being considered. When Reclamation has no control and responsibility over the expenditure of funds provided, NEPA compliance is not required (43 CFR 46.100(a)). This generally occurs when an Act of Congress specifically directs Reclamation to provide funding for a particular activity or to a particular entity. It should be noted that Federal funding under these circumstances may still require consideration under other requirements (e.g., NHPA section 106).

When some degree of control and responsibility exists, NEPA compliance is appropriate. Signing of financial assistance documents, payments of associated costs, and transfers of money are contingent upon first completing appropriate environmental compliance.

Generally, studies and planning assistance activities are categorically excluded from NEPA compliance by Interior and do not require completion of a CEC. In addition, if these activities are restricted to such actions as nondestructive data collection, monitoring, and nonmanipulative field studies, they may not require analysis under other environmental laws and regulations. However, cultural clearances and Section 404 permits may be required for monitoring or studies involving ground disturbing actions such as test pits or drill holes and, therefore, a CEC should be completed. In general, if the action being approved or funded is not expected to cause on-the-ground effects, it is probably not necessary to complete a CEC.

Under NEPA, an appropriate document must be prepared which describes and analyzes the environmental effects of a proposed Federal action, including non-Federal actions funded by Reclamation. Preparation of a CEC may be appropriate for most financial assistance proposals. However, proposals with unclear or potentially significant impacts will require preparation of an EA or an EIS. For these latter two documents, sufficient time and funds must be allowed for completion before the assistance document can be signed (i.e., the document which approves the proposed action and commits funds to implement that action).

In addition, NEPA compliance for projects of non-Federal partners on Reclamation lands, regardless of the funding source (cost share or otherwise), is generally required. For example, NEPA compliance is required prior to construction of new facilities in a recreational area managed by a county for Reclamation, even if the county and/or other entities are paying the total cost.

It should be noted that non-Federal entities are not “responsible” for compliance with NEPA. NEPA compliance is Reclamation’s responsibility. However, due to policy, budget, and staffing limitations, Reclamation often requires that benefiting entities (proponents) provide the needed information and even, in some cases, the analysis necessary for the NEPA compliance documentation (40 CFR 1506.5(a)). In the case of interagency acquisitions, the appropriate Federal partner may be required to complete the NEPA analysis and documentation. This requirement should be specified in the financial agreement.

The cost of NEPA compliance may be funded jointly or as a direct cost to the applicant. The respective financial agreement should specify how these costs will be covered.

See also Reclamation memo entitled “Guidance on Complying with the National Environmental Policy Act and other Environmental Laws for Water 2025 Challenge Grant Proposals” in the attachments.

## **4.16 Inclusions/Exclusions**

Inclusions and exclusions occur when land is being added to an existing service area (inclusion) or when land is being removed from an existing Reclamation project area (exclusion). Inclusions and exclusions should be viewed as any other action undertaken by Reclamation and, as such, are to be reviewed pursuant to NEPA. There is often some land-use change that is caused by these activities, and such a change must be evaluated as part of the action in evaluating an inclusion or exclusion. When the inclusion/exclusion may result in land use changes impacting the environment, an EA or an EIS (if warranted) may be appropriate. In cases in which it can be established that Reclamation’s action of approving inclusions/exclusions has no demonstrable effect on land use (and, thus, no environmental effects), a CEC is likely the appropriate document.

## **4.17 Water Conservation**

Reclamation will comply with NEPA on all actions associated with Federal assistance to water districts in conservation planning and implementation activities, including programs such as the Water SMART Grant Program, the Water Conservation Field Services Program, and the Title XVI Water

Reclamation and Reuse Program. The type of compliance (CE, EA or EIS) will be commensurate with the potential significance of impacts and the level and type of assistance provided or the Federal action taken, as outlined below.

*1. Submittal and Review of Water Conservation Plans (WCPs).*—Districts are required under the Reclamation Reform Act to develop and submit WCPs to Reclamation. Reclamation will review each individual WCP that is submitted and provide comments and recommendations to the district on the adequacy of the plans in meeting the district's identified goals and measures. These comments will be advisory in nature but will be substantive in identifying possible environmental impacts of measures proposed in the plan. Reclamation will include in those comments information on any possible future NEPA or ESA compliance that may be envisioned for site-specific implementation of plan elements. Reclamation does not approve plans but may publish notice of submitted WCPs. Because they are public documents, Reclamation will make available to any interested party, as requested, a copy of each submitted plan and/or Reclamation comments and recommendations.

*2. NEPA Compliance Associated with Conservation Planning Assistance.*—When Reclamation provides a district with assistance in the preparation of WCPs, Reclamation will comply with NEPA on the Federal action taken. Technical assistance that can be considered general, day-to-day, and limited in scope will usually fall within an existing Interior NEPA CE covering such routine informational technical assistance activities, and no formal documentation (CEC) of such activity need be processed. However, in-depth, site-specific assistance may not be covered by the CE, and preparation of an EA may be required.

*3. NEPA Compliance Associated with Conservation Implementation Assistance.*—When Reclamation provides a district with assistance in the implementation of water conservation measures identified in a district's plan, Reclamation will again comply with NEPA on the Federal action taken prior to implementation of the measure. When Reclamation provides a district with financial assistance to implement or demonstrate a water conservation measure identified in a plan, appropriate NEPA compliance will be documented as a part of the financial assistance agreement. If Reclamation provides a district with technical assistance to implement or demonstrate a water conservation measure, Reclamation will address appropriate NEPA compliance as described above for conservation planning assistance, depending on whether such technical assistance is provided generally or formally through agreement.

When Reclamation provides financial assistance for implementing or demonstrating a water conservation measure, Reclamation will consider

the interrelationship of all measures proposed in the district's WCP and provide recommendations on possible legal requirements, potential environmental impacts, and mitigation strategies.

## 4.18 Applicant-Driven Actions

Applicants are private or other non-Federal entities that initiate or propose actions which, at some stage of planning and development, need Reclamation approval or assistance through the submission of applications. It is a requirement of Interior NEPA regulations (43 CFR 46.200(e)) that the applicants be informed, as soon as it is practicable, of any responsibility they will bear for funding environmental analysis. Reclamation should always inform applicants of environmental information that must be included in their application and any consultations the applicant must complete before or during the application process. In practical terms, this means Reclamation EAs, and even EISs, will frequently be drafted by consulting firms paid by the applicants. For such externally driven proposals, NEPA compliance questions commonly arise in three areas: (1) range of alternatives, (2) limitations on actions by the applicant, and (3) contractor selection requirements. As noted earlier, Reclamation remains fully responsible for the adequacy of NEPA compliance.

Be aware that the ESA uses the term "applicant" in a different way than described here. An applicant in the ESA process has specific rights to be involved in the process that do not apply to applicants in the sense used here (see Section 7 of the ESA for more details).

### 4.18.1 Range of Alternatives

**(40 CFR 1502.14; also see CEQ's Forty Most Asked Questions, No. 2, and CEQ Guidance Memorandum issued August 10, 1983)**

Frequently, the applicant's proposed action will be submitted to Reclamation for approval, and the Federal decision (action) may be to simply approve or disapprove. In such situations, Reclamation must determine what other alternatives should be considered in the NEPA document and whether these alternatives are "reasonable," given the purpose and need of the action.

In general, the referenced guidance is to include and consider reasonable alternatives in applicant-driven proposals in the same fashion that an internal Reclamation proposal would include and consider them. In CEQ's Forty Most Asked Questions, it is observed that...

Reasonable alternatives include those that are practical or feasible from the technical or economic standpoint and using common sense rather than simply desirable from the standpoint of the applicant.



In later guidance (August 1983 guidance memorandum), CEQ concludes it is reasonable for the Federal agency to limit the range of alternatives to those “. . . which are considered feasible, given the applicant’s stated goals.” The agency should consider the “applicant’s purposes and needs and the common sense realities of a given situation in the development of alternatives.”

The determination of appropriate alternatives is a Reclamation responsibility. The responsible official has discretion to determine what (if any) action alternatives are appropriate. The number and scope of alternatives also remain Reclamation’s responsibility. It is recommended that the rationale for the decision be documented either in the NEPA document or in the office’s files.

**4.18.2 Limitations on Actions by the Applicant  
(40 CFR 1506.1, 43 CFR 46.160; also see CEQ’s Forty Most Asked Questions, No. 11)**

The applicant is clearly held to the same standard as the Federal agency in taking action prior to completion of the NEPA process. That is, the applicant should not take any action prior to the ROD or FONSI that would have an adverse environmental impact or that would limit the choice of reasonable alternatives. The difficulty for the Federal agency lies in how to enforce this limitation when the applicant may be initiating the proposal with its own money and on its own property (i.e., there is no Federal authority to stop such private actions). CEQ advises the Federal agency to “notify the applicant that the agency will take strong affirmative steps to ensure that the objectives and procedures of NEPA are fulfilled.” For example, the agency might advise an applicant that if it takes such action, the agency will not process its application.

**4.18.3 Contractor Selection Requirements  
(40 CFR 1506.5; also see CEQ’s Forty Most Asked Questions, Nos. 16 and 17, and CEQ Guidance Memorandum issued August 10, 1983)**

The above-referenced guidance should be consulted for detailed information, especially the August 10, 1983, CEQ memorandum, regarding contractor-prepared NEPA documents. In general, preliminary EAs may be prepared by applicants (or their consultants, known as “third party contracts”) without prior approval or involvement by the Federal agency in the selection of the consultant. Early coordination, however, is encouraged. The Federal agency may accept such EAs if they meet the agency’s requirements, including compliance with CEQ regulations. Ultimately, Reclamation is responsible for the scope and content of the EA; consequently, Reclamation must independently review and evaluate the information in the EA to ensure that it meets Reclamation’s requirements.

An EIS may be prepared directly by the lead agency or a cooperating agency when appropriate. Alternately, an EIS may be prepared by a contractor selected by a lead and/or cooperating agency.

There are situations in which a consulting firm may be hired under a “third party contract.” According to CEQ’s Forty Most Asked Questions, a third party contract refers to the preparation of EISs by contractors paid by the applicant, not by the agency. In these cases, the lead or cooperating agency must select the contractor, even though the contract is between the consulting firm and the applicant. The applicant would prepare the paperwork for soliciting contractor candidates, and Federal acquisition requirements would not apply because the Federal agency procures nothing and incurs no obligations or costs under the contract. CEQ guidance and regulations, cited above, should be carefully reviewed.

Whether a contractor is hired directly by the lead and/or cooperating agency or hired under a third party contract, Reclamation must provide guidance and participate in the preparation of the EIS to ensure that appropriate scope and analyses are completed. In all cases, the consulting firm selected to prepare the EIS must execute a disclosure statement demonstrating that it has no financial or other interest in the outcome of the project.

## **4.19 Environmental Management System**

An environmental management system (EMS) is a management practice that allows an organization to manage its controllable environmental impacts in a systematic way. EMS implementation in Reclamation reflects the International Organization for Standardization 14001:2004(E) model. This model embraces a Plan/Do/Check/Act management cycle where the organization’s environmental impacts are identified, goals and targets related to significant impacts are set, progress is monitored, and adjustments are made in the context of management review to foster continual performance improvement.

EMS differs from NEPA in that the EMS typically requires identification of environmental aspects associated with an organization’s ongoing operations and activities, prioritizing those which have, or can have, significant impacts on the environment. EMS provides a framework to improve day-to-day environmental performance, including the achievement of environmental regulatory compliance, not just “major Federal actions.” EMS also requires continuous review, adjustments, and improvement to reduce environmental impacts year after year. NEPA and EMS are distinct and separate processes at different phases of project planning and operation. However, the results of the NEPA process can be utilized in EMS to identify and prioritize environmental aspects of a proposed activity or of similar ongoing activities. Commitments and mitigation measures established as a result of the NEPA process can be transformed into EMS objectives and

targets and be tracked and monitored through the EMS “Check” process. For more information on EMS and NEPA, please see the CEQ guide entitled “Aligning NEPA Processes with Environmental Management Systems.”

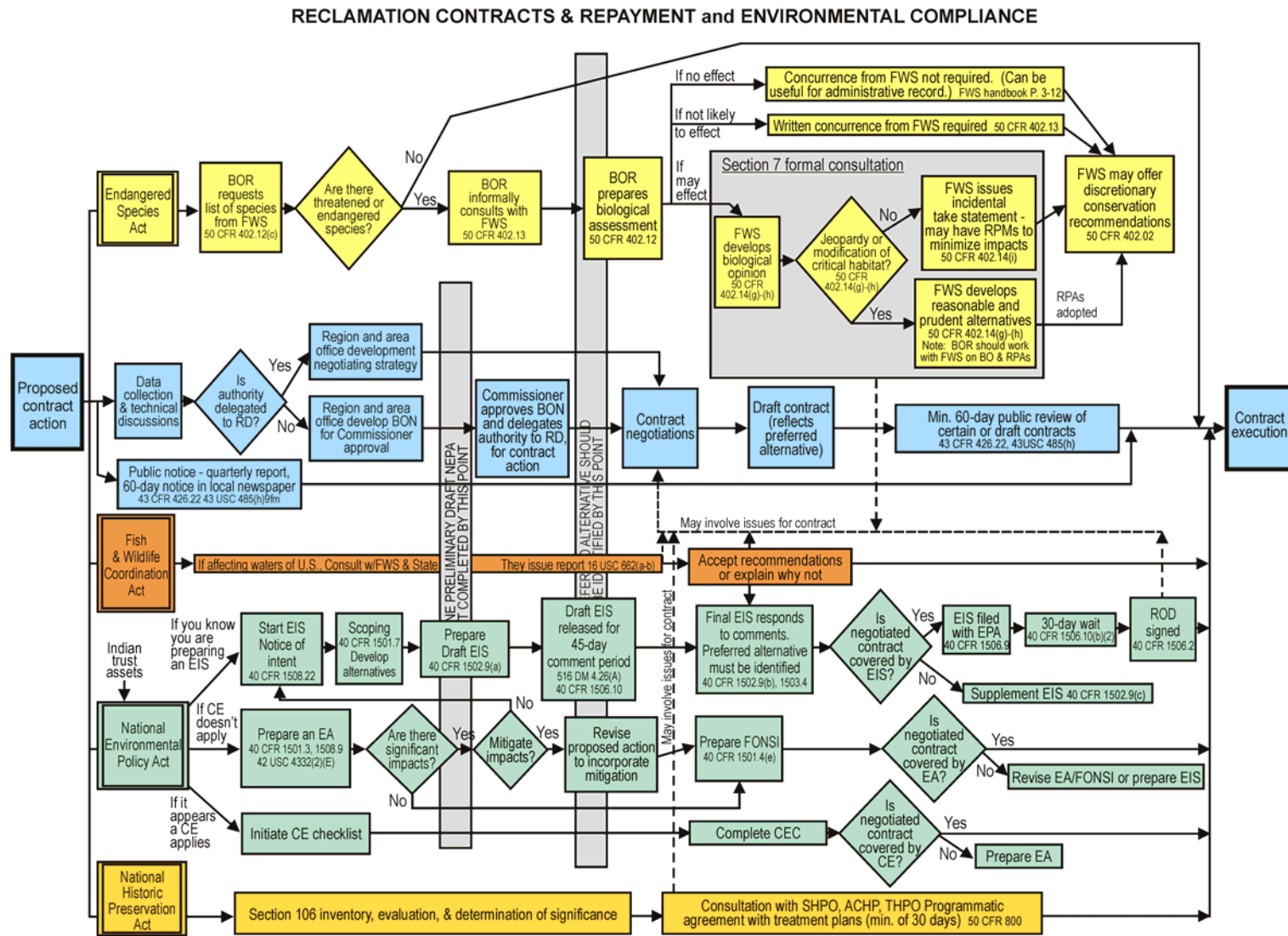


Figure 4.1.—Reclamation contracts and repayment and environmental compliance.

## Chapter 4 Useful Links

CEQ's Guidance Memorandum issued August 10, 1983

<http://ceq.hss.doe.gov/nepa/regs/1983/1983guid.htm>

CEQ's Forty Most Asked Questions

<http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm>

CWA

<http://epw.senate.gov/water.pdf>

Directives and Standards WRT 04-01

<http://www.usbr.gov/recman/wtr/wtr04-01.pdf>

EO 11988 - Floodplain Management

[http://www.fema.gov/plan/prevent/floodplain/eo\\_11988.shtm](http://www.fema.gov/plan/prevent/floodplain/eo_11988.shtm)

EO 11990 – Wetlands

<http://water.epa.gov/lawsregs/guidance/wetlands/eo11990.cfm>

EO 12898 - Environmental Justice

<http://www.archives.gov/federal-register/executive-orders/pdf/12898.pdf>

ESA

<http://www.fws.gov/endangered/esa-library/pdf/ESAall.pdf>

FWCA

<http://www.usbr.gov/power/legislation/fwca.pdf>

NHPA

<http://www.achp.gov/docs/nhpa%202008-final.pdf>

Reclamation Reform Act

<http://www.usbr.gov/rra/>

SOD

<http://www.usbr.gov/ssle/damsafety/>

Title XVI - Water Reclamation and Reuse Program

<http://www.usbr.gov/WaterSMART/title/>

Title XVI - Watersmart Program

<http://www.usbr.gov/WaterSMART/title/>

Water Conservation Field Services Program

<http://www.usbr.gov/waterconservation/>

16 U.S.C. 590a

<http://codes.lp.findlaw.com/uscode/16/3B/590a>

36 CFR 800.5 (a)(2)(vii)

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=74eb81d7638f83d68f67af38f8d58841&rgn=div8&view=text&node=36:3.0.6.1.1.2.1.3&idno=36>

40 CFR 1500-1508

[http://ceq.hss.doe.gov/ceq\\_regulations/regulations.html](http://ceq.hss.doe.gov/ceq_regulations/regulations.html)

43 CFR 46

<http://www.doi.gov/oepc/nepafr/docs/Federal%20Register%20October%202015,%202008%20NEPA.pdf>

516 DM 14.5 – Categorical Exclusions

<http://elips.doi.gov/ELIPS/DocView.aspx?id=1727&dbid=0>

602 DM 2

<http://elips.doi.gov/ELIPS/DocView.aspx?id=1803>

606 DM 1

<http://elips.doi.gov/ELIPS/DocView.aspx?id=1822&dbid=0>

## Chapter 5

# Categorical Exclusion

As explained in chapter 3, a CE applies to actions that do not individually or cumulatively have a significant effect on the human environment. Each CE is approved by CEQ and excludes categories of Federal actions from further NEPA documentation because those types of actions have been shown to have no significant effect on the environment. A CEC is a tool Reclamation uses to document consideration of “extraordinary circumstances” (43 CFR 46.215) in the application of a CE to a particular situation.

As a general rule, preparation of a CEC should be a fairly rapid process, taking a few hours or a few days and involving a little research, a few coordination telephone calls, and/or short face-to-face discussions to get information, as needed, to fill out the checklist. Some internal and external scoping of issues and documentation may also be required. If completion of the CEC is going to take weeks and/or months to scope and document, or if the answer to any question is uncertain or “yes,” an EA should generally be prepared.

## 5.1 When to Use a Categorical Exclusion (40 CFR 1508.4 and 43 CFR 46.205-215)

The use of a CE depends upon three basic criteria. First, the action being considered must fit into one of the categories on the list of CEs. Second, the responsible official must believe that there are no potential significant impacts or complications that would make a CE inappropriate; and, third, no extraordinary circumstances apply.

Interior (43 CFR 46.210) has a list of CEs that can be used for any agency’s actions. Additionally, there is a Reclamation-specific list (516 DM 14.5) that can also apply (<http://elips.doi.gov/ELIPS/DocView.aspx?id=1727&dbid=0>). NEPA compliance for proposed actions that do not fit into any of the categories on these lists, even if there are believed to be no potentially significant effects, should start with an EA. Also, any time a proposed action has any potentially significant complications (such as site-specific circumstances of concern), an EA should be prepared instead. Finally, a CEC should be prepared whenever a Reclamation CE is used (and may be advisable even when using an Interior CE in unique circumstances).

Any action that is normally categorically excluded must be subjected to sufficient environmental review to determine whether any extraordinary circumstances (43 CFR 46.215) apply. If so, an EA (or EIS) must be prepared. Reclamation’s CEC supports the determination that a proposed action qualifies for the cited CE.

The initial determination relative to NEPA compliance and documentation for minor actions, including initiating the appropriate paperwork for a CEC, is the responsibility of the Reclamation office initiating the action.

## **5.2 Categorical Exclusion Checklist for Individual Actions**

Completing a CEC should not require extensive research or any substantive data collection. It should include a description of the proposed action, documentation on how it meets the exclusion category, and a list of any environmental commitments associated with the action.

The CEC should be used to evaluate an individual action in relation to the impacts it may cause. Figure 5.1 is an example of the minimum contents of a CEC. The format for a CEC may change between regions, but the wording of the evaluation criteria reflects the language of 43 CFR 46.215, the requirements of several Executive orders, and Reclamation policy on ITAs and, therefore, should not be changed. If all the answers to the checklist are “no,” the action meets the criteria for a CE.

If, after reasonable efforts to clear up uncertainties and compliance questions, an answer is checked “yes,” an EA should be prepared. If it is certain the impacts are potentially significant (40 CFR 1508.27), the EA process may be bypassed, and the preparation of an EIS initiated. If answers are uncertain, an EA may be necessary and additional information gathered to relieve the uncertainty. If project mitigation is required, the action probably should be covered by an EA rather than a CE. Even so, environmental commitments may be made which, when followed, would eliminate the need for specific mitigation measures. These commitments (which would be documented in the CEC) include such measures as stopping work and calling in a cultural resource specialist if archeological resources were uncovered in the course of the action, or consulting with the Service if unexpected evidence of a T&E species were found on the site. These commitments are not an attempt to produce a “mitigated CE” but, rather, an acknowledgment that unexpected things can happen and that Reclamation will respond appropriately if something should occur. This acknowledgment and/or other available and appropriate supporting material (letters from the Service, SHPO, etc.) may be attached to the CEC.

When completing the CEC, answering “uncertain” to any questions does not automatically make the action in question subject to an EA. It may only mean that sufficient data are not available to answer the question “yes” or “no.” For example, if the CEC is filled out and all the questions are answered “no” except for one, which is marked “uncertain,” then more research or consultation is



needed. If, after further research, no significant impact is found in this area, the question can then be answered “no” and a CE can be cited. The results and actions taken should be documented in the “Remarks” section of the CEC.

If additional data are gathered and doubt persists about the significance of the possible impact, an EA should be prepared.

### **5.3 CEC Criteria for Evaluating Categorically Excluded Actions (43 CFR 46.215)**

The criteria and exceptions included in a CEC that must be considered in evaluating whether or not a CE is applicable and appropriate are listed below. The majority of the criteria and exceptions (extraordinary circumstances) are set forth in 43 CFR 46.215.

#### **Evaluation of Criteria for CE:**

**1. This action would have a significant effect on the quality of the human environment (40 CFR 1502.3).**

The response should consider the broad impacts to the physical, biological, social, legal, and economic factors that make up the total human environment and the relative significance of those impacts. Generally, this criterion should be evaluated last, as the information from the others is needed to evaluate this criterion adequately.

**2. This action would have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources (NEPA Section 102(2)(E) and 43 CFR 46.215(c)).**

Controversy is based on the analysis and effects of the proposed action and not merely on whether or not a group or individual likes the project. The term “controversial” refers “to cases where a substantial dispute exists as to the size, nature, or effect of the major federal action rather than to the existence of opposition to a use.” (*N. Am. Wild Sheep v Dept of Agric.*, 681 F.2d 1172, 1182 (9<sup>th</sup> Cir. 1982)) (citation omitted)

One should consider the use of available information, consultation with technical experts, limited public involvement, or professional judgment to reach a decision regarding potential resource conflicts, as well as short- and long-term potential uses of the natural resources in question.

**3. This action would have significant impacts on public health or safety (43 CFR 46.215(a)).**

A number of issues may arise relative to public health and safety. The most common concerns are likely to involve water quality and hazardous materials. Other public health and safety considerations may not be as obvious. However, it is important to provide appropriate consideration of the broad range of public health and safety issues.

Activities must not violate applicable Federal, tribal, or State water quality standards. These water quality standards are established to protect the beneficial uses of the designated water body. Where standards have not been established, applicable water quality health goals may be considered.

Activities must adhere to requirements set forth under the Clean Water Act, P.L. 92-500, as amended; 33 U.S.C. 1251 et seq.; and Safe Drinking Water Act, P.L. 93-523 and amendments.

Many Reclamation activities may directly or indirectly affect public safety. Examples include the application of pesticides, dam construction or repair, development of recreational facilities, canal maintenance, and reservoir operations.

**4. This action would have significant impacts on such natural resources and unique geographical characteristics as historic or cultural resources; parks, recreation, and refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (EO 11990); flood plains (EO 11988); national monuments; migratory birds; and other ecologically significant or critical areas (43 CFR 46.215 (b)).**

Reclamation should consider the effect of its undertaking on unique cultural and historic resources. State SHPOs, historic preservation societies, tribes, the ACHP, and other organizations may be of assistance in identifying these and should be contacted early in the process.

The Service should be contacted to determine whether national wildlife refuge system lands, including waterfowl production areas, are within the affected area and whether these areas may be adversely impacted. State and local management agencies should be contacted if refuges under their management authority may exist in the area.

Land management and conservation agencies, such as the Forest Service, Bureau of Land Management (BLM), National Park Service (NPS), and the Service, should be contacted to help identify wild or scenic rivers; rivers listed in the national inventory of such rivers; park and recreation lands; wilderness areas or

areas proposed for wilderness designation; and national monuments. These agencies can assist in determining whether direct, indirect, or cumulative adverse impacts to these resources may result from the proposed action.

The NPS or its National Natural Landmark (NNL) Web site should be consulted to determine NNL locations and to assist in determining the impacts of the proposed action on those resources.

If the proposed action has the potential to impact ground water, the appropriate State and/or local entities should be contacted to assist in identifying sole or principal aquifers and the impacts to such aquifers.

The Natural Resources Conservation Service (NRCS) can assist in identifying prime and unique farmlands and in determining whether the proposed action will result in adverse impacts. Consideration should be given to the direct, indirect, and cumulative effects the proposed action may have upon prime and unique farmlands in the project area (Reclamation is responsible for determining whether the proposed action may have growth-inducing effects and related impacts upon prime and unique farmland).

Jurisdictional wetlands are wetlands which are regulated under Section 404 of the CWA. The excavation or discharge of dredged or fill material into jurisdictional wetlands is regulated by USACE. Authorization from USACE is required for excavation and fill activities in jurisdictional wetlands, except for those activities which have been exempted or grandfathered through the rulemaking process. The level of authorization necessary can range from a nationwide general permit to an individual permit. USACE regulations in 33 CFR 328.3(b) define wetlands as:

Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions.

Wetlands generally include swamps, marshes, bogs, wet meadows, seasonal wetlands such as vernal pools and prairie potholes, and other similar areas.

All potential Reclamation actions must consider impacts to wetlands. Such consideration should begin with a review of National Wetland Inventory maps, NRCS soil surveys, and/or aerial photography, when available, followed by a field inspection, if necessary, to verify the presence or absence of wetlands. If possible, a representative from the Service, USACE, or NRCS should participate in the field inspection. The results of the field inspection should be documented.

Consideration should be given to whether the proposed action will increase the risk of loss of property from flooding; increase the impact of floods upon human safety, health, and welfare; or hinder preservation and/or restoration of the natural and beneficial values served by flood plains.

Reclamation must determine if a proposed action will result in “take” of migratory birds. A CEC is not appropriate to use for proposed actions that involve intentional take of migratory birds unless a permit has been obtained from the Service. Where unintentional take of migratory birds is anticipated (for example, vegetation clearing during the nesting season), the Service should be consulted and reasonable measures included in the action to minimize any such unintentional take.

**5. This action would have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks (43 CFR 46.215(d)).**

Activities such as the introduction of a species into previously unoccupied habitat, the eradication of a species from large areas, captive management of T&E species, or innovative mitigation techniques may involve adverse environmental effects which may not have been readily discernible or which may be difficult to quantify with existing data and technology. In addition, the nature and magnitude of some environmental effects may not become apparent until long-term monitoring has been completed. Some research-oriented activities or unique environmental proposals in which the effects cannot be quantified with existing methodologies may warrant checking the “uncertain” blank.

**6. This action would establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects (43 CFR 46.215 (e)).**

If the proposed action is innovative, will facilitate future actions by establishing a base upon which related or connected actions depend for support, or is the initial action in a known series of actions, it may set a precedent for future actions. To mark a “yes” for this item, the Reclamation action should be essential for the subsequent activity to occur (a direct causal link), and Reclamation should have some degree of control and responsibility over the subsequent activities. A “yes” or uncertain response would require Reclamation to analyze the impacts of the action in an EA or EIS.

**7. This action would have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects (43 CFR 46.215 (f)).**

The analysis of cumulative effects is one of the most important and difficult analyses to conduct. Cumulative effects are defined in 40 CFR 1508.7 as:

The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions.

Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

It is normally difficult to predict cumulative impacts which may be expected to reasonably occur in the future. The analysis of cumulative effects associated with reasonably foreseeable future actions should not be speculative but based upon known long-range plans and other plans developed by agencies, organizations, and/or individuals.

Cumulative effects can be additive or interactive. Additive effects tend to emerge from one kind of source through time or space. Interactive effects result from more than one kind of source. Reclamation needs to consider whether a proposed action is one of many similar events that could accumulate effects over time.

**8. This action would have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by Reclamation (in coordination with a Reclamation cultural resources professional, LND 02-01)(43 CFR 46.215 (g)).**

The National Register is a listing of properties significant in local, State, or national history maintained by the Secretary. National Register properties may be prehistoric or historic sites, districts, buildings, structures, or objects significant in American history, architecture, engineering, and culture. Properties eligible for listing receive the same level of protection as properties listed in the National Register. The SHPO maintains a list of eligible properties for his or her respective State. In some cases, a THPO may maintain a list of eligible properties for the lands of the tribe he/she represents. Unevaluated properties are considered potentially eligible until determined otherwise.

Historic properties are subject to consideration under Section 106 of the NHPA. Federal agencies are encouraged to coordinate compliance with Section 106 and NEPA as early as possible. Even if the action would normally be categorically excluded from NEPA review, Reclamation must determine if it qualifies as an undertaking requiring review under Section 106.

Through the consultation process prescribed in 36 CFR Part 800, Reclamation must determine whether the proposed action will have an effect on historic properties and, if so, whether the effect is adverse. Adverse effects under NHPA do not always constitute potentially significant impacts under NEPA. If an adverse effect on a historic property can be avoided, minimized, or mitigated, the proposed action may be sufficiently modified under NEPA that it no longer has a potentially significant impact. If that is the case, the CEC can be signed. There may be occasions where a proposed action cannot simply be modified to prevent a potentially significant impact. In such cases, an EA (or an EIS) will be required.

The results of compliance with the NHPA should be included on or accompany the CEC to show that compliance with the NHPA has been fulfilled. The CEC should be coordinated with and signed by a cultural resources specialist or other appropriately qualified professional.

**9. This action would have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated critical habitat for these species (43 CFR 46.215 (h)).**

Reclamation must determine if T&E species exist in the project area. This determination must be made with the involvement of the Service and/or NOAA-NMFS, as appropriate, the agencies charged with determining the distribution and critical habitat for listed species. There should also be close coordination with the area or regional ESA specialists or coordinators.

Reclamation must determine if the activity may significantly affect any proposed or listed species or its critical habitat. To reach a conclusion of “no” on the CEC, Reclamation should have determined one of the following: (1) there are no listed species or designated critical habitat in the proposed area, (2) the proposed action would have no effect upon listed species or designated critical habitat, or (3) the effect of the proposed action on listed species or designated critical habitat was insignificant, discountable, or wholly beneficial (this determination requires written concurrence from the Service/NMFS of “is not likely to adversely affect” and, if critical habitat exists, “will not destroy or adversely modify,” critical habitat). See the Service’s Consultation Handbook for additional information.

For those rare situations where a proposed species or proposed critical habitat is present, the test is similar. The reasoning that led to the determination should be documented and included with the CEC.

**10. This action would violate a Federal, tribal, State, or local law or requirement imposed for protection of the environment (43 CFR 46.215 (i)).**

Reclamation should determine the jurisdictional authority for the area to be impacted by the action. This could be a State or Federal agency, or a city, county, or tribal government. Once the jurisdictional authority has been determined, the appropriate applicable environmental laws and regulations for that authority (e.g., CWA Sections 402 and 404) should be reviewed. This may involve laws/regulations for more than one authority (e.g., an area may have to comply with a combination of environmental laws/regulations from tribes, the State, a county, or a city).

Reclamation should determine if Secretarial or Executive orders (including EO 12898, EO 12114, and Secretarial Order 3206, in the attachments) apply to the action.

In responding to this criterion, Reclamation would determine if any environmental laws, enacted by the governmental entity whose jurisdiction encompasses the affected area, would be violated by the action.

**11. This action would affect ITAs (to be completed by Reclamation official responsible for ITAs) (512 DM 2, Policy Memorandum dated December 15, 1993).**

ITAs are legal interests in property held in trust by the United States for federally recognized Indian tribes or individuals. Consideration of potential adverse impacts to ITAs should occur as early as possible in the NEPA compliance process. The initial step should be to identify ITAs in or near the affected area. Identification of ITAs should involve consultation and/or coordination with potentially affected Indian tribes, individuals, or entities; BIA; the Solicitor's Office; and/or the area and regional Native American Affairs coordinator. As the determination of ITA status is essentially a legal issue, the involvement of the Solicitor's Office is important when it is essential to state with certainty whether something is an ITA. All impacts to ITAs, even nonsignificant ones, must be considered. Adverse impacts should be avoided when possible and mitigated or compensated when not avoidable. The consultation process should reflect the potential for impacts and be carried out with the affected beneficiary and trustee. If the extent of the effects cannot be agreed upon early on with potentially affected tribes, then consideration should be given to undertaking an EA.

The results of any efforts to resolve ITA concerns should be documented and included with the CEC. The appropriate regional or other director designated as ITA coordinator signs the CEC to concur with the findings. Additional information on ITAs can be found in the attachments.

**12. This action would have a disproportionately high and adverse effect on low income or minority populations (EO 12898) (43 CFR 46.215 (j)).**

Reclamation should determine if minority and low-income populations exist within the project area through the use of census, as well as demographic and economic data. Disproportionate impacts on low-income or minority populations as a result of the action, or not taking the action, should be evaluated. The reasoning used to determine that there will not be a disproportionately high and adverse impact on low-income and minority populations should be documented. Unlike most of the other criteria, environmental justice effects are not based upon any determination of significance but, instead, upon disproportionately high and adverse effects. As a result, some situations may (rarely) occur when an insignificant effect related to environmental justice may trigger additional compliance actions under EO 12898, but no EA would be required, and a CEC could still be signed.

**13. This action would limit access to, and ceremonial use of, Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (EO 13007, 43 CFR 46.215 (k), and 512 DM 3)).**

EO 13007 defines Indian sacred sites as discrete, narrowly delineated locations on Federal land designated as sacred by virtue of established religious significance to, or ceremonial use by, an Indian religion, provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

Reclamation should determine if there are Indian sacred sites present, or there is the potential for them to be present, within the affected area. This should be determined in consultation with potentially affected tribes. Actions that may prevent use of the CE may include actions that limit reasonable access to, or ceremonial use of, Indian sacred sites or actions that cause adverse physical impacts to Indian sacred sites.

Sacred sites effects are not based upon any determination of significance but, instead, upon affecting the physical site or limiting access or use.

**14. This action would contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act, EO 13112, and 43 CFR 46.215 (l)).**

Actions should be evaluated for reasonable potential to introduce or spread noxious weeds or non-native invasive terrestrial and aquatic species by considering such factors as:

- Existing populations within the project area
- Potential to increase the rate of establishment or spread of noxious weeds or non-native invasive species by natural or human dispersal to the project area from populations in reasonable proximity to the project area
- Risk of introduction through use of contaminated equipment in the project area
- Potential for the action to provide the necessary environmental conditions for the establishment or spread of noxious weeds and non-native invasive species (i.e., ground disturbance, increased moisture)



## 5.4 Proposing a New Categorical Exclusion

Reclamation can add to the list of CEs. This requires amending 516 DM 14.5. If an area office or regional office wishes to add an action to the list, the effort should be coordinated with Policy and Administration. The process involves Reclamation-wide review and comment, Interior and CEQ approval, and publication in the FR with associated public review and comment. An action qualifies for a new CE if it can be demonstrated that it has not in the past caused (and is unlikely to ever cause) any significant effects on the environment.

Once an office determines that the addition of a new CE may be warranted and would be beneficial in meeting the goals of NEPA, the requesting office should, under the Regional Director's signature, provide the draft text of the proposed CE and supporting documentation to Policy and Administration. Regional/area offices may also request that Policy and Administration develop the text and documentation.

The text of the proposed CE should be consistent with the tone and style of existing Reclamation CEs listed in 516 DM 14.5. The category proposed shall be well defined and succinctly stated. Supporting documentation should consist of: draft CE text, draft FR notice, detailed rationale for the proposal, and documentation (generally several EA/FONSI) supporting the premise that the proposed category of actions does not significantly affect the quality of the human environment. These materials will be used during the coordination process to gain concurrence from other Reclamation offices and to develop the package to put forth for Interior and CEQ review and approval.

<b>CATEGORICAL EXCLUSION CHECKLIST</b>	
<b>Project:</b>	<b>Date:</b>
<b>Nature of Action:</b>	
<b>Exclusion Category:</b>	
<b>Evaluation of Criteria for Categorical Exclusion</b>	
1. This action or group of actions will have a significant effect on the quality of the human environment.	No__Uncertain__Yes__
2. This action or group of actions will involve unresolved conflicts concerning alternative uses of available resources.	No__Uncertain__Yes__
3. This action will have significant adverse effects on public health or safety.	No__Uncertain__Yes__
4. This action will have an adverse effect on unique geological features such as wetlands, wild or scenic rivers, rivers placed on the nationwide river inventory, refuges, floodplains, or prime or unique farmlands.	No__Uncertain__Yes__
5. This action will have highly controversial effects.	No__Uncertain__Yes__
6. This action will have highly uncertain environmental effects or involve unique or unknown environmental risk.	No__Uncertain__Yes__
7. This action will establish a precedent for future actions.	No__Uncertain__Yes__

Figure 5.1.—Example of a CE checklist sheet.

8.	This action is related to other actions with individually insignificant but cumulative significant environmental effects.	No__Uncertain__Yes__
9.	This action will adversely affect properties listed or eligible for listing in the National Register of Historical Places.	No__Uncertain__Yes__
10.	This action will adversely affect a species listed or proposed to be listed as endangered or threatened.	No__Uncertain__Yes__
11.	This action threatens to violate Federal, state, local, executive or Secretarial orders, or tribal law or requirements imposed for protection of the environment.	No__Uncertain__Yes__
12.	This action will affect Indian Trust Assets.	No__Uncertain__Yes__
13.	This action will have a disproportionately high and adverse human health or environmental effects on low income or minority populations.	No__Uncertain__Yes__
14.	This action will limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites.	No__Uncertain__Yes__
15.	This action will contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species.	No__Uncertain__Yes__

**Figure 5.1.—Example of a CE checklist sheet (continued).**

NEPA Action: Categorical Exclusion \_\_ EA \_\_ EIS \_\_

**Environmental commitments, explanation, and/or remarks:**

Preparer's Name and Title: \_\_\_\_\_ Date: \_\_\_\_\_

Regional Archeologist concurrence with Item 9:  
See attached concurrence memo

ITA Designee concurrence with Item 10:  
See attached concurrence memo

Approved:  
\_\_\_\_\_  
Regional Environmental Officer

Date: \_\_\_\_\_

Figure 5.1.—Example of a CE checklist sheet (continued).

# Chapter 5 Useful Links

Clean Water Act

<http://epw.senate.gov/water.pdf>

DM Part 516, Chapter 14

<http://elips.doi.gov/ELIPS/DocView.aspx?id=1727&dbid=0>

EO 11988 – Floodplains

<http://www.fema.gov/plan/ehp/ehplaws/eo11988.shtm>

EO 11990 - Protection of Wetlands

<http://water.epa.gov/lawsregs/guidance/wetlands/eo11990.cfm>

EO 12114 – Environmental Effects Abroad of Major Federal Actions

<http://www.archives.gov/federal-register/codification/executive-order/12114.html>

EO 12898 – Environmental Justice

<http://www.archives.gov/federal-register/executive-orders/pdf/12898.pdf>

EO 13007 – Indian Sacred Sites

<http://www.achp.gov/EO13007.html>

EO 13112 – Invasive Species

[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1999\\_register&docid=fr08fe99-168.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1999_register&docid=fr08fe99-168.pdf)

LND 02-01 – Cultural Resources Management

<http://www.usbr.gov/recman/lnd/lnd02-01.pdf>

National Historic Preservation Act

<http://www.achp.gov/docs/nhpa%202008-final.pdf>

National Natural Landmarks Web site

<http://www.nature.nps.gov/nml/>

National Register of Historic Places

<http://www.nps.gov/nr/>

National Wetland Inventory maps

<http://www.fws.gov/wetlands/>

NRCS Soil Surveys

<http://soils.usda.gov/survey/>

## National Environmental Policy Act Handbook

### Safe Drinking Water Act

<http://water.epa.gov/lawsregs/guidance/sdwa/text.cfm>

### Section 102(2)(e) of NEPA

<http://ceq.hss.doe.gov/nepa/regs/nepa/nepaeqia.htm>

### SO 3175 incorporated into 512 DM 2

<http://elips.doi.gov/ELIPS/DocView.aspx?id=1701&dbid=0>

### SO 3206

[http://www.fws.gov/nativeamerican/graphics/Sec\\_Order\\_3206.pdf](http://www.fws.gov/nativeamerican/graphics/Sec_Order_3206.pdf)

### 33 CFR 328.3(b)

[http://www.access.gpo.gov/nara/cfr/waisidx\\_02/33cfr328\\_02.html](http://www.access.gpo.gov/nara/cfr/waisidx_02/33cfr328_02.html)

### 40 CFR 1500-1508

[http://ceq.hss.doe.gov/ceq\\_regulations/regulations.html](http://ceq.hss.doe.gov/ceq_regulations/regulations.html)

### 43 CFR 46

<http://www.doi.gov/oepc/nepafr/docs/Federal%20Register%20October%202015,%2002008%20NEPA.pdf>

### 512 DM 3

<http://elips.doi.gov/ELIPS/DocView.aspx?id=1703&dbid=0>

## Chapter 6

# Environmental Assessments and Findings of No Significant Impact

The EA is a concise public document used to determine whether to prepare a FONSI or EIS. Because CEQ defines the term “environmental assessment” as the basis for either a FONSI or an EIS, this term should not be used for other Reclamation documents.

An EA is a different document from an EIS. Significant differences include required content, degree of public involvement, and the intended purpose (i.e., support for a FONSI or determination that an EIS is necessary).

## 6.1 When to Use an Environmental Assessment (40 CFR 1508.9, 43 CFR 46.300-325, and 516 DM 1.12)

An EA will be prepared for all actions except for:

- Actions exempted from NEPA
- Actions covered by an Interior CE
- Actions that qualify for a Reclamation CE based upon the CEC
- Actions which have been sufficiently addressed by an earlier environmental document (generally an EA or EIS)
- Actions for which it is obvious that an EIS will be needed

EAs should be written for actions for which there is not an appropriate CE, or for actions that may fall under an exclusion category but do not qualify under the checklist criteria. These types of EAs may be fairly short if the action is minor with no controversy (disputes over scientific conclusions or impacts of the action).

The average EA should be about 30 pages or less. As the length of the EA increases, the chances increase that an EIS is the correct documentation under NEPA, simply because the number of issues is one indication of the possibility of significant impacts.

An EA may also be prepared when minor changes are made to a proposed action for which an EIS has been completed. As an example, this type of EA may be prepared when a programmatic EIS has been completed but site-specific layout and design of projects have not taken place. Another example occurs when an EIS was done for development of an irrigation district but changes to the delivery system are proposed. This situation is specifically addressed in Interior's regulations at 43 CFR 46.140 (c). Reclamation does not recommend the use of the term "finding of no new significant impact" to conclude these assessments.

EAs are generally prepared in the regions by either the area or regional offices, and the head of the area or regional office has ultimate responsibility for their adequacy. The TSC may prepare an EA for a region or may (rarely) prepare one for a TSC internal action (e.g., research actions). An environmental specialist with expertise in NEPA should be involved in the preparation and review of all EAs.

In addition, an EA may be used to evaluate any action at any time to assist in planning and decisionmaking. This information would not necessarily lead to a decision to prepare an EIS, but it would provide the decisionmaker with information on environmental issues and effects that may be incorporated upfront in a proposal. Public notification is not required for such an analysis but should be included where appropriate.

Finally, for EAs that are likely to be complex or to address a wide range of issues, a review of EIS actions and content (chapters 7 and 8) is recommended.

## **6.2 Actions Associated with an EA**

The EA process is less formal than the EIS process. For a minor, routine action, an EA may simply be a short document written by a few people within a Reclamation office and approved with a simple public Notice of Availability (NOA) but without any formal public review process. However, there should still be consultation with various agencies and affected interests, including Indian tribes. Information should be provided to the public on the NEPA process and how to get involved. An EA on a complex action with substantial public interest may involve many of the public involvement actions, and other actions, associated with an EIS. Depending on the complexity of the proposal, the following actions may be appropriate:

- Joint environmental documentation with tribal, State, and local agencies
- Scoping (public, interagency, and/or intra-agency)
- News releases through newspapers, newsletters, and the Internet



- Sending the draft EA to the public for comments
- Public meeting
- Sending the final EA and FONSI to the public
- Consultation and coordination with other agencies
- Requesting that eligible governmental entities (43 CFR 46.225) be cooperating agencies
- Supplementing previous EAs and/or FONSI
- Adoption of an EA

No formal public scoping is required for an EA; however, informal scoping, which may be internal to Reclamation, is needed to define the potentially significant issues and the scope of analysis. Such informal scoping should always involve appropriate disciplines within Reclamation and may involve other agencies or interested parties, depending upon the complexity of, and issues raised by, the proposed action. Where the proposed action is likely to be controversial, or one that usually requires an EIS, formal public scoping meetings should be considered. The extent of public scoping and involvement is at the discretion of the lead office and should reflect potential issues and controversy. All potentially significant issues identified must be analyzed in the EA.

Reclamation is responsible for the adequacy, completeness, and processing of all EAs involving Reclamation actions, projects, and lands. Proponents for actions requiring Reclamation's approval will normally have to supply the appropriate information needed for any required NEPA document. If a contractor will be developing an environmental report for the proponent to use to comply with NEPA requirements, Reclamation should participate in the selection of the contractor. In addition, the report must meet Reclamation standards. Further, the contractor should provide a disclosure statement specifying that they have no financial or other interest in the outcome of the proposed project. The applicant may bear the costs of gathering environmental information necessary for NEPA compliance or the costs may be shared, depending upon the proposed action and applicable authorities. The applicant may do this by hiring a contractor to obtain the necessary information or by providing funds to Reclamation to do the work (also see section 4.19).

### **6.3 Timeframe for an EA**

The EA should be started as early as possible following definition of the proposed action and be developed concurrently with other studies. The office proposing an

action must schedule sufficient time for the EA to be prepared and obtain sufficient budget for its completion. The time needed for the EA process is highly variable, depending upon the issues and controversy associated with the proposal and the extent of public review and interest. At any time during the preparation of an EA, issues may be identified that indicate the need for an EIS. If the schedule does not allow for such an event, a significant disruption of the schedule could occur.

In addition, the timeframe can be significantly affected by the separate processes associated with NHPA compliance, FWCA requirements, ITA analysis, consultation under the ESA, and others. These factors should be taken into consideration when developing a timeline.

## **6.4 Content of an EA (40 CFR 1508.9 and 43 CFR 46.310)**

CEQ and Interior regulations require that the EA include, at a minimum, a brief discussion of:

- The proposal
- The need for the proposal
- The environmental impacts of the proposed action
- The environmental impacts of the alternatives considered
- A list of agencies and persons consulted

The EA should be prepared by an interdisciplinary team, rather than a single individual. If it is not possible to assemble a team, different disciplines should be contacted to provide appropriate information and analysis.

An EA should not, in and of itself, conclude whether an EIS or a FONSI should be prepared. Impacts should be identified quantitatively whenever possible or a qualitative analysis given. Statements as to the significance of impacts should not be made because that determination is made in the FONSI. In appropriate circumstances, Reclamation should circulate draft EAs and draft FONSI to the public for comment.

The level of detail and depth of impact analysis should be limited to that needed to determine if significant impacts will occur. Only those factors of the existing environment which might influence or be significantly affected by the proposed action need be discussed. A statement as to why other factors are not discussed should be included.

Conclusions and analysis should be based upon an unbiased, objective evaluation of data and information presented in the EA. Opinions, justifications, and unsupported “statements of fact” should be avoided.

Information not considered to be general knowledge should be supported by:

- Information that can be found in published material
- Information readily available for inspection in either the area or regional office
- Data collected by Reclamation, other Federal agencies, contractors, or other technically qualified agencies or organizations

Information may be incorporated by reference (40 CFR 1502.21). Figure 6.1 is an example of a short EA.

#### **6.4.1 Need for the Proposal**

This section will present a brief statement of what the proposal is and why the action is being considered (i.e., what are the underlying needs to which the agency is responding). This statement should be developed early in the process and used in defining the scope and determining appropriate alternatives. The following information is optional but may be helpful in more fully defining the need: Federal permits, licenses, approvals, and entitlements that will be necessary to implement the project, and ongoing actions that may affect or be affected by the proposed project. This discussion should be kept brief and focused on the need. Regulations only require a statement of need, but the use of the term Purpose and Need is acceptable.

#### **6.4.2 Proposed Action and Alternatives**

This section should describe the proposed action (proposal) and appropriate, reasonable alternatives. The proposed action should be defined in terms of the Federal decision to be made. When the proposed action is related to other actions—especially other Federal actions—a careful consideration of the independent value of the proposed action should be made. When the independence of the proposed action is not clear, it may be appropriate to expand the scope to include those other actions.

The need for appropriate and reasonable alternatives is dependent upon (among other considerations) there being no unresolved conflicts about the proposed action with respect to alternative uses of available resources. If none exist, no alternatives need be considered or analyzed. Unresolved conflicts concerning alternative uses of resources are undefined in law or regulation and are to be determined by the responsible official. Considerations include, but are not limited to, the degree of public interest, other priorities, and the potential for environmental effects. If no alternatives are included, this section should present the reasons for that. If alternatives are included, this section should describe all alternatives at a brief, focused, and comparable level of detail.

#### **6.4.2.1 No Action Alternative**

While a “no action alternative” is not required in an EA under CEQ or Interior regulations, it is Reclamation’s practice to include it because it provides an appropriate basis by which all other alternatives are compared. In the (not recommended) event that an EA does not contain a no action alternative, the effects should be determined by comparing the impacts of the action alternative(s) to existing conditions. The no action alternative should be presented first so that the reader can easily compare the other alternatives to it. Conditions under the no action alternative should not be considered identical to existing conditions of the affected environment because future actions may occur regardless of whether any of the action alternatives are chosen. These future actions could include other water development projects, land use changes, or municipal development. The no action alternative is therefore often described as “the future without the Federal project.” If other projects in the affected area are likely to occur and the effects are reasonably foreseeable, it should be discussed in the no action alternative. Sufficient discussion should be presented so that readers can make the needed comparisons for the evaluation and understand how the no action alternative is different from existing conditions.

#### **6.4.2.2 Action Alternatives**

Action alternatives include the proposed action and all other feasible and reasonable alternatives that will be evaluated in the EA. Each action alternative should fulfill the requirements of the need for the project as described in the “Need” section of the assessment. Alternatives should be based upon needs and relevant issues. The appropriate analysis should be presented for each alternative so that reviewers may evaluate the environmental impacts of each alternative by comparing them to the no action alternative. This analysis should be at a comparable level of detail for all alternatives. These discussions should be brief and tightly focused upon potentially significant issues. An EA does not require the detailed analysis of alternatives presented in an EIS. The proposed action should be identified in the assessment to make readers aware of the action that is being contemplated, allowing them to focus their review on that action. It is possible that only the no action alternative and the proposed action alternatives need to be analyzed if no unresolved conflicts concerning alternative uses of resources exist. If there is consensus among community representatives and stakeholders for a consensus-based alternative (43 CFR 46.110), and it is feasible and meets the purpose and need for the action, then it should also be evaluated in the EA.

There is no requirement to identify a preferred alternative in an EA, although it may be helpful for situations in which a broad range of alternatives is being considered. Similarly, alternatives considered but eliminated from detailed study do not need to be addressed in an EA. But, again, if the situation warrants it, such a discussion may be useful for increased public understanding. As the complexity increases in the EA, it may be useful to refer to the chapters on EISs or consider if an EIS is the appropriate NEPA compliance document.

Alternatives outside the agency's authority to implement may be considered, if reasonable. If such an alternative became the preferred alternative, implementation would depend on a change in authorization, a change of the lead Federal agency to one with the appropriate authority, or a transfer of the project to a non-Federal entity. It could also lead to the cancellation of the project.

The discussion of the alternatives, including the no action alternative, may include the following items, where appropriate:

- Location of alternatives and alternative project features, including legal description, aerial photography, and a map or sketch
- Amount and ownership of lands to be affected
- Area to be disturbed
- Numbers, locations, and photographs or drawings of structures to be constructed, including utilities
- Water and wastewater quantities, wastewater disposal plans, and water conservation measures
- Description of project operations
- Mitigation and/or restoration plans
- Costs associated with the alternative, including mitigation
- Modifications or removal of existing facilities or structures

Mitigation measures and environmental commitments needed to reduce impacts below significance should be incorporated into the alternatives, where appropriate. These mitigation measures then become an integral part of the alternative. In other words, the alternative cannot be described without the mitigation measures.

### **6.4.3 Affected Environment**

An "Affected Environment" section is not required for an EA. It is Reclamation's practice to include this section because of its usefulness in analyzing the context and intensity of the impacts. The affected environment is considered to be the existing condition. In describing the affected environment, care should be taken to identify the environmental trends that currently exist and the areas of concern that may be impacted by the action or alternatives, not just to provide an inventory of resources.

The EA should emphasize only those resource areas that may be impacted by the action, and only to the extent necessary to enable an understanding of the extent of anticipated impacts. A brief discussion of critical environmental issues—such as ITAs, Indian sacred sites, environmental justice, cultural resources, and T&E species—is necessary to show that they have been considered, even if there are no impacts or only minor impacts. Where ongoing activities have effects in these areas, the discussion should summarize both the context and intensity of the ongoing effect and what specific ongoing activity is causing the effect.

#### **6.4.4 Environmental Consequences**

The “Environmental Consequences” chapter forms the scientific and analytic basis for the comparison of alternatives, including the proposed action and no action. In this section, the environmental impacts of all action alternatives will be discussed and compared to the no action alternative. The analysis should present facts and information but avoid conclusions regarding significance—that is the function of the FONSI. It is important that analyses are presented in a clear, concise discussion, and only for meaningful project impacts. If the project would have no impact in critical environmental areas or on such issues as those involving wetlands and endangered species, this should also be stated. Note that all impacts to ITAs, sacred sites, and environmental justice need to be considered and addressed, whether minor or potentially significant, in accordance with Reclamation’s ITA policy, procedures, and guidance (also see ECM 97-2 and 95-3 at <http://oepec.doi.gov/ECM/ECM97-2.pdf>).

The analysis of impacts should focus on those resources that may be affected in a significant way by the proposal. It is suggested that a CEC be used to provide a preliminary scope of the issues to be addressed in this analysis. Other resources may need to be examined as well, depending upon the site-specific nature of the proposal.

Potential beneficial and adverse impacts should be presented. The EA should address short- and long-term impacts, direct and indirect impacts, irreversible and irretrievable resource commitments, and residual or net (those remaining after all mitigation measures are implemented) impacts. If appropriate, the EA should also discuss potential cumulative impacts resulting from actions taken by Reclamation, other Federal agencies, and State and local agencies, and how they relate to the action being considered. (For further information on direct, indirect, residual, and cumulative impacts, see chapter 8.)

Mitigation should be addressed following the review of impacts for each resource component being evaluated and should be presented for each alternative. Mitigation measures address impacts not eliminated through avoidance of adverse effects. Mitigation measures necessary to reduce impacts should be considered environmental commitments and should be clearly integrated into the alternatives.

### 6.4.5 Consultation and Coordination

This section shall include a list of parties consulted including agencies, Indian tribes, affected ITA trustees and beneficiaries, cooperating agencies, and other members of the public (43 CFR 46.155). It should also document field reviews of the project site or location of proposed development, as appropriate. NEPA Implementation Procedures - Appendices I, II, and III and 40 CFR, Chapter V (FR, December 21, 1984) contain lists of Federal and State agencies that may be contacted, as appropriate.

This section should include a record of necessary compliance with other applicable statutes (ESA, CWA, etc.) and of any public involvement activities. All practicable efforts should be made to involve appropriate Federal, tribal, State, and local governmental entities, as well as private organizations and individuals with an interest in the proposal (40 CFR 1506.6 and 43 CFR 46.305). This section should document, in chronological order, the meetings, news releases, and other consultation and coordination activities leading to the selection and development of the action or project.

Comments received on any draft EA could be summarized in this section of the final EA, and any substantive issues raised by those letters should be addressed in the final EA, or FONSI, as appropriate.

To the maximum extent possible, an EA should integrate any surveys and studies required by the NHPA, FWCA, ESA, other environmental laws and EOs, and other appropriate tribal, State, and local laws. An EA can be used as Reclamation's biological assessment for compliance with the ESA. A discussion of related laws and EOs should be included either as an attachment or in chapter 1. The discussion of related laws and EOs should be integrated with the description of the respective impacted resources.

A list of required permits (Federal, tribal, State, and local), along with a determination of who will be responsible for obtaining these permits, should be included. Some of the actions that may require permits are as follows:

- Burning
- Impacts to water quality
- Changes to nonpoint sources of pollution from agriculture, silviculture, mining, and construction
- Storage of oil and hazardous substances
- Removing fill in waters of the United States

#### **6.4.6 List of Environmental Commitments**

A list of environmental commitments for the proposal should be prepared and included in the EA. This list is usually included as an attachment to the EA and contains all mitigation measures integrated into the proposed action (see section 3.11).

#### **6.4.7 Bibliography or References Cited**

A bibliography or references cited section is encouraged. The EA should reference any methodologies used and should make explicit reference to any scientific or other sources used. Citations of specific topics should include the pertinent page number.

#### **6.4.8 Distribution List**

A distribution list may be included in the consultation and coordination section or as a separate attachment or appendix. The affected and interested publics should be put on the distribution list. In identifying the “affected” publics, those individuals should be considered who are directly or indirectly affected, as well as those who have expressed an interest in the action.

### **6.5 Format for an EA**

There is no required format for an EA. However, all documents should comply with Reclamation’s visual identity requirements (<http://intra.usbr.gov/vip/>) and should not include any private contractor logos (or other identifiers). A suggested format for EAs is shown below:

- Title page
- Table of contents
- Need for the proposal
- Proposed action and appropriate alternatives
- Environmental impacts
- Consultation and coordination
- References cited

Cases may occur in which a modified outline would facilitate the presentation of environmental information and analyses. Any format, however, must include the required elements discussed in section 6.4 and may be limited to just those five required elements.

Although the EA ordinarily should not exceed about 30 single-spaced pages in length, a proposal of great complexity may require additional description and analysis. As an EA increases in length and complexity, increased consideration should be given to preparing an EIS, rather than an EA, as the appropriate



NEPA compliance document. The document should be written in a clear, concise fashion based on the necessary environmental analysis and kept as brief as possible, using referenced and incorporated material as practicable. Every attempt should be made to avoid overly technical language. The text, appropriate tables, and figures should be presented so the decisionmakers and the public can readily understand them.

## 6.6 Review and Distribution of an EA

No formal public review of an EA is required—only public notice. However, public review is commonly included in the process and is often helpful (40 CFR 1506.6, 40 CFR 1501.4(e), and 43 CFR 46.305). Public involvement for an EA can be a simple public notice or posting to Reclamation’s Web site that an EA is available, without preparation or distribution of a draft EA, for simple, noncontroversial proposals, or it can be more extensive. On occasion, the review can be similar to an EIS in terms of public involvement, including scoping meetings, publication of a draft EA, public meetings on the draft EA, and formal responses to comments in the final EA (for highly complex, controversial proposals). Again, as complexity, potential significance, and potential controversy (based on the analysis and effects of the proposed action rather than merely whether a group or individual likes the project) increase, the need to consider an EIS as the appropriate NEPA compliance document also increases.

When a draft EA is being prepared, preliminary review of the draft EA by any cooperating entities, such as project sponsors, the Service, EPA, or Indian tribes, is encouraged. The level of the review and selection of the reviewing entities will be at the discretion of the office preparing the draft EA.

As appropriate, the draft EA should be made available for comment to potentially affected Indian tribes, affected ITA trustees and beneficiaries, State and local agencies or organizations, and local offices of Federal agencies with expertise in the field. Obtaining assistance through consultation is encouraged before the EA is written. Holding public meetings on the proposed action may be desirable but is not required. The critical factor is to ensure that all interested parties are notified, regardless of the mechanism used.

Any public review of an EA may also fulfill the public review requirements related to NHPA, EO 11990, EO 11988, and ITAs.

Public notice that an EA is available is required by 40 CFR 1506.6(b) (see also question 38 in CEQ’s NEPA’s Forty Most Asked Questions). A public notice can be as informal as a press release or as formal as a FR notice, depending upon the specific situation.

If a FONSI is contemplated, it is permissible to state this preliminary decision in any published draft EA, and even to include a draft FONSI with the draft EA. In

this circumstance, the cover letter, or the text of the EA, should make it clear that no final decision on a FONSI will be made until the public review is completed and comments are considered.

In limited cases, where the proposed action is similar to one that normally requires an EIS (listed in DM Part 516, chapter 14), or where the nature of the action is without precedent, the FONSI must be made available for public review for 30 days before a final decision is made on whether or not to prepare an EIS. When this 30-day public review of a FONSI is required, it is expected that the EA will also be available for a 30-day public review. These reviews can be, and usually are, simultaneous.

## **6.7 Results of the EA**

The EA will provide sufficient information to determine if an EIS or a FONSI is needed (on rare occasions, a proposal may be dropped entirely). In some cases, it is used to provide information to the planning process without leading to a conclusion on potentially significant issues.

### **6.7.1 Initiation of an EIS**

It is rare that an EA will be finalized, and then an EIS begun, because as soon as the analysis indicates that an EIS is needed, the EA process is generally stopped, and the EIS process is initiated. The EIS process is discussed in considerable detail in chapters 7 and 8. Any analysis prepared for the EA is applicable to the EIS and should be used to reduce delays.

### **6.7.2 FONSI**

#### **6.7.2.1 Description and Purpose**

If, based on the EA, the responsible official decides that the impacts of the proposed action are not significant and do not warrant preparation of an EIS, a FONSI will be prepared by the originating office. The FONSI will generally be short and should be no longer than necessary to address the impacts identified in the EA and any other required subjects (e.g., ITAs, sacred sites, etc.). Examples of FONSI are shown in figures 6.2 and 6.3.

CEQ regulation 40 CFR 1508.13 defines a FONSI as a:

...document by a Federal agency briefly presenting the reasons why an action, not otherwise categorically excluded, will not have a significant effect on the human environment and for which an EIS therefore will not be prepared.

The absence of controversy over a proposed action does not necessarily indicate that a FONSI is appropriate any more than the presence of controversy means an EIS is required.

The FONSI is an agency finding supported by the evaluation of impacts in the EA. The EA will be attached to the FONSI. The FONSI shall note any other environmental documents related to the action. Such documents may be EAs/EISs that are completed or being prepared. These documents may be related to, but are not part of, the scope of the proposal under consideration.

The FONSI should explicitly address every impact identified in the EA and present reasons why those impacts are not significant for the preferred alternative. It can be useful to discuss significance in terms of the context and intensity of the impact (40 CFR 1508.27). This would include identifying any mitigation measures that would be adopted to reduce or eliminate impacts, as well as other environmental commitments. A FONSI may be prepared on proposed actions having the potential for significant effects when it can be clearly demonstrated that mitigation which reduces impacts to the point of nonsignificance is proposed as part of the action. (See discussion in CEQs NEPA's Forty Most Asked Questions, No. 40 and CEQ's January 14, 2011, memorandum, "Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact.")

Mitigation measures and other environmental commitments may be adopted as part of Reclamation's final decision on an action in the same manner as it would be adopted in a ROD. (See discussion in CEQ's NEPA's Forty Most Asked Questions, No. 39.) An Environmental Commitments Plan is recommended to ensure that environmental commitments are appropriately implemented.

Actions that may affect T&E species require consultation with the Service and/or NOAA-NMFS. Effects on National Register listed or eligible properties require consultation with the SHPO. A Service or NOAA-NMFS biological opinion indicating jeopardy or adverse modification of critical habitat would generally preclude the preparation of a FONSI.

If Reclamation, in consultation with the SHPO/THPO, determines that a historic property may lose its eligibility for inclusion in the National Register as a result of a proposed action, or if Reclamation and the SHPO/THPO do not agree on mitigation of an adverse effect to a historic property, this situation may preclude preparation of a FONSI. However, a FONSI can always be prepared as long as the proposed action is modified to avoid any potentially significant impacts—also known as the mitigation FONSI (see also Reclamation Manual Directive and Standard LND 02-01).

The FONSI must include a statement that there will be no impacts to ITAs, or else a statement describing the expected impacts; a listing of unresolved issues; a list of commitments to prevent, mitigate, or compensate adverse impacts to these areas; and a summary of any mitigation, monitoring, and enforcement programs related to these areas (ITA guidance, ECM 97-2, and 512 DM 2).

With regard to Indian sacred sites, as defined by EO 13007 (Indian Sacred Sites) and 512 DM 3 (Departmental Responsibilities for Protecting/Accommodating Access to Indian Sacred Sites), the FONSI must include a statement that there will be no impacts that would adversely affect the physical integrity of such sites and that access to, or ceremonial use of, such sites would not be restricted, or a statement describing the anticipated effects or restrictions. It should also include information similar to that provided for ITAs, but with regards to the Indian sacred site, including access. If impacts are anticipated, an explanation must also be provided as to why such impacts cannot be avoided in accordance with EO 13007.

The document should include similar information for environmental justice (EO 12898, Environmental Justice).

The conclusions should be expressed as briefly and concisely as possible and should cover the major issues included in the EA. Topics not covered by analysis in the EA should not be introduced in the FONSI. If significant new environmental information is developed or plans are significantly changed between the time the EA is prepared and the FONSI is scheduled to be signed, the EA should be revised to include the new information before the FONSI is signed. Once the FONSI is signed, new information or a modification to the proposal before the action is completed should trigger a review of the EA/FONSI. This review could result in a determination that no new analysis is needed, a revision of the existing EA/FONSI, a new EA, or (very rarely) an EIS, depending upon the site-specific circumstances.

No action can be taken until there is a final FONSI that addresses the entire proposed action.

#### **6.7.2.2 Processing**

The FONSI, including the attached EA, should be distributed to appropriate Federal, State, and local agencies; Indian tribes; affected ITA beneficiaries and trustees; individuals; organizations; and agencies involved in the preparation of, or who commented on, the EA, and to the general public, upon request. The availability of the FONSI and assessment shall be announced to the affected public (40 CFR 1506.6(b)). This notice may be accomplished by posting to a Web site, if appropriate.

If the FONSI covers an action that normally would require an EIS, or is an action without precedent, the FONSI shall be circulated for public review for 30 days with appropriate public notice. The determination to finalize the FONSI or prepare an EIS (40 CFR 1501.4(e)(2)) and the initiation of the proposed action may not occur until this process is completed. It would normally be expected that the EA would be circulated with the FONSI. Also, any EA/FONSI may be circulated for public review whenever circumstances warrant (such as controversy or to assist a local co-lead in meeting procedural requirements).

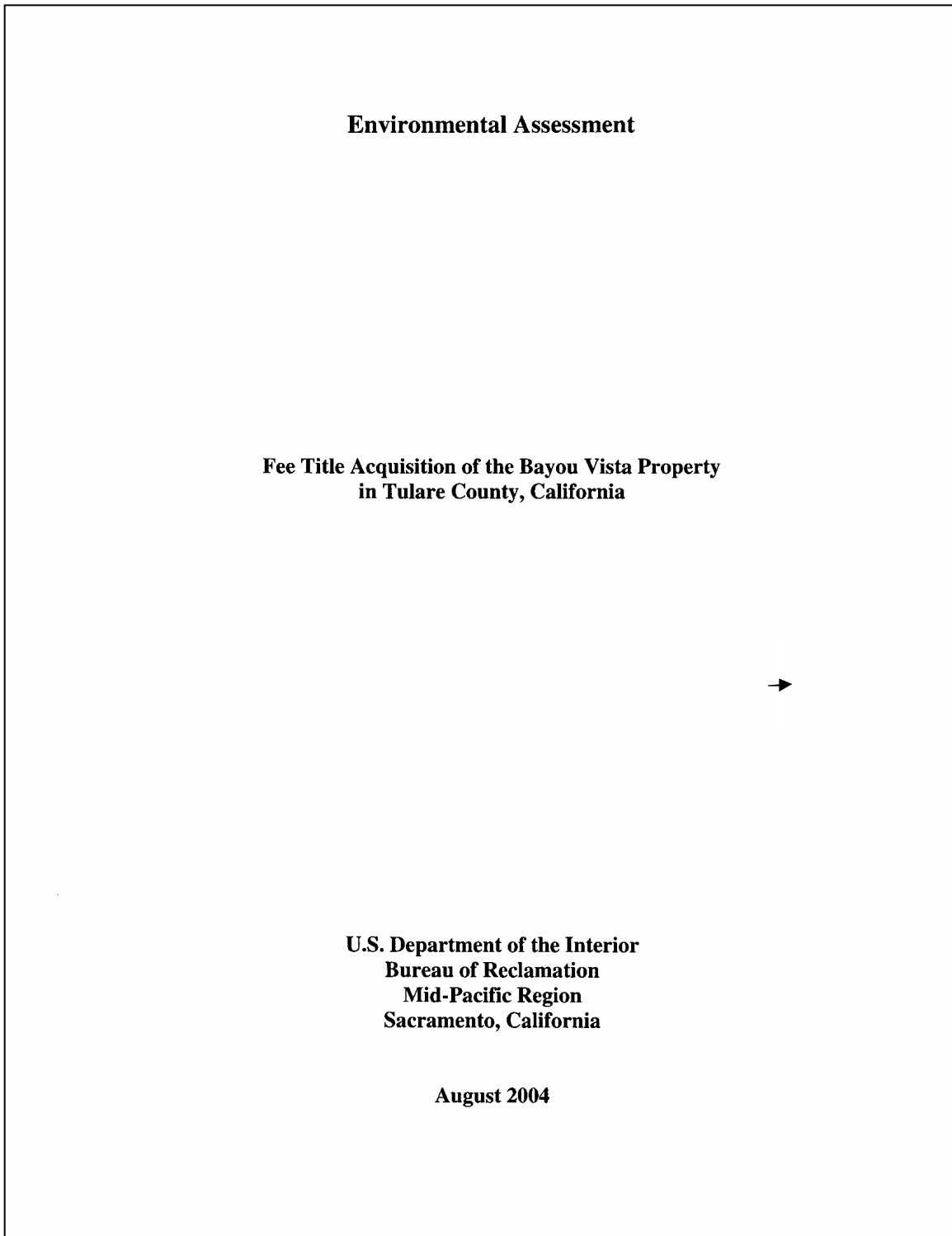
It is recommended that the region or area office, depending upon regional policy, serially number and file each FONSI that is initiated and prepared. Each FONSI prepared during a calendar year may be serially numbered using either the region or area office designation - FONSI - year - number to date (e.g., GP-FONSI-89-1). This will aid in referencing the document, as well as assist in tracking FONSI decisions Reclamation wide.

Because the FONSI will be used as backup documentation for decisionmaking packages in the regional or area office, it is recommended that each region establish a single repository for all EAs and FONSI's produced.

In instances in which another agency has completed an EA and FONSI on the same action, the appropriate regional or area office official may independently analyze the documents and, if applicable, use them as Reclamation's NEPA compliance (see section 3.14, "Adoption of Other Documents"). In these instances, a Reclamation cover sheet and a separate discussion on the analysis and reasons for adoption should be prepared. It is also appropriate to adopt a proponent-prepared environmental report in the same manner. Adoption does not eliminate the need for any appropriate public review prior to finalizing the EA/FONSI.

#### **6.7.2.3 Approval**

FONSI's shall be approved and signed as determined by individual office policies and/or procedures. If the action is to be approved by the Commissioner, and the FONSI is prepared in the TSC, then the FONSI will be approved by the Director, Policy and Administration, at the direction of the Commissioner.



**Figure 6.1.—Example of an EA.**

### **Background**

The Bureau of Reclamation (Reclamation) proposes to provide \$456,000 to the Sequoia Riverlands Trust (SRT) for fee title acquisition of the Bayou Vista property (515 acres) in Tulare County. The Bayou Vista property is located in the central San Joaquin Valley in an unincorporated portion of Tulare County, on the south side of Ave. 144 approximately five miles southeast of Corcoran, California (See map).

### **Purpose and Need for Action**

Reclamation is required to carry out actions pursuant to the implementation of the Central Valley Project Conservation Program (CVPCP) and the Central Valley Project Improvement Act (CVPIA) Habitat Restoration Program (HRP). These actions include acquisition of lands for the protection of CVP impacted habitats and species. The purpose and need of this action is to provide habitat protection for three federally listed endangered species, the Tipton kangaroo rat, San Joaquin kit fox and blunt-nosed leopard lizard; and protect resident wildlife, including Western burrowing owl and migratory species such as mountain plover. Protection of this parcel from development by fee title acquisition will maintain an important habitat linkage between two existing natural areas in a highly modified and fragmented landscape. Kern National Wildlife Refuge Complex (KNWRC) staff provides management, biological monitoring and logistical support to Kern and Pixley NWRs. If this proposal is funded, the property acquired would be added to Pixley NWR and managed as an addition to existing Refuge lands.

Cultivated agricultural land is located on the west boundary of the parcel and irrigated pasture is adjacent to the east. An active dairy operation, owned and operated by the same party offering to sell the proposed parcel, extends from the pasture on the east. The land in question has been considered for development in the past. Immediate protection is needed to prevent loss of this natural land. While close proximity of the existing dairy to these natural lands does provide management challenges, the location is an unavoidable reality. What is uncertain is future development or adverse impacts from management of the subject property as part of an industrial agribusiness. The continued high-paced conversion of lands to dairy operations in recent years makes parcels containing unique native habitat even more valuable, and the need to establish habitat linkages all the more critical. Acquisition of this parcel will maintain a critical north-south linkage. Future conversion of this parcel (a continuing threat until the property is acquired) would eliminate the last natural connection between Pixley NWR and the Creighton Ranch, forcing terrestrial wildlife species to use intensively cultivated lands when passing from one area to another.

### **Proposed Action and Alternatives**

**No Action:** Reclamation would not contribute Central Valley Project Conservation Program (CVPCP) and/or Central Valley Project Improvement Act (CVPIA) funds towards the acquisition of the Bayou Vista property. SRT would be required to obtain

Figure 6.1.—Example of an EA (continued).

another source of funding from other private and public sources. If alternative funding cannot be secured, SRT would lose the opportunity to acquire the property at this time.

**Proposed Action:** Reclamation would provide \$456,000 in CVPCP and CVPIA funds to the Sequoia Riverlands Trust (SRT) for fee title acquisition of the Bayou Vista property (515 acres) in Tulare County. The Sequoia Riverlands Trust (SRT), a nonprofit land trust, will pursue acquisition of the Bayou Vista property. The SRT will seek to transfer acquisition rights to the U.S. Fish and Wildlife Service Pixley National Wildlife Refuge (PNWR) prior to closing, or will transfer the title itself in the event SRT closes first. In either case, the Bayou Vista property will ultimately become part of the PNWR and managed by PNWR in accordance with existing refuge operations and planning strategies. The total estimated cost of acquisition and transfer, pending appraisal of the property, and including SRT costs, is \$998,875. Funding to complete the acquisition will be sought from public and private sources during 2004, with an additional possible request to the Conservation Program in early 2005.

### **Affected Environment and Environmental Consequences**

The subject property is a critical link in the extant native topography of the San Joaquin Valley floor. Many early accounts of the San Joaquin valley describe an area rich in native wildlife. Wildlife use of this area as a corridor connecting native landscapes would be protected by this project. Natural areas along the Tule River incorporated in the Creighton Ranch lie to the north. Protected lands within the existing Pixley NWR are adjacent to the south. Annual grasses and sparse vegetation occupy the site, which is described as California prairie by Kuchler (1977). This type of land form is referred to as California Annual Grassland Series in California Department of Fish and Game's California Wildlife Habitat Relationships System. The subject parcel represents part of the transition zone between the grassland community of Pixley NWR and seasonal wetlands along the Tule River on the Creighton Ranch to the north. Transition zones between natural areas typically contain high levels of biological diversity.

#### *Project Benefits*

There are currently several initiatives under way to protect southern San Joaquin valley wetland habitats, including the USDA - Wetland Reserve Program, USFWS planning for conservation easements within a proposed Tulare Basin wildlife management area boundary, creation of a new improvement district by the Tulare Basin Wetlands Association and Semitropic Water Storage District as well as independent acquisition and restoration projects on individual private properties by organizations such as Sequoia Riverlands Trust. While natural upland areas may receive some consideration in these various wetland projects, the greatest limiting factor in this mosaic of natural landscapes are dry upland sites that provide travel corridors between natural areas and safe passage through intensively developed areas. The corridors along the east side of the Tulare Basin are very narrow and need expansion to insure the success of ecosystem restoration and fully functional habitats.

Figure 6.1.—Example of an EA (continued).



Providing connectivity between natural areas is a significant attribute of this site from both a local and regional perspective. Natural lands that have never been cultivated are exceedingly rare in this part of the San Joaquin Valley. An inventory conducted by the California Energy Commission published in 1990 found that only about three percent of the valley floor remains in good or better natural condition. The remaining natural lands on the valley floor occur in scattered parcels, hindering dispersal and persistence of resident and migratory wildlife populations.

*Relationship to the Central Valley Project*

The project site is located adjacent to Lower Tule River Irrigation District (LTRID), and a LTRID ground water recharge site is immediately east of the property. Pixley NWR lands nearby are surrounded by farms within the Pixley Irrigation District and the Delano-Earlimart Irrigation District.

The nearly complete development of the southern San Joaquin valley floor has been accomplished with use of water stored and conveyed by Central Valley Project (CVP) facilities. Lands outside of CVP-contractor water districts have benefited from CVP facilities on wetter than average years when flood flows and water exceeding reservoir storage capacity is made available at little or no cost to non-CVP contract water districts. The sharing of facilities to transport water and redirect water supplies exceeding storage limitations effectively expands the effects of the CVP to nearly all developed agricultural lands within organized water districts, water conservation and storage districts within the San Joaquin valley. The net result of CVP water supplies imported into this arid San Joaquin Valley is that development of richly productive and intensively managed farms has replaced native landscapes, natural topography and has limited the amount of land available as wildlife habitats.

*Habitat Values and Wildlife Species Benefited*

According to a February 8, 1995 letter in Refuge files from a previous landowner (Theodore Off), past surveys have documented the presence of Tipton kangaroo rat and San Joaquin kit fox on the subject property. Blunt-nosed leopard lizards have been found immediately adjacent to this parcel on the Los Feliz unit of Pixley NWR and on the Creighton Ranch (when it was managed as The Nature Conservancy's Creighton Ranch Preserve) during the 1980's (R. Hansen, field notes).

Swainson's hawk (*Buteo swainsoni*), listed as a Threatened Species in the State of California, nests in riparian habitat along the nearby Tule River and forages on this grassland property between March and October (R. Hansen, field notes). Abundant ground squirrel burrows in this open landscape provide ideal habitat for Western burrowing owl (*Athene cunicularia*), a California Species of Special Concern which is a resident nesting species on this property (R. Hansen, field notes). Other California Species of Special Concern which are year-round residents on the subject property (R. Hansen, field notes) include Northern harrier (*Circus cyaneus*), California horned lark (*Eremophila alpestris actia*), and loggerhead shrike (*Lanius ludovicianus*). California

Figure 6.1.—Example of an EA (continued).

Species of Special Concern that have been observed on the subject property (R. Hansen, field notes) during winter months (outside their normal breeding season) are ferruginous hawk (*Buteo regalis*), golden eagle (*Aquila chrysaetos*), merlin (*Falco columbarius*), prairie falcon (*Falco mexicanus*), mountain plover (*Charadrius montanus*), long-billed curlew (*Numenius americanus*) and short-eared owl (*Asio flammeus*).

Past and present grazing management favors several listed species. The broad open grassland communities have become exceedingly rare in the San Joaquin valley. Surrounding agricultural land and intensive cultivation makes this property a natural bridge between two existing pockets of native habitat. Securing the permanent protection of this property will contribute to maintaining a viable home range for a breeding pair of kit fox. Populations require contiguous blocks of lands of approximately 640 to 7,680 acres (USFWS 1998). The location of this property will add biological value and enhance wildlife use of the adjacent NWR property. Island effects of fragmentation can be prevented with acquisition of this addition to Pixley NWR.

Implementing the proposed action would contribute to attaining the goals of the Central Valley Project Conservation Program to protect, restore, and enhance threatened and endangered species affected by the Central Valley Project.

There would be no change in land use after the property is acquired. The landowner would receive fair market value for the purchase.

Any change in the Tulare County tax base is anticipated to be insignificant because the size of the property is very small when compared to the total acreage of taxable land within Tulare County.

There would be no effect to historic properties.

Indian Trust Assets (ITAs) are legal interests in property or rights held in trust by the United States for Indian Tribes or individuals. Indian reservations, rancherias, and allotments are common ITAs. Other ITAs include traditional use areas. No ITAs have been identified at the property.

Executive Order 12898 requires each Federal Agency to identify and address disproportionately high and adverse human health or environmental effects, including social and economic effects of its program, policies, and activities on minority populations and low-income populations. Since there would be no change in existing or similar land uses, there would be no adverse human health or environmental effects to minority or low-income populations.

EA-5

Figure 6.1.—Example of an EA (continued).

**Consultation and Coordination with Others**

During development of the proposed action, Reclamation met with the Sequoia Riverlands Trust, the Nature Conservancy, and the Service (Pixley NWR staff).

On June 3, 2004, Reclamation initiated informal consultation with the Service on the activities for the overall Conservation Program for Fiscal Year 2004. The Service concurred on July 20, 2004 that Conservation Program projects, including the Bayou Vista Property, would not likely adversely affect listed species.

EA-6

**Figure 6.1.—Example of an EA (continued).**

**Finding of No Significant Impact  
and  
Environmental Assessment**

**Fee Title Acquisition of the Bayou Vista Property  
in Tulare County, California**

**U.S. Department of the Interior  
Bureau of Reclamation  
Mid-Pacific Region  
Sacramento, California**

**August 2004**

**Figure 6.2.—Example of a FONSI.**

**U.S. Department of The Interior**

**Bureau of Reclamation**

**Mid-Pacific Region**  
**Sacramento, California**

**Finding of No Significant Impact**

**Fee Title Acquisition of the Bayou Vista Property  
in Tulare County, California**

**Recommended:** \_\_\_\_\_ **Date:**

**Environmental Specialist**

**Recommended:** \_\_\_\_\_ **Date:**

**Program Manager, Central Valley  
Project Conservation Program**

**Approved:** \_\_\_\_\_ **Date:**

**Chief, Division of Environmental  
Affairs**

**FONSI No.** \_\_\_\_\_

FONSI-2

Figure 6.2.—Example of a FONSI (continued).

### **Background**

Pursuant to implementation of the Central Valley Project Conservation Program (CVPCP) and the Central Valley Project Improvement Act Habitat Restoration Program (HRP), the Bureau of Reclamation (Reclamation) proposes to provide \$456,000 to the Sequoia Riverlands Trust (SRT) for fee title acquisition of the Bayou Vista property (515 acres) in Tulare County. The purpose and need of this action is to provide habitat protection for three federally listed endangered species, the Tipton kangaroo rat, San Joaquin kit fox and blunt-nosed leopard lizard; and protect resident wildlife, including Western burrowing owl and migratory species such as mountain plover. The total estimated cost of acquisition and transfer, pending appraisal of the property, and including SRT costs, is \$998,875. Funding to complete the acquisition will be sought from public and private sources during 2004, with an additional possible request to the Conservation Program in early 2005. The SRT will seek to transfer acquisition rights to the U.S. Fish and Wildlife Service Pixley National Wildlife Refuge (PNWR) prior to closing, or will transfer the title itself in the event SRT closes first.

Cultivated agricultural land is located on the west boundary of the parcel and irrigated pasture is adjacent to the east. An active dairy operation, owned and operated by the same party offering to sell the proposed parcel, extends from the pasture on the east. The land in question has been considered for development in the past. Immediate protection is needed to prevent loss of this natural land. While close proximity of the existing dairy to these natural lands does provide management challenges, the location is an unavoidable reality. What is uncertain is future development or adverse impacts from management of the subject property as part of an industrial agribusiness. The continued high-paced conversion of lands to dairy operations in recent years makes parcels containing unique native habitat even more valuable, and the need to establish habitat linkages all the more critical. Acquisition of this parcel will maintain a critical north-south linkage. Future conversion of this parcel (a continuing threat until the property is acquired) would eliminate the last natural connection between Pixley NWR and the Creighton Ranch, forcing terrestrial wildlife species to use intensively cultivated lands when passing from one area to another.

### **Findings**

Reclamation prepared an environmental assessment on the grant in August 2004, which is incorporated by reference. The Division of Environmental Affairs of the Mid-Pacific Region of Reclamation has found that the proposed action is not a major Federal action that would significantly affect the quality of the human environment. Therefore, an environmental impact statement is not required for carrying out the proposed action.

Following are the reasons why the impacts of the proposed action are not significant:

1. Existing land use will not change.
2. The current landowner will receive fair market value for the property.

**Figure 6.2.—Example of a FONSI (continued).**

3. Any change in the Tulare County tax base is anticipated to be insignificant because the size of the property is very small when compared to the total acreage of taxable land within Tulare County.
4. The proposed action will not adversely affect threatened or endangered species. On June 3, 2004, Reclamation initiated informal consultation with the Service on the activities for the overall Conservation Program for Fiscal Year 2004. The Service concurred on July 20, 2004 that Conservation Program projects, including the Bayou Vista Property, would not likely adversely affect listed species.
5. There will be no effect to historic properties.
6. The proposed action will not affect any Indian Trust Assets.
7. Implementing the proposed action will not disproportionately affect minorities or low-income populations and communities since there will be no change in land use.

FONSI-4

**Figure 6.2.—Example of a FONSI (continued).**

## FINDING OF NO SIGNIFICANT IMPACT

### ADOPTION OF AN INTERIM 602(a) STORAGE GUIDELINE

#### I. Introduction

The Secretary of the Interior, acting through the Bureau of Reclamation (Reclamation), has proposed the adoption of an interim 602(a) storage guideline that will assist the Secretary of the Interior in making a determination of the quantity of water considered necessary as of September 30 of each year to assist in implementation of and as required by Article II(1) of the 1970 Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs (Long-Range Operating Criteria) pursuant to the Colorado River Basin Project Act of September 30, 1968. See 68 FR 56317 (September 30, 2003).

Section 602(a) of the Colorado River Basin Project Act (codified at 43 U.S.C. § 1552(a)), requires that the Secretary of the Interior make an annual determination of the quantity of water considered necessary to be in storage in Upper Basin reservoirs to provide protection to the Upper Division States of Colorado, New Mexico, Utah, and Wyoming against drought in the Colorado River Basin. This quantity of water is commonly referred to as “602(a) storage.” In years when projected storage in Upper Basin reservoirs is greater than 602(a) storage, and Lake Powell storage is greater than storage at Lake Mead, storage equalization releases are made. Such storage equalization releases are made to maintain, as nearly as practicable, the active storage in Lake Mead equal to the active storage in Lake Powell on September 30 of each year. In years when projected storage in the Upper Basin is less than 602(a) storage, such storage equalization releases from Lake Powell are not made and the operating objective is to maintain a release of a minimum of 8.23 million acre-feet as specified in the Long-Range Operating Criteria.

#### II. Proposed Action

In July 2000, Reclamation issued a draft environmental impact statement (DEIS) on the proposed adoption of specific criteria, applicable for 15 years, under which surplus water conditions would be determined, and accordingly surplus water made available, for use by the Lower Division States of Arizona, California, and Nevada. During the public comment period for the DEIS, the seven Colorado River Basin States submitted information to the Department of the Interior that contained a proposal for interim surplus criteria and a number of other related issues. This information was published in the *Federal Register* on August 8, 2000 (65 FR 48531-38). One of the related components of the seven Colorado River Basin States’ proposal not directly related to Lower Division surplus determinations is contained in Section V of the Basin States submission, “Determination of 602(a) Storage in Lake Powell During the Interim Period,” and reads as follows:

During the interim period, 602(a) storage requirements determined in accordance with Article II (1) of the Criteria (Long-Range Operating Criteria) shall utilize a value of not less than 14.85 million acre-feet (elevation 3,630 feet) for Lake Powell (65 FR 48537).

Figure 6.3.—Example No. 2 of a FONSI.



Reclamation did not adopt this aspect of the seven Basin States submission based upon Reclamation's finding that this proposal was outside the scope of the proposed action for adoption of interim surplus guidelines. See 66 FR 7775 (January 25, 2001).

This proposed action would adopt this aspect of the Basin States' recommendation and would limit 602(a) storage equalization releases when the storage level in Lake Powell is projected to be below 14.85 million acre-feet (elevation 3,630 feet) on September 30 as an added consideration (guideline) in the annual 602(a) storage determination through the year 2016. Under this guideline, water year releases from Lake Powell would be limited to the minimum objective release of 8.23 million acre-feet when Lake Powell is projected to be below 14.85 million acre-feet (elevation 3,630 feet) on September 30. The proposed guideline would remain in effect through calendar year 2016.

A final environmental assessment (EA), "Adoption of an Interim 602(a) Storage Guideline" (March 2004), has been prepared by Reclamation. In this final EA, the effects of the proposed action (referred to as the Proposed Action Alternative) are analyzed.

### **III. Summary of Impacts**

Reclamation's analysis indicates that there will be limited impacts resulting from adoption of the proposed guideline. Computer simulation modeling of the Colorado River concludes that there is an 88 percent probability that the proposed guideline will not result in any change to the operation of the Colorado River reservoirs. Under some possible future runoff scenarios, there could be some change to storage equalization releases made from Lake Powell under the proposed guideline. Modeling results showed that there is a 12 percent probability that the proposed guideline would modify storage equalization releases from Lake Powell to Lake Mead to some degree. Within this 12 percent probability range, effects were generally minimal. Modeling results indicate that the total volume of water released from Lake Powell through 2016 will be unaffected by adoption of the proposed guideline. The proposed guideline resulted in no long-term effects and there were no effects observed beyond the year 2016.

1. Lake Powell - There is a 12 percent probability that there could be a temporary increase in the water surface elevation of Lake Powell of 0.01 to 6.4 feet, an increase of up to 407,000 acre-feet of storage (an increase of 2.8 percent).
2. Lake Mead - There is a 12 percent probability that there could be a temporary decrease in water surface elevation of 0.01 to 4.1 feet, a decrease of up to 413,000 acre-feet of storage (a decrease of 2.9 percent).
3. River Flows - Changes to river flows below Lake Powell, if they occur, are projected to be minor. Releases from Lake Powell, Lake Mead, and reservoirs below Lake Mead are projected to remain within historical normal operating parameters.
4. Water Supply - There are no anticipated effects on water supply to the Upper Division States of Colorado, New Mexico, Utah, and Wyoming. There is a very small probability (about 1 percent) that the proposed guideline could reduce surplus deliveries to the Lower Division States of Arizona, California, and Nevada in a single year through the year 2016. Computer model studies showed that the proposed guideline would not increase the frequency or magnitude of future water shortages to the Lower Division States.

**Figure 6.3—Example No. 2 of a FONSI (continued).**

5. Water Deliveries to Mexico - The proposed guideline is not anticipated to result in any change to the delivery of water to Mexico pursuant to the 1944 United States-Mexico Water Treaty.
6. Water Quality - There could be some minor increases in salinity in Lake Mead.
7. Aquatic Resources - There would be no measurable changes to aquatic resources in the area of potential effects.
8. Special Status Species - There would be no effect to special status species caused by the proposed guideline.
9. Recreation – There are no projected adverse impacts to recreation at Lake Powell, Lake Mohave, or Lake Havasu. There would be no anticipated impacts to Colorado River recreation. The proposed guideline could result in some short-term impacts to recreation resources at Lake Mead related to item 2 above.
10. Hydropower - Changes to hydropower production at Glen Canyon Dam and Hoover Dam are projected to be less than 0.01 percent. There could be some minor incremental increases to pumping costs for the Southern Nevada Water Authority which draws water from Lake Mead.
11. Air Quality - There are no projected impacts to air quality.
12. Visual Resources – There are no projected impacts to visual resources.
13. Cultural Resources - There will be no effect to cultural resources as a result of this undertaking. Reclamation is in the process of compiling data regarding the location of cultural resources (and historic properties) within the area of potential effects of the proposed guideline and the Colorado River Interim Surplus Guideline.
14. Indian Trust Assets - There would be no effect to Indian Trust Assets. The proposed guideline does not allocate additional Colorado River water. There would be no effect on existing or additional tribal water rights and/or tribal allocations.
15. Environmental Justice - There are no environmental justice implications from the proposed guideline.
16. River Flows - Changes to river flows below Lake Powell, if they occur, are projected to be minor. Releases from Lake Powell, Lake Mead, and reservoirs below Lake Mead are projected to remain within historical normal operating parameters.
17. Water Supply - There are no anticipated effects on water supply to the Upper Division States of Colorado, New Mexico, Utah, and Wyoming. There is a very small probability (about 1 percent) that the proposed guideline could reduce surplus deliveries to the Lower Division States of Arizona, California, and Nevada in a single year through the year 2016. Computer model studies showed that the proposed guideline would not increase the frequency or magnitude of future water shortages to the Lower Division States.
18. Water Deliveries to Mexico - The proposed guideline is not anticipated to result in any change to the delivery of water to Mexico pursuant to the 1944 United States-Mexico Water Treaty.
19. Water Quality - There could be some minor increases in salinity in Lake Mead.
20. Aquatic Resources - There would be no measurable changes to aquatic resources in the area of potential effects.
21. Special Status Species - There would be no effect to special status species caused by the proposed guideline.

**Figure 6.3.—Example No. 2 of a FONSI (continued).**

22. Recreation – There are no projected adverse impacts to recreation at Lake Powell, Lake Mohave, or Lake Havasu. There would be no anticipated impacts to Colorado River recreation. The proposed guideline could result in some short-term impacts to recreation resources at Lake Mead related to item 2 above.
23. Hydropower - Changes to hydropower production at Glen Canyon Dam and Hoover Dam are projected to be less than 0.01 percent. There could be some minor incremental increases to pumping costs for the Southern Nevada Water Authority which draws water from Lake Mead.
24. Air Quality - There are no projected impacts to air quality.
25. Visual Resources – There are no projected impacts to visual resources.
26. Cultural Resources - There will be no effect to cultural resources as a result of this undertaking. Reclamation is in the process of compiling data regarding the location of cultural resources (and historic properties) within the area of potential effects of the proposed guideline and the Colorado River Interim Surplus Guideline.
27. Indian Trust Assets - There would be no effect to Indian Trust Assets. The proposed guideline does not allocate additional Colorado River water. There would be no effect on existing or additional tribal water rights and/or tribal allocations.
28. Environmental Justice - There are no environmental justice implications from the proposed guideline.

#### **IV. Finding**

Based on the analysis of the environmental impacts as described in the final EA and on thorough review of public comments received, Reclamation has determined that implementing the proposed guideline will not have a significant impact on the quality of the human environment or the natural resources of the area. A Finding of no Significant Impact is justified for the proposed guideline. Therefore, an environmental impact statement is not necessary to further analyze the environmental effects of the proposed guideline.

#### **V. Decision – Interim 602(a) Storage Guideline**

Reclamation hereby adopts the following interim 602(a) Storage Guideline:

1. Through the year 2016, 602(a) storage requirements determined in accordance with Article II (1) of the Long-Range Operating Criteria shall utilize a value of not less than 14.85 million acre-feet (elevation 3,630 feet) for Lake Powell. Accordingly, when projected September 30 Lake Powell storage is less than 14.85 million acre-feet (elevation 3,630 feet), the objective will be to maintain a minimum annual release of water from Lake Powell of 8.23 million acre-feet, consistent with Article II(2) of the Long-Range Operating Criteria.

**Figure 6-3.—Example No. 2 of a FONSI (continued).**

2. Under the current area-capacity relationship at Lake Powell, a water surface elevation of 3,630 feet corresponds to 14.85 million acre-feet of storage. In the event that a sediment survey is performed at Lake Powell and a revised area-capacity relationship is determined before the year 2016, the revised water storage volume that correlates with the water surface elevation of 3,630 feet at Lake Powell shall be used in Section V(1) of this Interim 602(a) Storage Guideline.
3. The Interim 602(a) Storage Guideline shall be utilized in the operation of the Colorado River in years 2005 through 2016. This guideline will first be implemented in the development of the 2005 Colorado River Annual Operating Plan (AOP) and for all subsequent AOPs through the year 2016.

Approved:

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Rick L. Gold, Regional Director  
Upper Colorado Region, Bureau of Reclamation

\_\_\_\_\_  
Date

Approved:

\_\_\_\_\_  
Robert W. Johnson, Regional Director  
Lower Colorado Region, Bureau of Reclamation

\_\_\_\_\_  
Date

**Figure 6.3—Example No. 2 of a FONSI (continued).**

# Chapter 6 Useful Links

CEQ's January 14, 2011 Memorandum on Mitigation and Monitoring  
[http://ceq.hss.doe.gov/ceq\\_regulations/guidance.html](http://ceq.hss.doe.gov/ceq_regulations/guidance.html)

CWA  
<http://epw.senate.gov/water.pdf>

Departmental Manual  
[http://elips.doi.gov/app\\_dm/index.cfm?fuseaction=home](http://elips.doi.gov/app_dm/index.cfm?fuseaction=home)

EO 13007  
<http://www.achp.gov/EO13007.html>

EO 12898  
<http://www.archives.gov/federal-register/executive-orders/pdf/12898.pdf>

ESA  
<http://www.fws.gov/endangered/esa-library/pdf/ESAall.pdf>

Federal Register, December 21, 1984  
[http://www.doe.gov/sites/prod/files/Implem\\_Appendices\\_I\\_II\\_III.pdf](http://www.doe.gov/sites/prod/files/Implem_Appendices_I_II_III.pdf)

FWCA  
<http://www.usbr.gov/power/legislation/fwca.pdf>

LND 02-01  
<http://www.usbr.gov/recman/lnd/lnd02-01.pdf>

NEPA's Forty Most Asked Questions  
<http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm>

NHPA  
<http://www.achp.gov/docs/nhpa%202008-final.pdf>

40 CFR 1500-1508  
[http://ceq.hss.doe.gov/ceq\\_regulations/regulations.html](http://ceq.hss.doe.gov/ceq_regulations/regulations.html)

43 CFR 46  
<http://www.doi.gov/oepc/nepafr/docs/Federal%20Register%20October%2015,%202008%20NEPA.pdf>

## Chapter 7

# Environmental Impact Statement— Actions

## 7.1 When to Use an EIS (40 CFR 1502.1, 43 CFR 46.400)

The primary purpose of an EIS is to infuse the policies and goals of NEPA into Federal programs and actions. An EIS shall be prepared to inform decisionmakers and the public of the proposed action, reasonable alternatives, and their environmental impacts. It is to be used by Reclamation officials, in conjunction with other relevant material, to plan actions and to make decisions. A flowchart indicating major steps in the NEPA process is found in chapter 3, figure 3.1.

An EA (as discussed in chapter 6) may sometimes lead to a decision to prepare an EIS; however, there are some general activities for which it is known that there could be significant impacts. For these activities, the need to prepare an EIS is known without first preparing an EA. These activities normally include major actions involving construction of a new water resource project or a major unit of an existing project; proposed modifications to existing projects or actions that could result in changes in the authorized operation of an existing project and new or additional impacts; and new land and water management programs.

## 7.2 Typical EISs

The most common type of EIS focuses on a site-specific action or project. The next most common EIS type is the programmatic EIS. NEPA requires an EIS to be prepared when potentially significant impacts can result from the establishment of a program or new regulations (a programmatic EIS). A programmatic EIS (40 CFR 1500.4(i), 1502.4(b) and (c), 1502.20) is one that analyzes broad-scope actions that are similar in terms of timing, geography, or other characteristics that provide a basis for evaluating environmental consequences. It provides a generic analysis of impacts that may not attempt to define the site-specific effects in detail but that do present at least a range of effects that reflect the reasonably foreseeable consequences of the program. While site-specific data may not be available, the requirement of NEPA to gather all reasonably available information needed to support a reasoned choice among alternatives does apply to a programmatic EIS. The range of alternatives considered may include various combinations of program elements. Careful screening of alternatives is necessary to keep the analysis manageable.

A programmatic EIS supports broad policy or program decisions that constrain or define specific proposals that may be proposed as part of the program or under the policy. Subsequent analysis of more specific proposals would generally be required under NEPA and would be more specific because it would be of narrower scope. Information from a programmatic EIS can be referenced (“tiered”) in the subsequent NEPA document to reduce redundancy and address broad cumulative effects.

### **7.2.1 Legislative EIS (40 CFR 1506.8, 1508.17; 43 CFR 46.445)**

Either the site-specific or programmatic EIS can be used to propose legislation. The legislative EIS includes a bill or legislative proposal (including a proposal to reauthorize a project) to Congress, developed by or with the significant cooperation and support of a Federal agency, but it does not include requests for appropriations. The test for “significant cooperation” is whether the proposal is, in fact, predominantly that of the agency rather than of another source (drafting does not by itself constitute significant cooperation). Only the agency that has primary responsibility for the subject matter involved will prepare a legislative EIS.

There are two types of legislative EISs. The first type is used for proposals that are not site specific. The legislative EIS is filed with EPA, sent with the legislative proposal to Congress, and is intended to be the detailed statement required by law. In this instance, the legislative EIS will be so marked and will not be identified as a “draft” or “final.” This legislative EIS will not be distributed for public review and comment. Reclamation has not prepared this type of EIS recently, if ever.

The second type of legislative EIS is required for proposals for Federal or federally assisted construction or other projects, which the agency recommends to Congress, to be located in a specific geographical area (other categories are detailed in 40 CFR 1506.8). These are essentially routine EISs filed with EPA and sent to Congress as draft legislative EISs no later than 30 days after the legislative proposal is forwarded. A distribution is made for review and comment, a public hearing is held, and a FEIS is prepared and filed. The main advantage of this type of legislative EIS is that the proposal can be sent to Congress for action with only the DEIS. The FEIS is forwarded at a later time. Again, Reclamation has not prepared this type of EIS recently, if ever.

### **7.2.2 Delegated/Nondelegated EIS (ESM 11-2)**

All of the EISs described in sections 7.2 and 7.2.1 can be delegated or nondelegated, although the vast majority of them are delegated. A delegated EIS is one for which the decision authority on the proposed action rests, by delegation,

with a single Assistant Secretary. The Assistant Secretary, in turn, may delegate this responsibility to individual bureaus (see sections 7.8.1.1 and 7.8.1.2 below). Any EIS signed at the Commissioner's Office, regional office, or area office level is a delegated EIS.

A nondelegated EIS generally has one of the following features:

- An EIS for which the decision authority on the proposed action requires the approval of more than one Assistant Secretary (or bureaus under more than one Assistant Secretary), or
- An EIS reserved or elevated to the Secretary (or Office of the Secretary) by expressed interest of the Secretary, Deputy Secretary, Chief of Staff, Solicitor, or Assistant Secretary for Policy, Management and Budget, or
- An EIS for which the proposed action is highly controversial in nature or one in which the Secretary has taken a prominent public position in a highly controversial issue, or
- An EIS for which the proposed action faces a high probability of judicial challenge to the Secretary.

Nondelegated EISs are to be reviewed by OEPC. OEPC should provide clearance, to indicate informal, but substantive, approval of a nondelegated EIS prior to Reclamation printing the document. This approval can be accomplished by OEPC's affirmative response (by any method, including e-mail or a telephone call) to Reclamation's request to OEPC to print.

### **7.3 Tiering and Transferred Analyses (40 CFR 1502.20; 43 CFR 46.120, 46.140; 516 DM 1.18)**

Agencies are encouraged to tier their EISs to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (40 CFR 1508.28).

“Tiering” refers to following up on analysis contained in a broader EIS (such as national programs, policy statements, or large geographic areas) with subsequent narrower EISs or EAs (such as regional or basinwide program statements or, ultimately, site-specific statements), incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:



- From a program, plan, or policy EIS to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.
- From an EIS on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (the later stage could address the design and implementation of a project or the proposed modification of a project in response to monitoring and evaluation [adaptive management]). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and to exclude from consideration issues already decided or not yet ripe.

If tiering is anticipated, the entire process should be outlined at the outset, if known, so that the interested public can understand what level of detail and analysis will be included in each tier.

When a broad EIS has been prepared, and a subsequent EIS or EA is prepared on a specific action included within the broad program or policy, the subsequent statement need only summarize the issues discussed in the broader statement. Issues addressed in a broad EIS are incorporated by reference so that the document can concentrate on issues specific to the subsequent or following action. An EA tiered to a broad EIS need only analyze the changes to, or details of, the original proposal not previously analyzed to determine if any of those changes or details result in potentially significant impacts. The subsequent document shall state where the earlier document is available. Preparers must ensure that conditions described in the earlier document are still in effect and that the analysis is reliable. If substantial changes have occurred, the tiered document must include additional documentation, and the analysis must be revised to bring the document up to date. When tiering is anticipated, it is prudent to print a substantial number of extra copies of the document for distribution during review of subsequent documents. For additional information, see ESM 10-17, “Procedures for Implementing Tiered and Transference of Analyses.”

To avoid duplication of effort and reduce paperwork and costs, Reclamation staff are encouraged to utilize environmental information and analyses developed in previous environmental documents when preparing new documents on similar actions. This activity is referred to as “transferred analyses.” It has not been a common practice to do this within Reclamation; however, with the creation of electronic repositories of NEPA documents in the regions, Denver offices, and other agencies, the ability to access documents is now available, and preparers should take advantage of the stored data. Before adopting information, preparers must investigate its reliability, quality, and applicability to the current proposal. Data utilized in previous NEPA documents may be incorporated by reference. See ESM 10-17 and the discussion below (section 7.4) on incorporating by reference.

## **7.4 Incorporating by Reference (40 CFR 1502.21, 43 CFR 46.135)**

Incorporating by reference is an acceptable technique when material is readily available. “Readily available” suggests that the public could be expected to gain access to it within the time allowed for comment. Incorporated material shall be briefly described and appropriately cited. An EIS should not be processed for filing unless referenced documents are complete and available at the time of filing with EPA.

## **7.5 Actions Associated with an EIS**

### **7.5.1 Getting Started**

Before an NOI is published in the FR and scoping is formally initiated, a number of steps should be taken. At the beginning of the process, the action and the purpose and need for the action should be explicitly defined. This should involve a multidisciplinary team and management input and approval.

With the definition of the proposed action, other environmental evaluations in the area that may be related to the action should be reviewed. Whenever appropriate, these documents should be adopted or used as a basis for tiering. Every effort should be made to identify existing information and analysis applicable to the current action to reduce redundancy.

### **7.5.2 Restrictions on Actions**

While the EIS is being prepared, Reclamation is limited in the actions it can take. Until a decision is made, no action concerning the project shall be taken that will have an impact on, or preclude the choice of, other reasonable alternatives. Such actions include commitment of funds, personnel, resources, or materials that will advance the proposal to a point from which retreat may be difficult or impractical. (40 CFR 1506.1).

### **7.5.3 Timeframes (40 CFR 1501.8, 43 CFR 46.240)**

Preparation of an EIS should coincide with Reclamation’s decisionmaking process so that it can be completed in time for the FEIS to be included in, or to accompany, any recommendations or reports. The EIS should be prepared early enough so that it can provide an important contribution to the decisionmaking process. An exception to this would be in circumstances where an emergency exists and there is not time to complete NEPA before action must be taken to protect public safety and/or natural resources.

Reclamation should establish a schedule for each EIS in consultation with the cooperating agencies. Cooperating agencies should be expected to complete any requested reviews and analysis within the defined schedule. Once this schedule is established, Reclamation is not required to (but may agree to) delay preparation of an FEIS if comments are not received within the defined schedule.

In establishing the schedule, several factors need to be considered: (1) issues involved (e.g., potential impact and the nature and extent of the proposed action); (2) public involvement and consultation with agencies and Indian tribes; (3) NEPA process and required time limits; (4) data collection needs; (5) relationship of the proposed action to related processes within and outside of Reclamation; and (6) legal constraints. Adequate time should be allowed for the preparation and processing of the DEIS or FEIS. The process can vary significantly—from less than 18 months to 3 or more years—depending upon the controversy, scope, and issues to be addressed. Sometimes an EIS may be court directed and have a mandatory completion date.

Usually, the more significant the issues, the greater the amount of time needed for preparation of an adequate EIS. If significant public controversy exists, an expanded public involvement program may be helpful in gathering data and reducing the potential for litigation, but it may extend the time needed to complete the EIS.

The NEPA process includes a number of minimum required time limits. These limits may be extended at Reclamation's discretion. They are as follows:

- The **minimum period** between the notice of a hearing and the actual hearing is **15 days** (40 CFR 1506.6 (c)(2)); however, a 30-day notice is recommended for either a hearing or public meeting.
- The **minimum period** for public review of the DEIS (or any supplements) is **45 days** (40 CFR 1506.10(c) and (d)). There is no maximum time period.
- The **minimum period** between EPA's FR notice announcing availability of a FEIS and issuing the ROD is **30 days** (40 CFR 1506.10 (b)(2)). There is no maximum time period.

The minimum review period for a DEIS (or any supplements) is 45 days from the date that EPA publishes the "Notice of Availability of Weekly Receipt of Environmental Impact Statements" in the FR (see figure 7.1). This notice, usually published on Fridays, lists all EISs filed with EPA during the preceding week (40 CFR 1506.10(a)). However, for a delegated DEIS, Reclamation has the flexibility to establish a longer comment period while still meeting all minimum review requirements stated above. This longer comment period may begin as

early as when the document is filed with EPA and may be extended as long as Reclamation desires. The longer comment period is generally calculated from the publication date of Reclamation's NOA in the FR.

Data collection needs can be significant. NEPA requires that the lead agency collect data needed for a reasoned choice among alternatives if it can be collected at a less-than-exorbitant cost (40 CFR 1502.22(a)). The determination of exorbitant costs must include all applicable costs, including consideration of monetized, as well as nonmonetized, costs such as social costs, opportunity costs, and nontimely fulfillment of statutory mandates (43 CFR 46.125). Data collection can require significant time and should be factored into the development of a reasonable timeframe for completion of the EIS (see chapter 8, section 8.8.2).

Finally, the relationship of the proposed action to related processes within and outside of Reclamation must be understood in order to reasonably set an achievable timeframe. Internal processes, such as safety of dams evaluations and contract negotiations, have timeframes and scheduling requirements that should be integrated with the NEPA requirements for those actions into one Reclamation decisionmaking process. External processes such as ESA or CWA Section 404 compliance can significantly affect the development of a reasonable timeframe, so consultation and coordination should begin with the appropriate agencies as early as possible.

## **7.6 Federal Register Notices Associated with an EIS**

### **7.6.1 Notice of Intent to Prepare an EIS (40 CFR 1501.7, 1508.22)**

An NOI is required by CEQ regulations and notifies the public that an EIS will be prepared and considered. The office originating the action prepares the draft NOI and accompanying draft news release. These two items are reviewed and surmamed in accordance with procedures in the regional offices and Interior. The originating office or appropriate regional office will be responsible for publishing the NOI in the FR and issuing the news release (see section 7.7 below). In accordance with 40 CFR 1508.22, the NOI must briefly:

- Describe the proposed action and possible alternatives.
- Describe the agency's proposed scoping process, including whether, when, and where any scoping meetings will be held. The timeframe for conducting scoping depends on the document being prepared and the complexity of the issues. It is up to the lead agency to determine how much time it will allow for the scoping process.

- State the name, address, telephone number, and e-mail address of a person within the agency who can answer questions about the proposed action and the EIS.

The NOI should also indicate if there are any known or possible ITAs or environmental justice issues associated with the proposed action.

As soon as practicable after the decision to prepare an EIS, the lead agency shall publish the NOI in the FR and issue the press release. The NOI may be delayed if there is a lengthy period between the agency's decision to prepare an EIS and the start of actual preparation. In such a case, the NOI may be published at a reasonable time in advance of preparation of the draft statement (40 CFR 1507.3(e)).

In most cases, planning of a project will occur over a period of several months or even years, and the determination to prepare an EIS is made at the beginning of project planning or shortly after project planning is initiated. It is recommended that the NOI and accompanying news release be prepared at the time the decision is made to prepare an EIS and that updated ones be prepared if there is a long time period before the EIS is actually initiated.

Figure 7.2 illustrates the general format requirements for a FR notice. Figure 7.3 is an example of a combined FR NOI and Notice of Scoping Meetings, and figure 7.4 is an example of the accompanying press release for a NOI and Notice of Scoping Meetings.

### **7.6.2 Notice of Scoping Meetings (40 CFR 1506.6)**

Agencies are required to make a diligent effort to notify the public of NEPA-related meetings. Notice of Scoping Meetings, if held, may be published in the FR, but it is not required for all actions unless the action is associated with effects of national concern. Any notice should be published at least 15 days before the scoping meeting occurs. It is recommended that offices also publish notices in local media, in advance of, and closer to the day of the scoping meeting to give the public adequate and timely notice of the opportunity to participate in the NEPA process. Normally, Notice of Scoping Meetings is included in the NOI, but if not, a separate notice is required.

For actions with primarily local effects, Notice of Scoping Meetings may be published in local newspapers using a press release and/or paid advertisement, posted on the appropriate Reclamation Web site, and mailed to entities directly affected by the proposal. These actions should be taken at least 15 days before the meeting date. Notice by these methods may also be used for actions of national concern, in addition to FR posting.

### **7.6.3 Notice of Availability and Public Hearing/Meeting (ESM 11-2, 40 CFR 1506.6)**

Under ESM 11-2, “Procedures for Approving and Filing Environmental Impact Statements,” an NOA is published in the FR when the DEIS becomes available for public review and comment and before any public hearings or meetings are held, or when the FEIS becomes available (figure 7.5 is an example of an NOA for a FEIS). For a DEIS involving formal hearings or public meetings, the notice of the hearings/meetings may be combined with the FR NOA (figure 7.6). The combined Notice of Availability and (if applicable) Notice of Public Hearing should be published in the FR a minimum of 15 days before the first public hearing is held. The Notice of Public Hearing, if separate from the NOA, should be published in the FR a minimum of 15 days before the hearing and at least 15 days after the document is available to the public. For additional information on publishing NOAs, see section 7.7 below.

### **7.6.4 Joint Lead Notices**

There are no procedures written in either the DM regulations or CEQ regulations for preparing joint-lead FR notices. While joint leads are allowed under the CEQ regulations, the CEQ and Interior prefer to have a single agency designated as the lead, with other agencies acting as cooperating agencies. Nevertheless, situations will arise where Reclamation is a joint lead with another Federal or State agency. When this happens, the joint Federal leads must agree on which one of the agencies is going to assume the lead for administrative purposes (i.e., publishing the FR notices, receiving comments on the NEPA documents, filing the documents with EPA, and distributing the documents).

When there are joint leads, a single FR notice should be prepared containing the names of the Departments and the names of both agencies at the top of the first page. Both agencies should sign the notice at the end. The notice should be surnamed by both agencies according to its review procedures. For Reclamation, the notice must be properly surnamed through the review process (see section 7.7 below).

## **7.7 Federal Register Notice Publication Process**

Following are the steps for the FR notice publication process for EISs. Please refer to figure 7.2 for important general format requirements. The format for FR notices is described in detail in the Federal Register Document Drafting Handbook. Copies of the handbook can be accessed online (<http://www.archives.gov/federal-register/write/handbook/>) or by contacting Reclamation’s Federal Register Liaison (84-21300).

All Reclamation notices to be published in the FR must be reviewed and surnamed in the Commissioner's Office and appropriate Interior offices. In addition, all notices must be reviewed and approved by the Federal Register Liaison (84-21300). Once approved, notices must be signed and emailed or faxed to the Special Assistant to the Deputy Commissioner, Policy, Administration and Budget (94-00010) with a cc to the Federal Register Liaison).

The Directors, Office of Executive Secretariat and Regulatory Affairs, meet daily with the Interior's Chief of Staff to recommend or give approval to publish each FR notice. The Federal Register Liaison (84-21300) will notify the originating office when approval to publish has been received. **Under no circumstances should a notice be sent directly to the Office of the Federal Register prior to receipt of approval by Interior. This review process may take up to 30 days or more to complete.** To avoid delays, the originating office should send the NOA ahead of the rest of the EPA filing package for review and surnaming (see section 7.8 for information on preparing EPA filing packages). Publication emergencies can be avoided by allowing for the 30-day review in the FR notice preparation timeline.

Reclamation's process for preparing FR notices for publication is further described below:

1. The office responsible for the EIS prepares a draft notice. This office is usually a field, area, or regional office. It may also be an office in the TSC under a service agreement with the area or regional office. If this is the case, the draft notice is sent to the region for approval. If the study is Reclamation wide, the notice is prepared by Policy and Administration.
2. The originating office should email a draft notice to the Federal Register Liaison (84-21300) for a review of format. The Federal Register Liaison will email the draft notice back with any suggested changes.
3. **Three original notices** are prepared and routed for surnaming and signature by the appropriate official at the regional or area office level (generally the Regional Director or Area Manager) or by the designated official for Reclamation-wide projects. Directors in the Washington, Denver, and regional offices have the authority to sign program-specific notices for programs under their responsibility. The signatory authority may be delegated to a lower level at the discretion of the Director (Reclamation Manual, ADM 01-02, paragraph 3B). Therefore, each region/office may have different signatory authorities.

While the three originals are being routed for surname and signature, the notice should be copied (MS Word) to a compact disc (CD) for submission to the Office of the Federal Register. For detailed requirements on CD submission, please see chapter 5 in the Federal Register Document Drafting Handbook.

4. General requirements for FR notices are:

- Notices should not be stapled.
- Notices must be signed in blue ink (a signature in black ink is difficult to distinguish from a photocopy).
- Name and title of the signatory official shown on the notice must match the name and title of the person who actually signs the notice. The signatory name, title, and region should be typed directly beneath the handwritten signature. Acting officials may sign, but only if their name and title are typed below the signature line. The date of the actual signature must also be shown. Do not place a signature block on a page by itself (placing text on the signature page helps to ensure the integrity of the document). The date of signature and the name, title, and region of the signatory official should also be added to the file on the CD.
- Notices must include Reclamation's billing code: 4310-MN-P. The "P" added to the end of Reclamation's standard billing code (4310-MN) notifies the Office of the Federal Register that the document is being submitted for publication on a CD. The "P" should not be used in the billing code at any other time.
- When submitting the notice on a CD, the CD should be labeled with the name of the project and Reclamation's billing code (4310-MN-P). If not mentioned in the transmittal letter to the Office of the Federal Register (figure 7.7), the CD should include a statement certifying that the file is a true copy of the original document, as well as identification of the word processing software.

5. After the notice is signed by the appropriate approving official, a copy with the actual handwritten signature will be emailed or faxed to the Special Assistant to the Deputy Commissioner, Policy, Administration and Budget (94-00010) for surnaming. Under no circumstances should a notice be sent directly to the Office of the Federal Register without completion of the review process.



6. For all notices, the originating office prepares a letter transmitting the three signed original notices and the CD to the Office of the Federal Register (figure 7.7). To avoid delays or misplaced mail, express mail should be used for overnight delivery, or the notice can be hand carried by the appropriate Regional Liaison to the Office of the Federal Register at the following address:

Office of the Federal Register  
800 North Capitol Street, NW  
7<sup>th</sup> Floor, Suite 700  
Washington, DC 20001

7. Additional steps for publishing NOAs (if the NOA is **not** express mailed directly to the Office of the Federal Register by the originating office):

- The three signed original copies of the NOA and the CD are included in the EIS filing package, which is sent to the appropriate Regional Liaison in Washington (see sections 7.8.1.2 and 7.8.2.1).
- Under ESM 11-2, when the EIS package arrives in Washington, it is the responsibility of the Regional Liaison to get a control number from OEPC (in some instances, the region may obtain the number directly from OEPC and provide it to the Regional Liaison). The control number will appear either as **DES**\_\_\_ (for DEISs) or **FES**\_\_\_ (for FEISs). Once assigned, the number should be stamped or written in blue ink by the Regional Liaison on each copy of the NOA after the “ACTION” heading. The Regional Liaison should also insert the control number after the “ACTION” heading on the CD containing the NOA. The Regional Liaison is also responsible for stamping or writing the control number on the front page or cover sheet of each paper copy of the DEIS or FEIS in the filing package. This is not required for copies being distributed to the public (for additional information on this process, see section 7.8.2.3).
- On the day the EIS is ready for filing with EPA (or at least 3 days in advance of the filing date, depending on when the NOA is to be published), the Regional Liaison will hand carry the signed original copies of the NOA and the CD containing the NOA to the Office of the Federal Register (see address above).

8. The Office of the Federal Register will publish all notices according to its regular schedule:

Received (by 2 p.m.)	Published
Monday	Thursday
Tuesday	Friday
Wednesday	Monday
Thursday	Tuesday
Friday	Wednesday

## **7.8 Review, Filing with EPA, and Distribution of EISs (ESM 11-2, ESM 10-14, ESM 10-15; 40 CFR 1503.1, 1506.9, 1506.10)**

### **7.8.1 Review**

Each region has internal review requirements that must be followed. These should include a broad review of the preliminary draft and final documents, before filing, by individuals with environmental compliance expertise to ensure adequacy. Review of the documents by any cooperating agencies is also appropriate at this time. Upon request, the TSC and/or Policy and Administration may review and/or assist in the revision of preliminary DEISs and/or FEISs.

A broader review by the Commissioner's Office may occur on highly complex or controversial actions. The office of the Assistant Secretary for Water and Science, the Office of the Solicitor, and OEPC may also get involved in the reviews. If the Commissioner's Office in Washington is involved in the review of a NEPA document, the preparing office should provide reviewers with preliminary drafts to avoid delays later on when the NEPA document is ready to be filed. The Regional Liaison usually coordinates the Commissioner's and applicable DOI office reviews with support from Reclamation's representative in the office of the ASWS.

#### **7.8.1.1 Delegated EISs**

A delegated EIS is one prepared for a proposed action for which decision authority is delegated to a single Assistant Secretary or further delegated to a subordinate bureau (see section 7.2.2). Within Reclamation, delegated EISs may be signed by the Commissioner or Regional Directors.

The area and regional offices are responsible for preparation, adequacy, and internal review of the document. This review will address the legal and technical adequacy of material presented, compliance with NEPA and other environmental laws, and adherence to Interior and Reclamation regulations, instructions, and

policies. Special attention will be given to completeness and accuracy of the analysis. Additionally, the analysis of the alternatives will be critically evaluated to make sure an alternative or alternative feature that has less environmental impact, and that is legally and technically feasible, has not been inadvertently overlooked.

Review of preliminary copies of the DEIS by project sponsors and cooperating agencies is encouraged. The level of review and selection of the reviewing entities should be at the discretion of the office preparing the DEIS.

Technical peer review of the different sections is generally performed by another office. For example, material developed by the area offices would normally be reviewed by the regional office but may also be reviewed, upon request, by the TSC and/or Policy and Administration.

Review of documents covers all aspects, not just environmental compliance, and adequate time is needed to review the document's contents and to coordinate among the various disciplines involved in the review. These reviews (by sponsors, cooperating agencies, and peers) should be allowed 30 calendar days, whenever possible.

The originating office should make every effort to accommodate the policy and technical recommendations of the reviewing office. If a recommendation cannot be accommodated by the originating office, then the originating and reviewing offices should work together to develop an alternative approach that is acceptable to both offices or refer the disagreement to the decisionmaker for action.

To facilitate preparation of the document, internal regional office comments and recommendations should be forwarded through informal channels (blue envelope, email, etc.) or discussed in a meeting or conference call between the originating office and regional office staff.

In rare instances, a Director or the Commissioner may request that Policy and Administration take the lead within Reclamation to prepare an EIS. This process would generally include the following steps: Policy and Administration would develop a team to prepare the document using resources from the TSC, the Commissioner's Office, and the regions, as appropriate. The team would then develop an outline of the steps needed to complete the document. The outline would be reviewed internally by Policy and Administration, and other appropriate groups within Reclamation, before being sent to the Commissioner/Director requesting approval to initiate the EIS.

If the proposed action is determined to be of interest Reclamation wide, the preliminary draft would also be offered to all regions and other directors for review. The Director requesting the document would approve the draft before it was filed by Policy and Administration with EPA for public review.

Those regions and other directors who provided input on the draft would be given the opportunity to review the final document. The Director requesting the document would approve the final before it was filed with EPA.

#### **7.8.1.2 Nondelegated EISs**

Under ESM 11-2, nondelegated EISs are to be reviewed by the Secretary's OEPC. The office that originates the EIS will send an email or memorandum to the Director of OEPC requesting its approval to print, along with a copy of the document (see figure 7.8 for an example of an Approval to Print memorandum). To avoid any delays at the time of printing, the preparing office should include OEPC in reviews of preliminary drafts of the EIS or, if that is not possible, send a copy of the EIS to OEPC to review at least 2 weeks in advance of a request for approval to print.

In addition, the filing package for the nondelegated EIS will be somewhat different than that for a delegated EIS. It is likely to require more than the usual number of paper copies and CDs of the EIS. The transmittal letters to the EPA and Office of the Federal Register must be signed by the Director of OEPC. The letters may be prepared in the regional office on Office of the Secretary of the Interior letterhead and mailed to the Regional Liaison in Washington or emailed to the Regional Liaison to be put on Office of the Secretary of the Interior letterhead. The region will also email the NOA to the Regional Liaison. The NOA must include three originals with the OEPC Director's original signature (in blue ink), title, and date on each copy. The region should also include a copy of the NOA on a CD with the OEPC Director's name, title, and date of signature typed in the signatory block. A draft press release may also be required by the Office of Public Affairs. When Reclamation is preparing a nondelegated EIS, it will also forward a draft press release through its Assistant Secretary to the OEPC (if required by the Office of Public Affairs).

The filing package for a nondelegated EIS should contain the following:

- Email or memorandum from originating office (usually the Regional Director) to OEPC requesting approval to print (figure 7.8).
- FR NOA and accompanying CD for DEISs and FEISs signed by the Director of OEPC (figure 7.9).
- Letter from the Director of OEPC to the Office of the Federal Register transmitting three signed originals of the NOA and denoting transmission of the CD (figure 7.10).
- Memorandum from the Regional Director to the Commissioner transmitting the filing package to the Regional Liaison (figure 7.12)

- Letter from the Director of OEPC to EPA, Office of Federal Activities, transmitting the EIS for filing with EPA and stating that transmittal to all agencies has been completed (figure 7.11).
- Memorandum from the Commissioner to the Director of OEPC transmitting the EIS (similar to figure 7.14).
- Draft press release.

In addition to the items in the filing package described above, the nondelegated EIS should include an interested party letter, letters to elected officials (optional), and letters to affected Indian tribes signed by the Secretary or Commissioner. Procedures for filing the nondelegated EIS are similar to those followed for a delegated EIS (see section 7.8.2.3 below).

The review procedures for a nondelegated EIS are similar to a delegated EIS but involve more required reviewing offices within Interior. The specific reviewing offices will vary with the proposed action in the EIS but will, at a minimum, include OEPC and the Solicitor's Office at the administrative draft DEIS and FEIS stages.

For additional details, please see ESM 11-2, "Procedures for Approving and Filing Environmental Impact Statements."

## **7.8.2 Procedures for Filing Delegated EISs**

The Regional Director will normally approve the EIS and sign the transmittal letters necessary to file the EIS. For EISs on rulemakings, Reclamation-wide issues, and other extremely controversial EISs, the Commissioner or the ASWS may approve the EIS.

### **7.8.2.1 Preparation of Filing Documents**

While the EIS (draft or final) is being reviewed, the originating office (usually the regional office) prepares the following items for filing the EIS with the EPA, which will make up the filing package:

- FR NOA and accompanying electronic versions for DEISs (figure 7.6) and FEISs (figure 7.5). The NOA for a DEIS is generally combined with the Notice of Public Hearing as a Notice of Availability and Notice of Public Hearing.
- Letter from the Regional Director to the Office of the Federal Register transmitting three signed originals of the NOA and denoting transmission of the CD (figure 7.7).
- Memorandum from the Regional Director to the Director, Operations, transmitting the filing package to the Regional Liaison (figure 7.12).

- Letter from the Regional Director to EPA, Office of Federal Activities, transmitting the EIS for filing with EPA and stating that transmittal to all agencies has been completed (figure 7.13). This statement will ensure that the EIS is received by all interested parties by the time EPA’s “Notice of Availability of Weekly Receipt of Environmental Impact Statements” appears in the FR (figure 7.1).
- Memorandum from the Regional Director to the Director of OEPC transmitting the EIS (figure 7.14).

#### **7.8.2.2 Documents Associated with Distribution of the Delegated EIS**

In addition to the items in the filing package described above, the originating office or other designated office will prepare other items associated with the release and distribution of the EIS. These items are listed below.

- Letter to interested parties signed by a Reclamation official (i.e., Commissioner, Regional Director, or Area Manager). Examples of interested party letters for a DEIS and FEIS are shown in figures 7.15 and 7.16, respectively.
- Letters to elected officials signed by a Reclamation official (figure 7.17). This letter is optional. Elected officials can instead receive the EIS with the interested party letter instead of an individually signed letter.
- Letters to affected Indian tribes signed by a Reclamation official (figure 7.18).
- The applicable news release for the action. Examples of news releases for a Notice of Availability and Notice of Public Hearings for a DEIS and an NOA for a FEIS are shown in figures 7.19 and 7.20, respectively.
- Distribution list.

After completion of the review and appropriate revision of the EIS, these items are finalized and either incorporated into the EIS or included with it for distribution. If the items are prepared by the TSC, they are sent to the requesting region (or area office) for approval and submission to the program manager.

#### **7.8.2.3 Filing the Delegated EIS**

When the regional office and Washington Office have approved the NOA, and when the EIS has been completed, approved by the region, and is ready to file with EPA, the filing package should be sent by overnight mail to the appropriate

Regional Liaison in the Commissioner's Office using the transmittal memorandum to the Director, Operations, described in section 7.8.2.1. The filing package should include the following:

- At least four paper copies of the EIS and appendices. More may be needed for nondelegated, legislative, and certain other highly controversial EISs.
- At least seven copies of the EIS and appendices in electronic format (more may be needed).
- Three original copies of the FR NOA signed by the Regional Director in blue ink and an electronic version of the NOA (described in section 7.8.2.1).
- A letter from the Regional Director to the Office of the Federal Register transmitting the signed original copies of the NOA and the electronic version (described in section 7.8.2.1).
- A letter from the Regional Director to EPA, Office of Federal Activities, transmitting the EIS for filing (described in section 7.8.2.1).
- A memorandum from the Regional Director to the Director of OEPC transmitting the EIS (described in section 7.8.2.1).

When the document arrives in Washington for filing, the Regional Liaison will obtain a control number from OEPC. It will be either a DES (for DEISs) or FES (for FEISs) number. The EPA and OEPC will not accept the EIS without this number. The Regional Liaison will stamp or hand write this number in blue ink on each copy of the NOA after the "ACTION" heading and insert the number after the "ACTION" heading on the electronic data storage device containing the NOA. The Regional Liaison will also stamp or hand write the number on the front page or cover sheet of each paper copy of the DEIS/FEIS in the filing package. While it is not necessary for the regional or area offices to stamp all of the EIS copies being distributed to the public with the DES/FES control number, the Regional Liaison should provide the number to the regional office for its records. **Note:** It is possible for someone in the regional office, rather than the Regional Liaison, to obtain the DES/FES control number from OEPC, as long as it is not requested more than 2 weeks before the document is ready to be published. When this is done by the region, the control number will already be included in the NOA and printed on the cover sheet of the document. It should be noted that the control number from OEPC is time sensitive, so if the number is obtained ahead of time, any delay in providing the document to EPA could invalidate the number and cause further delay as a new number is assigned.

The date that comments are due on a DEIS must appear on the cover sheet of the document (CEQ NEPA regulations, 40 CFR, Section 1502.11(f)). If this date is not included on the cover sheet, the Regional Liaison is responsible for stamping or hand writing it on the paper copy of each DEIS in the filing package. The comment due date must appear on the cover sheet of all documents being distributed to the public. **Note:** It is very helpful if the regional/area office calculates the comment due date according to NEPA regulations and includes it on the cover sheet of the document before it goes to print.

All copies of the EIS should be distributed concurrently with the filing date with EPA. At the time of filing, EPA will ask if all copies have been distributed. Therefore, immediately after the Regional Liaison has obtained a DES/FES control number, he or she should coordinate with the regional office to agree on a filing date (see section 7.5.3 for important information on coordinating timeframes and comment periods).

On the day that the document is to be filed with EPA, the Regional Liaison will keep one paper copy of both the EIS and appendices, and one copy of both the EIS and appendices in electronic format, for his or her future use. The Regional Liaison will arrange to hand carry the following:

- **To EPA:** Four copies of the complete EIS, including appendices, along with a transmittal letter to EPA. At least one copy of the entire EIS must be a paper copy; the remaining three copies can be on appropriate electronic storage devices. For filing purposes, EPA specifically allows CDs, USB flash drives, memory cards, or other appropriate electronic storage devices. It is helpful to read EPA's "Amended Environmental Impact Statement Filing System Guidance" which can be accessed online (<http://www.epa.gov/compliance/nepa/submiteis/#more>).
- **To OEPC:** One paper copy of the EIS and appendices, and two copies of the EIS and appendices in electronic format—OR three paper copies of the EIS and appendices, along with a transmittal memorandum to OEPC.
- **To the Office of the Federal Register:** Three signed original copies of the NOA, the electronic version of the NOA, and a transmittal letter to the Office of the Federal Register, located at 800 North Capitol Street, NW, 7th Floor, Suite 700, Washington, DC 20001.
- **To Interior's Natural Resource Library:** One paper copy of the EIS and appendices, and one copy of the EIS and appendices in electronic format (no transmittal memorandum is needed).



When the documents are filed, the Regional Liaison will notify the originating office and applicable regional office (if different) that this has been accomplished. After 1 year, any remaining copies of the draft or final documents should be sent back to the originating office.

The regional office should notify the area office of the filing date when it receives notification from the Regional Liaison that filing has been completed. The Regional Public Affairs Office publishes any accompanying news release as soon as distribution of the document has been completed.

### **7.8.3 Distribution**

Distribution of DEISs and FEISs may be done at the area or regional level, or by the TSC, depending on which is most effective. To guide the use of the Internet and other electronic means, please see ESM 10-15, "Publication and Distribution of Interior NEPA Compliance Documents via Electronic Methods." The letter transmitting the document to the public (applicable interested party letter) may be signed by the Commissioner, Regional Director, or Area Manager.

Copies of the DEIS should be sent to a wide segment of the public for review. The EIS should be distributed to:

- Appropriate Interior bureaus and offices.
- Federal agencies.
- The Washington offices of senators and representatives.
- State office(s) of congressmen in the affected State(s).
- Potentially affected or interested Indian tribes and affected Indian trust asset beneficiaries and trustees.
- State or area-wide clearinghouses, as appropriate. For additional information, see [http://www.whitehouse.gov/omb/grants\\_spoc](http://www.whitehouse.gov/omb/grants_spoc) or ESM 10-14, "State and Local Agency Review of Environmental Statements." For questions regarding State clearinghouses, please contact Policy and Administration (84-50000).
- State agencies indicating a desire to review independent of the clearinghouses.
- Local agencies.
- Public libraries.

- Conservation, environmental, or other interested groups.
- Individuals having an interest or stake in the proposed action.
- Parties that commented on the DEIS.

After filing, the regional and area offices will have copies available for public inspection and a supply to meet reasonable public requests (normally at no cost). EISs shall be transmitted to all commenting agencies and made available to the public no later than the day the EIS is filed with EPA (40 CFR 1506.9).

## **7.9 Public Hearings and Comment Procedures for an EIS**

### **7.9.1 Review and Comment (40 CFR 1506.10, 516 DM 4)**

The minimum review period for a DEIS (or any supplements) is 45 days starting from when EPA publishes the “Notice of Availability of Weekly Receipt of Environmental Impact Statements” in the FR. This timeframe may be extended at the agency’s discretion (see section 7.9.3 below). However, Reclamation may also start the comment period earlier, while still meeting all the minimum review requirements. This longer comment period may begin as early as when the document is filed with EPA and may extend as long as Reclamation desires. The longer comment period is generally calculated from the publication date of Reclamation’s NOA in the FR. For nondelegated EISs, the originating office would be responsible for consulting with OEPC about any proposed reduction or extension of the commenting process. The OEPC would notify EPA and CEQ about the changes.

### **7.9.2 Public Hearing Procedures**

Public hearings are not required for every DEIS but should be held if: (1) there is substantial controversy concerning the proposed action or substantial interest in holding the hearing; or (2) an agency with jurisdiction over the action requests a hearing supported by reasons why a hearing will be helpful (40 CFR 1506.6(c)). A public hearing is a more formal type of public meeting used to gather comments from the public. While not required, it is recommended that a court reporter and a hearing officer be utilized to conduct the hearing. A hearing is not the place to debate the merits or drawbacks of the project. If a question-and-answer period is desirable, it should be scheduled informally before or after the formal hearing, with the understanding that the informal question-and-answer period is not part of the formal hearing record. A question-and-answer period before the hearing can often aid the public in focusing its comments on the DEIS and the issues related to it. The hearing record should be left open for written public comment for 10 to 15 days after the date(s) of the public hearing(s).

The public hearing session(s) should be conducted by a hearing moderator in a manner that will encourage the fullest possible participation. All written comments from the public hearing and a summary of oral comments at the public hearing, along with Reclamation's responses, will be made a part of an appendix in the FEIS.

### **7.9.3 Extending the Comment Period Upon Request**

Reclamation may extend the comment period past the length of time stated in the NOA and press release upon request from outside agencies or individuals. If a request is submitted, the preparing office should:

- Evaluate the merits of the request and determine whether there is time to extend it. Reclamation staff will need to examine the reasons why the commenter wants to extend the comment period (i.e., there may be new issues, or they may have received the EIS late or not at all). There may not be time to extend the comment period (i.e., the NEPA process may need to be completed to meet certain statutory requirements or other mandates, such as renewal of water contracts). General practice within Reclamation is to try to accommodate all reasonable requests if there is time.
- If an extension of time is granted, the preparing office should notify the appropriate parties on the mailing list of the extension, put it on the region's Web site, and consider issuing a press release.
- In cases where a FR notice is prepared, the new notice need only discuss the extension of the comment period. A Notice of Extension of Public Comment Period is shown in figure 7.21.

Even without formal extension of the comment period, Reclamation should make reasonable efforts to fully consider all comments received, even comments received a short time after formal closure of the comment period. However, Reclamation does not have to delay an established schedule in order to consider late comments.

## **7.10 EIS Comment and Response (40 CFR 1503.4)**

The following paragraph should be included as part of any communication vehicle used to solicit public commentary or as part of any public involvement process. Specifically, this disclosure statement should be included at the end of the "Supplementary Information Section" of any FR notice that invites public participation (e.g., NOI, Notice of Scoping Meeting(s), Notice of Public Hearing(s) or Meeting(s), or NOA for EA and DEIS/FEIS documents):

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

All substantive written comments received from the public and a summary of the substantive comments from the formal public hearing(s), or meeting(s), should be included in the FEIS (40 CFR 1503.4). Letters of comment are often included in the FEIS, but this is not required. Responses must be given for each substantive comment unless the comments are extremely voluminous. If the comments are voluminous, they may be grouped under categories of issues with broadly covered responses. This situation is rare, however, and individual responses are generally developed. Incoming review comments received in Washington or Denver will be sent to the originating office. The originating office will maintain a log of all comments received.

## **7.11 Supplemental Statements (40 CFR 1502.9(c), 516 DM 1.14)**

A Reclamation EIS should be supplemented when:

- A DEIS has become outdated. Generally, a draft that has not been finalized and is more than 5 years old should be reviewed internally to determine if it needs to be revised and reissued as a supplement.
- Substantial changes have been made in the alternatives that are relevant to environmental concerns.
- Significant new circumstances or information relevant to environmental concerns arise that have a bearing on the proposed action or impacts.
- Review of the DEIS results in the inclusion of a new preferred alternative which was not included as a detailed reasonable alternative in the DEIS, or new material significantly alters previously described impacts.
- It has been over 5 years since the FEIS and ROD have been issued, the project still has not been implemented and conditions in the area have changed, or the project has been substantially modified.

A supplement shall be prepared, circulated, and filed in the same fashion as an EIS, but an FR NOI is not required. A scoping process is not required but may be appropriate, depending upon the reason for the supplement. A hearing may be

necessary for a supplement if the conditions in section 7.9.2 are met. A supplement may be prepared for a DEIS or FEIS. If prepared for a DEIS, the draft supplement should be integrated with the existing DEIS during preparation of the FEIS for the proposed action. If prepared after the EIS is filed, both a draft and a final supplement will generally be prepared. Interior procedures require Reclamation to consult with OEPC and the Office of the Solicitor prior to proposing to CEQ to prepare a final supplement without preparing an intervening draft (516 DM 1.14B).

## **7.12 Cancellation of an EIS**

Occasions may arise when an EIS is to be prepared and, later, the project is canceled, delayed for an indefinite period of time, or drastically modified. In these cases, it may be necessary or desirable to cancel the EIS. This process can also be referred to as withdrawing an EIS, terminating an EIS, or cessation of an EIS. Interior recommends that DEISs that have not had FEISs prepared within 5 years be reviewed to ensure they are still relevant. Interior periodically reviews and develops a list of DEISs that fall within this category and may recommend that Reclamation cancel them. In addition, if an NOI is prepared and a DEIS is not completed within 5 years, a similar review is appropriate to ensure the EIS process is still relevant.

A Notice of Cancellation of a DEIS must be published in the FR and a Notice of Cancellation sent to those agencies, organizations, and individuals that received the DEIS. DEISs canceled by Interior will also be published in the FR. Figure 7.22 is an example of a Notice of Cancellation.

The notice should include a brief description of the proposal, a reference to the earlier FR NOI, NEPA analysis completed to date, and the reason for terminating the EIS. If the reason for terminating the EIS is the abandonment of the proposal, the FR notice should indicate that the NEPA process will be reinitiated if the proposal is revived at a future date.

If an EA and a FONSI are subsequently prepared and substituted for what was originally envisioned to be a DEIS, the FONSI should be made available for a 30-day public review before the action may be implemented.

## **7.13 Procedures for Response to Referral from Other Agencies on Reclamation Programs (40 CFR 1504, 516 DM 4.7C)**

Other Federal agencies may review EISs prepared by Reclamation, or vice versa (CAA, Section 309; NEPA, Section 102(2)(c)). When this review results in serious interagency disagreements which cannot be resolved, a Federal agency

(including Reclamation) may refer the issue to CEQ for an opinion. Reclamation will notify the Commissioner, ASWS, Solicitor, and OEPC regarding any notice to refer a Reclamation EIS to CEQ.

Not later than 25 days after the referral to CEQ, Reclamation will deliver a response to CEQ and the referring agency through the Commissioner and OEPC. Reclamation may request more time if the response cannot be made within 25 days. CEQ may grant the time extension if Reclamation gives assurance that the matter will not go forward and explains why the time extension requested is reasonable. The response shall address the issues raised in the referral completely, be supported by data, and address the referring agency's recommendation (40 CFR 1504.3 (d)).

Interested persons or organizations (including the applicant) may deliver their views to CEQ. Views in support of the referral or response shall be delivered at the same time that the referral or response is delivered.

Not later than 25 days after receipt of both the referral and any response, or upon being informed that there will be no response (unless a time extension has been granted), CEQ may take one or more of the following actions as described in 40 CFR 1504.3(f):

1. Conclude that the conflict has been resolved.
2. Initiate discussions of mediation with referring and lead agencies (OEPC will be responsible for coordinating Interior's position).
3. Hold public meetings or hearings to obtain additional views and information.
4. Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decisionmaking process.
5. Determine that the issue should be further negotiated by the referring and commenting agencies and recommend that CEQ's involvement is inappropriate unless the agencies' disagreements are irreconcilable.
6. Publish its findings and recommendations.
7. When appropriate, submit the referral and the response, together with CEQ's recommendations, to the President for action.

The CEQ shall complete actions 2, 3, or 5, above, within 60 days. When the referral involves an action required by statute to be determined on the record after the opportunity for an agency hearing, the referral shall be conducted in a manner consistent with the Administrative Procedures Act (5 U.S.C. 557(d)).

67206

Federal Register / Vol. 74, No. 242 / Friday, December 18, 2009 / Notices

Hurricane and Storm Damage Reduction Project, To Reduce the Damages Caused by Erosion and Coastal Storms to Shorefront Structures Along the Mid-Reach Segment, Implementation, Brevard County, FL

*Summary:* EPA continues to have environmental concerns about the long-term impacts of inundating hard-bottom habitat. Rating EC2.

**Final EISs**

*EIS No. 20090358, ERP No. F-AFS-J65541-MT, Marsh and Tarhead Allotment Management Plans, Proposes to Authorize Grazing of Livestock under 10-year Permits, Lincoln Ranger District, Helena National Forest, Lewis and Clark Counties, MT*

*Summary:* EPA's previous issues have been resolved; therefore, EPA does not object to the proposed action.

*EIS No. 20090387, ERP No. F-BLM-K65030-CA, Carrizo Plain National Monument, Draft Resource Management Plan, Implementation, San Luis Obispo County and Portion of western Kern County, CA*

*Summary:* EPA does not object to the proposed project.

Dated: December 15, 2009.

**Ken Mittelholtz,**

*Deputy Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E9-30126 Filed 12-17-09; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

[ER-FRL-8986-6]

**Environmental Impact Statements; Notice of Availability**

*Responsible Agency:* Office of Federal Activities, General Information (202) 564-1399 or <http://www.epa.gov/compliance/nepa/>.

Weekly receipt of Environmental Impact Statements

Filed 12/07/2009 Through 12/11/2009 Pursuant to 40 CFR 1506.9.

*Notice:*

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on

EISs on its Web site at: <http://www.epa.gov/compliance/nepa/eisdata.html>. Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, after March 31, 2010, EPA will discontinue the publication of this notice of availability of EPA comments in the **Federal Register**.

*EIS No. 20090428, Final EIS, NOAA, AK, Bering Sea Chinook Salmon Bycatch Management, Establish New Measures to Minimize Chinook Salmon Bycatch, To Amend the Fishery Management Plan, Implementation, Bering Sea Pollock Fishery, AK, Wait Period Ends: 02/16/2010, Contact: Gretchen Harrington 907-586-7228.*

*EIS No. 20090429, Draft EIS, BR, ID, Minidoka Dam Spillway Replacement Project, To Prevent Structural Failure of the Minidoka Dam Spillway and Canal Headworks, Lake Walcott, Minidoka County, ID. Comment Period Ends: 02/05/2010, Contact: Allyn Meuleman 208-383-2258.*

*EIS No. 20090430, Final EIS, USFS, 00, Selway-Bitterroot Wilderness Plants Management Project, To Prevent the Establishment of New Invaders and Reduce the Impacts of Established Invasive Plants on Native Plant Community Stability, Sustainability and Diversity, Nez Perce, Clearwater, Lolo, and Bitterroot National Forests, ID and MT, Wait Period Ends: 02/01/2010, Contact: Chad Benson 208-942-3113.*

*EIS No. 20090431, Final EIS, FHWA, MO, East Columbia Transportation Project, To Improve the Transportation Network in Eastern Columbia/Boone County by: (1) Extending Route 740 from its Terminus at U.S.-63, along a new Alignment, to I-70 at the existing St. Charles road interchange, (2) Improving existing Broadway (Route WW) to Olivet Road, and (3) Extending Ballenger Lane, from Future Route 740 to Clark Lane, City of Columbia, Boone County, MO, Wait Period Ends: 01/19/2010, Contact: Peggy Casey 593-636-7104.*

*EIS No. 20090432, Draft EIS, NPS, DC, National Mall Plan, To Prepare a Long-Term Plan that will Restore National Mall, Implementation, Washington, DC, Comment Period Ends: 03/17/2010, Contact: Susan Spain 202-245-4692.*

*EIS No. 20090433, Final EIS, USFS, CA, Lassen National Forest, Motorized Travel Management Plan, Implementation, Butte, Lassen,*

*Modoc, Plumas, Shasta, Siskiyou, Tehama Counties, CA, Wait Period Ends: 01/19/2010, Contact: Christopher O'Brien 520-252-6698.*

*EIS No. 20090434, Draft EIS, FTA, UT, Draper Transit Corridor Project, To Improve Transportation Mobility and Connectivity for Residents and Commuters in the Project Study Area, Salt Lake County, UT, Comment Period Ends: 02/05/2010, Contact: Kristin Kenyon 720-963-3300.*

*EIS No. 20090435, Draft EIS, APHIS, 00, Glyphosate-Tolerant Alfalfa Events J101 and J163: Request for Nonregulated Status, Implementation, United States, Comment Period Ends: 02/16/2010, Contact: Cindy Eck 202-720-2600.*

*EIS No. 20090436, Draft EIS, USFS, OR, Canyon Fuels and Vegetation Management Project, Proposed Fuels and Vegetation Treatment to Reduce the Risk of Stand Loss Due to Overly Dense Stand Conditions, Lookout Mountain Ranger District, Ochoco National Forest, Crook County, OR, Comment Period Ends: 02/01/2010, Contact: Marcy Anderson 541-416-6463.*

*EIS No. 20090437, Final EIS, USACE, NC, Western Wake Regional Wastewater Management Facilities, Proposed Construction of Regional Wastewater Pumping, Conveyance, Treatment, and Discharge Facilities to Serve the Towns of Apex, Cary, Holly Springs and Morrisville, Research Triangle Park, Wake County, NC, Wait Period Ends: 01/19/2010, Contact: Henry Wicker 910-251-4930.*

**Amended Notices**

*EIS No. 20090365, Draft EIS, USACE, CO, Moffat Collection System Project, to Provide High Quality Dependable, and Safe Drinking Water to Over 1.1 Million Customers in the City and County of Denver, Application for an Section 404 Permit, City and County Denver, Adams, Boulder, Jefferson and Grand Counties, CO, Comment Period Ends: 03/01/2010, Contact: Scott Franklin 303-979-4120,*

*Revision to FR Notice Published 10/30/2009: Extending Comment Period from 01/28/2010 to 03/01/2010.*

*EIS No. 20090406, Final EIS, USFS, CA, Modoc National Forest Motorized Travel Management Plan, Implementation, National Forest Transportation System (NFTS), Modoc, Lassen and Siskiyou Counties, CA, Wait Period Ends: 02/01/2010, Contact: Kathleen Borovac 530-233-8754. Revisions to FR Notice 12/04/2009: Extending Comment Period from 01/04/2010 to 02/01/2010.*

**Figure 7.1.—Example of EPA's Notice of Availability of Weekly Receipt of Environmental Impact Statements.**

*EIS No. 20090413*, Final EIS, USFS, NV, Martin Basin Rangeland Project, Reauthorizing Grazing on Eight Existing Cattle and Horse Allotments: Bradshaw, Buffalo, Buttermilk, Granite Peak, Indian, Martin Basin, Rebel Creek, and West Side Flat Creek, Santa Rosa Ranger District, Humboldt-Toiyabe National Forest, NV. Wait Period Ends: 01/11/2010. Contact: Vernon Keller 775-355-5356. Revision to FR Notice 12/11/2009: Correction to Contact Person Phone Number from 775-355-5056 to 775-355-5356.

*EIS No. 20090415*, Final EIS, FHWA, MI, Detroit Intermodal Freight Terminal (DIFT) Project, Proposes Improvement to Intermodal Freight Terminals in Wayne and Oakland Counties, MI. Wait Period Ends: 01/29/2010. Contact: David T. Williams 517-702-1820. Revision to FR Notice Published 12/11/2009: Extending Comment Period from 01/11/2010 to 01/29/2010.

*EIS No. 20090421*, Draft EIS, NRC, WY, Moore Ranch In-Situ Uranium Recovery (ISR) Project, Proposal to Construct, Operate, Conduct Aquifer Restoration, and Decommission an In-Situ Recovery (ISR) Facility, NUREG-1910, Campbell County, WY, Comment Period Ends: 02/01/2010. Contact: Behram Shroff 301-415-0666. Revision to FR Notice Published 12/11/2009: Correction to Document Type from Draft Supplement to Draft.

*EIS No. 20090423*, Draft EIS, NRC, WY, Nichols Ranch In-Situ Uranium Recovery (ISR) Project, Proposal to Construct, Operate, Conduct Aquifer Restoration, and Decommission an In-Situ Recovery Uranium Milling Facility, Campbell and Johnson Counties, WY, Comment Period Ends: 02/01/2010. Contact: Irene Yu 301-415-1951. Revision to FR Notice Published 12/11/2009: Correction to Document Type from Draft Supplement to Draft.

*EIS No. 20090425*, Draft EIS, NRC, WY, Lost Creek In-Situ Uranium Recovery (ISR) Project, Proposal to Construct, Operate, Conduct Aquifer Restoration, and Decommission an In-Situ Recovery (ISR) Uranium Milling Facility, Sweetwater County, WY, Comment Period Ends: 02/01/2010. Contact: Alan B. Bjornsen 301-415-1195. Revision to FR Notice Published 12/11/2009: Correction to Document Type Draft Supplement to Draft.

Dated: December 15, 2009.

**Ken Mittelholtz**,  
Deputy Director, NEPA Compliance Division,  
Office of Federal Activities.  
[FR Doc. E9-30124 Filed 12-17-09; 8:45 am]  
BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2009-0192; FRL-8802-2]

### Issuance of an Experimental Use Permit

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Notice.

**SUMMARY:** EPA has issued an experimental use permit (EUP) to the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA, APHIS) for the use of Gonacon Immunocontraceptive Vaccine on feral horses in Theodore Roosevelt National Park in North Dakota. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

**FOR FURTHER INFORMATION CONTACT:** Autumn Metzger, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5314; e-mail address: metzger.autumn@epa.gov.

### SUPPLEMENTARY INFORMATION:

#### I. General Information

##### A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

##### B. How Can I Get Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2009-0192. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of

operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

## II. Description of EUP

**Registrant:** U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA, APHIS) applied for an EUP for the use of Gonacon Immunocontraceptive Vaccine on feral horses on July 13, 2009. 56228-EUP-40. **Registrant:** USDA, APHIS, Environmental Services Unit 149, 4700 River Road, Riverdale, MD 20737. This EUP allows the use of 1.6 ml of the active ingredient Mammalian Gonadotropin Releasing Hormone (GnRH) delivered in the end use product GonaCon Immunocontraceptive Vaccine on 47,000 acres of Federally owned park land in Theodore Roosevelt National Park in North Dakota to evaluate the contraceptive efficacy on feral horses (*Equus caballus*).

## III. Regulatory Conclusions

EPA issued the EUP as described in Unit II on October 13, 2009. The program is authorized only in the State of North Dakota. The EUP is effective from October 13, 2009 to October 13, 2014.

## IV. Missing Data

There was no missing data.

## V. Response to Comments

There were no comments.

**Authority:** 7 U.S.C. 136c.

## List of Subjects

Environmental protection,  
Experimental use permits.

Dated: December 7, 2009.

**Lois Rossi**,  
Director, Registration Division, Office of  
Pesticide Programs.

[FR Doc. E9-30125 Filed 12-17-09; 8:45 am]  
BILLING CODE 6560-50-S

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2009-0364; FRL-8794-6]

### Pesticide Products; Registration Applications

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to register pesticide products containing a new active ingredient not included in any currently

Figure 7.1.—Example of EPA's Notice of Availability of Weekly Receipt of Environmental Impact Statements (continued).



**Basic Requirements for Documents in the Notices Category of the *Federal Register***

For more information, the *Federal Register Document Drafting Handbook* is available on the Internet at: <http://www.archives.gov/federal-register/write/handbook/>.

Typical notice documents announce: Meetings or hearings, availability or cancellations of draft or final environmental impact statements, certain petitions, orders or decisions affecting named parties, etc.

General format:

- Margins 1 inch on top, bottom, and right; 1-1/2 inches on left.
- Double space entire document.
- Number pages – bottom center.
- Indent paragraphs at least 5 spaces.
- Do NOT staple the notices.
- Single-sided only.

Reclamation's Federal Register Liaison Officer must review your notice prior to signature. To answer questions on format, please call 303-445-2055 or 202-513-0519 for help.

Disks: (follow these guidelines for documents submitted on disk)

- Are the disk and document identical?
- Is the verification/certification letter included stating that the disk and document are identical?
- Is the disk virus-free, with no trash files, no security codes/passwords, and no backup files included?
- Are you using software that the Office of the Federal Register will accept? (The Office of the Federal Register accepts Microsoft Word.)
- Does the disk have a label that identifies the agency, kind of software, subject matter, and file name?
- Do you have a separate disk for each document?

Copies: **Do not list "cc" or "bc" copies at the end of any actual *Federal Register* notice.** List the mail codes for internal distribution and addresses of external parties at the bottom of the transmittal letter to the Office of the Federal Register with an attached copy of the notice. Please include the Office of Policy and Administration (84-50000) and your Regional Liaison in that list.

Mail: Send via **Federal Express** to: Office of the Federal Register  
800 North Capitol Street, NW, Suite 700  
Washington, DC 20001

Headings: The following template shows what headings a document published in the "Notices Category" should contain.

Figure 7.2.—Format for FR notice.

**Template for *Federal Register* Notices**

(Billing Code): **4310-MN-P**

**DEPARTMENT OF THE INTERIOR**

Bureau of Reclamation

Action, Project Name, Location (i.e., Notice of Availability of Draft Environmental Impact Statement for the Nimbus Hatchery Fish Passage Project, Lower American River, California)

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** (Describe action, i.e., Notice of availability, Announcement of meeting, etc.; capitalize first letter of first word only.).

**SUMMARY:** (A brief 1-2 paragraph statement should answer these questions: What action is being taken? Why is this action necessary? What is the intended effect of this action? Do not list statutes in this section, only in the SUPPLEMENTARY INFORMATION section.)

**DATES:** (Contains review/comment period deadline, request for hearing/meeting deadline, public hearing/meeting dates, any other dates the public may need to know.) No more than four dates. Limit narrative language. List additional dates in the SUPPLEMENTARY INFORMATION SECTION.

**ADDRESSES:** (Where to mail public comments, hand deliver public comments, attend a public meeting, examine any material available for public inspection, etc.). No more than four addresses. Limit narrative language. List additional addresses in the SUPPLEMENTARY INFORMATION section.

**Libraries:** This subheading is part of the “Addresses” heading; however, if you include more than four entries, it should be moved under “SUPPLEMENTARY INFORMATION” as a subheading (see *Document Drafting Handbook*, listed above). It can be used in an NOA to tell people where to locate copies of the EIS.

**Figure 7.2.—Format for FR notice (continued).**

**FOR FURTHER INFORMATION CONTACT:** (Name and telephone number and possibly e-mail addresses – may list two or more persons.)

**SUPPLEMENTARY INFORMATION:** (Contains background information and necessary details; information required by law, agency policy, or Executive Order. Use descriptive headings to highlight topics or organize text – see *Document Drafting Handbook*, listed above. Include a “Public Disclosure Statement” regarding possible release of names and addresses in *Federal Register* notices that seek public comment.)

**Date:** (The Office of the Federal Register recommends a signature date – but it is not required. When a date is furnished, use the date of actual signature. The Office of the Federal Register will not accept a postdated signature or change a signature date. Do not use correction fluid or tape. If there is a problem with the date, the notice is returned to Reclamation’s Federal Register Liaison Officer.)

**Signature Block:** (Printed name/title of person signing the document should be directly beneath the handwritten signature. The last line of the signature block should indicate the region/office publishing the notice (e.g., UC Region or Denver Office). The Office of the Federal Register requires THREE original copies of the document signed in BLUE INK.)

Figure 7.2.—Format for FR notice (continued).

**4310-MN-P**

**DEPARTMENT OF THE INTERIOR**

Bureau of Reclamation

Notice of Intent to Prepare an Environmental Impact Statement/Environmental Impact Report and Public Scoping Meetings for the Folsom Dam Safety of Dams Mormon Island Auxiliary Dam Modification, California

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of intent and public scoping meetings.

**SUMMARY:** The Bureau of Reclamation, the lead Federal agency, and the Sacramento Area Flood Control Agency, acting as the lead State agency, are intending to prepare a joint environmental impact statement/environmental impact report for the proposed Folsom Dam Safety of Dams Mormon Island Auxiliary Dam Modification (Proposed Action). The purpose of the Proposed Action is to reduce the seismic and static risk of failure of the Mormon Island Auxiliary Dam. In this way, the Bureau of Reclamation will achieve the existing standards for dam safety and reduce the risk of injury to those people living and working downstream of the Folsom Dam complex.

**DATES:** Submit written comments on the scope of the environmental impact statement/environmental impact report on or before January 3, 2009 (*if no specific date, use this phrase* [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]).

**Figure 7.3.—Example of NOI to prepare EIS and Notice of Scoping Meetings.**

A series of scoping meetings will be held to solicit public input on the scope of the environmental document, alternatives, concerns, and issues to be addressed in the environmental impact statement/environmental impact report. The scoping meeting dates are:

- Tuesday, December 2, 2008, 1:00 p.m. to 4:00 p.m., Folsom, CA.
- Tuesday, December 2, 2008, 6:00 p.m. to 9:00 p.m., Folsom, CA.
- Thursday, December 4, 2008, 6:00 p.m. to 9:00 p.m., El Dorado Hills, CA.

**ADDRESSES:** Send written comments to Ms. Elizabeth Vasquez, Central California Area Office, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630-1799; or e-mail *FolsomDamMods@usbr.gov*.

The public scoping meetings will be held at:

- Folsom -- Folsom Community Center, 52 Natoma Street, Folsom, CA 95630.
- El Dorado Hills -- El Dorado Hills Community Services District, 1021 Harvard Way, El Dorado Hills, CA 95762.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elizabeth Vasquez, 916-988-1707; *FolsomDamMods@usbr.gov*.

**SUPPLEMENTARY INFORMATION:** Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the Sacramento Area Flood Control Agency (SAFCA) will prepare the joint environmental impact statement/environmental impact report (EIS/EIR).

**Figure 7.3.—Example of NOI to prepare EIS and Notice of Scoping Meetings (continued).**

**Background**

The March 2007 Folsom Dam Safety and Flood Damage Reduction (Folsom DS/FDR EIS/EIR) included NEPA/CEQA analysis of modifying the Mormon Island Auxiliary Dam (MIAD). The analysis in the Folsom DS/FDR EIS/EIR considered several methods to modify MIAD to achieve Reclamation's risk standards for dam safety. The May 2007 *Record of Decision Folsom Dam Safety of Dams and Security Upgrades Project* documented that the preferred alternative for MIAD modification was to place an overlay and seepage control filters on the downstream (terrestrial) side of MIAD and reinforce the MIAD foundation using a construction technique known as jet grouting. At that time, some of the required permits and consultations (Endangered Species Act, Fish and Wildlife Coordination Act, and Sec 106 of the National Historic Preservation Act) were also obtained. Subsequent investigations into the feasibility of the MIAD Modification Project as conceived in the Folsom DS/FDR EIS/EIR have indicated that the design of the MIAD Modification Project will need to be changed to achieve Reclamation's existing risk standards for dam safety. Specifically, the utilization of jet grouting to stabilize the foundation of MIAD is unlikely to meet those risk standards.

The purpose of the Proposed Action is to reduce the seismic and static risk of failure of MIAD. In this way, Reclamation will achieve the existing standards for dam safety and reduce the risk of injury to those people living and working downstream of the Folsom Dam complex. This proposed project is a feature of the Folsom Dam Safety of Dams Project, and the analysis will tier from the March 2007 NEPA/CEQA environmental analysis, the Folsom DS/FDR EIS/EIR.

**Figure 7.3.—Example of NOI to prepare EIS and Notice of Scoping Meetings (continued).**

At this time, there are no known or possible Indian trust assets or environmental justice issues associated with the Proposed Action.

**Special Assistance for Public Scoping Meetings**

If special assistance is required to participate in the public scoping meetings, please contact Ms. Elizabeth Vasquez at 916-989-7192, TDD 916-989-7285, or e-mail *evasquez@usbr.gov*. Please notify Ms. Vasquez as far in advance as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available at 916-989-7285.

**Public Disclosure**

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment — including your personal identifying information — may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 28, 2008

Signed: /s/ Michael Chotkowski  
Michael Chotkowski  
Acting Regional Environmental Officer  
Mid-Pacific Region

**Figure 7.3.—Example of NOI to prepare EIS and Notice of Scoping Meetings (continued).**

**News Release** **RECLAMATION**  
*Managing Water in the West*

Mid-Pacific Region  
Sacramento, CA

MP-08-151

Media Contact: Michelle H. Light, 916-978-5100, [milight@mp.usbr.gov](mailto:milight@mp.usbr.gov)

For Release On: November 20, 2008

## Scoping Meetings Planned for the Mormon Island Auxiliary Dam Modification Project at Folsom Reservoir

As part of ongoing Safety of Dams work at Folsom Reservoir, the Bureau of Reclamation will modify Mormon Island Auxiliary Dam (MIAD), also known as Dike 8, to reduce hydrologic (flooding), seismic (earthquake), and static (seepage) risks. Reclamation, the lead Federal agency under the National Environmental Policy Act, and the Sacramento Area Flood Control Agency (SAFCA), the lead State agency under the California Environmental Quality Act, will prepare a joint Environmental Impact Statement/Environment Impact Report (EIS/EIR).

Reclamation is conducting studies to determine the preferred alternatives to improve the structure while minimizing impacts to the public, the environment, and the surrounding area. Three Scoping Meetings will be held to provide information and solicit public input. The meetings are being held in an open house format. Attendees are welcome to arrive at any time during the scheduled hours and talk with subject matter experts at several stations. Information will be provided, questions answered, and public comments will be welcomed. The Scoping Meetings are scheduled:

**Two on Tuesday, December 2, 2008:** Folsom Community Center, 52 Natoma Street, Folsom, CA. An afternoon meeting will be held between 1pm & 4pm and an evening meeting will be held between 6pm & 9pm.

**One on Thursday, December 4, 2008:** El Dorado Hills Community Services District, 1021 Harvard Way, El Dorado Hills, CA. One evening meeting will be held between 6pm & 9pm.

The Public Scoping Comment Period on the MIAD Modification Project will be open from Tuesday, December 2, 2008, to Monday, January 5, 2009. Written comments on the scope of the project should be mailed to Ms. Laura Caballero at the Bureau of Reclamation, Central California Area Office, 7794 Folsom Dam Road, Folsom, CA 95630-1799, or e-mailed to [MIAD\\_mods@mp.usbr.gov](mailto:MIAD_mods@mp.usbr.gov), or faxed to 916-989-7109.

Individuals who would like to receive updates on the project may contact Ms. Janet Sierzputowski at the Bureau of Reclamation, 2800 Cottage Way, MP-140, Sacramento, CA 95825, or e-mail [jsierzputowski@mp.usbr.gov](mailto:jsierzputowski@mp.usbr.gov), or phone 916-978-5112 (TDD 916-978-5608), or fax 916-978-5114. For information on the ongoing work at Folsom Dam and Reservoir, please

Figure 7.4.—Example of news release for NOI to prepare EIS and Notice of Scoping Meetings.



call the project hotline at 916-988-1707 (TDD 916-989-7285) or visit the Joint Federal Project website at <http://www.usbr.gov/mp/jfp/index.html> or the Safety of Dams website at <http://www.usbr.gov/mp/sod/>.

###

Reclamation is the largest wholesale water supplier and the second largest producer of hydroelectric power in the United States, with operations and facilities in the 17 Western States. Its facilities also provide substantial flood control, recreation, and fish and wildlife benefits. Visit our website at <http://www.usbr.gov>.

**Figure 7.4.—Example of news release for an NOI to prepare EIS and Notice of Scoping Meetings (continued).**

**4310-MN-P**

**DEPARTMENT OF THE INTERIOR**

Bureau of Reclamation

Notice of Availability of the Final Environmental Impact Statement for the Cachuma  
Lake Resource Management Plan, Santa Barbara County, California

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The final Environmental Impact Statement for the Cachuma Lake  
Resource Management Plan is available for public review. The Bureau of Reclamation  
has evaluated comments and is recommending a preferred alternative for approval. The  
Resource Management Plan involves alternatives for future use of the project area for  
recreation and resource protection and management.

**DATES:** Submit comments by [INSERT DATE 30 DAYS AFTER DATE OF  
PUBLICATION IN THE FEDERAL REGISTER]. The Bureau of Reclamation will not  
make a decision on the proposed action until at least 30 days after release of the final  
Environmental Impact Statement.

**ADDRESSES:** The final Resource Management Plan and Environmental Impact  
Statement are available for review at

[http://www.usbr.gov/mp/nepa/nepa\\_projdetails.cfm?Project\\_ID=283](http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=283). Send requests for  
a compact disc to Mr. Jack Collins, Bureau of Reclamation, 1243 N Street, Fresno, CA  
93721. See the SUPPLEMENTARY INFORMATION section for locations where  
copies are available for public view.

**Figure 7.5.—Example of NOA for FEIS.**

**FOR FURTHER INFORMATION CONTACT:** Mr. Jack Collins, Bureau of Reclamation, at (559) 349-4544 (TDD (559) 487-5933) or [jwcollins@usbr.gov](mailto:jwcollins@usbr.gov).

**SUPPLEMENTARY INFORMATION:** Cachuma Lake is an existing reservoir formed by Bradbury Dam, and located in Santa Barbara County, California. The dam, which provides irrigation, domestic, and municipal and industrial water supplies to the City of Santa Barbara, Goleta Water District, Montecito Water District, Carpinteria Valley Water District, and Santa Ynez River Water Conservation District, was constructed in the 1950s. The Cachuma Project has delivered an average of 25,000 acre-feet per year over the past 45 years and encompasses approximately 9,250 acres. In 1956, operation and maintenance of the Cachuma project was transferred from Reclamation to the Cachuma Operation and Maintenance Board. Reclamation still retains ownership of all project facilities and is responsible for the operation of the dam. The RMP will have a planning horizon of 20 years.

The new Resource Management Plan (RMP) would: (1) Ensure safe storage and timely delivery of high-quality water to users while enhancing natural resources and recreational opportunities; (2) protect natural resources while educating the public about the value of good stewardship; (3) provide recreational opportunities to meet the demands of a growing, diverse population; (4) ensure recreational diversity and the quality of the experience; and (5) provide the updated management considerations for establishing a new management agreement with the managing partner.

The final Environmental Impact Statement (EIS) is a program-level analysis of the potential environmental impacts associated with adoption of the RMP. The final EIS outlines the formulation and evaluation of alternatives designed to address these issues by

**Figure 7.5.—Example of NOA for FEIS (continued).**

representing the varied interests present at the Plan Area and identifies Alternative 2 (Enhancement) as the preferred Alternative. The RMP is intended to be predominately self-mitigating through implementation of RMP management actions and strategies, and the EIS also includes measures intended to reduce the adverse effects of the RMP.

A Notice of Availability of the Draft EIS was published in the Federal Register on July 25, 2008 (73 FR 43472). The written comment period on the Draft EIS ended on September 23, 2008. On October 9, 2008 a notice was published in the Federal Register (73 FR 59669) extending the comment period on the Draft EIS until October 31, 2008. The final EIS contains responses to all comments received and reflects comments and any additional information received during the review period.

Copies of the Final EIS are available at the following locations:

- Bureau of Reclamation, Mid-Pacific Region, Regional Library, 2800 Cottage way, Sacramento, CA 94825.
- Bureau of Reclamation, South-Central California Area Office, 1243 N. Street, Fresno, CA 93721.
- Cachuma Lake State Recreation Area, Highway 154, Santa Barbara, CA 93454.
- Santa Maria Public Library, Central Location, 420 South Broadway Avenue, Santa Maria, CA 93454.
- Santa Barbara Public Library, 40 East Anapamu Street, Santa Barbara, CA 93101.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6<sup>th</sup> and Kipling, Denver, CO 80225.

**Figure 7.5.—Example of NOA for FEIS (continued).**

- Natural Resources Library, U.S. Department of the Interior, 1849 C Street, NW,  
Main Interior Building, Washington, DC 20240-0001.

**Public Disclosure**

Before including your name, address, phone number, e-mail address, or other personal identifying information in any correspondence, you should be aware that your entire correspondence – including your personal identifying information – may be made publicly available at any time. While you ask us in your correspondence to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 21, 2010

Signature: /s/ David W. Gore  
David W. Gore  
Assistant Regional Director  
Mid-Pacific Region

Figure 7.5.—Example of NOA for FEIS (continued).

**4310-MN-P**

**DEPARTMENT OF THE INTERIOR**

Bureau of Reclamation

Notice of Availability of a Draft Environmental Impact Statement and Notice of Public Hearings for the Aspinall Unit, Colorado River Storage Project, Colorado

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of availability and notice of public hearings.

**DES 09-02**

**SUMMARY:** The Bureau of Reclamation, the Federal agency responsible for operation of the Aspinall Unit, has prepared and made available to the public a Draft Environmental Impact Statement on Aspinall Unit operations.

**DATES:** Submit written comments on the Draft Environmental Impact Statement on or before April 24, 2009, (*otherwise use this phrase* [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]).

Two public hearings have been scheduled to receive oral and written comments on the Draft Environmental Impact Statement:

- Tuesday, April 7, 2009 – 6:30 p.m. to 9:00 p.m., Gunnison, CO.
- Wednesday, April 8, 2009 – 6:30 p.m. to 9:00 p.m. Delta, CO.

**ADDRESSES:** Send written comments and requests for copies to Mr. Steve McCall, Bureau of Reclamation, Western Colorado Area Office, 2764 Compass Drive, Suite 106, Grand Junction, CO 81506; facsimile (970) 248-0601; or e-mail [smccall@uc.usbr.gov](mailto:smccall@uc.usbr.gov).

The Draft Environmental Impact Statement is available for public review at

<http://www.usbr.gov/uc/> (click on Environmental Documents).

**Figure 7.6.—Example of NOA and Notice of Public Hearings for DEIS.**

The public hearings will be held at:

- Gunnison -- Gunnison County Fairgrounds, 275 S. Spruce Street, Gunnison, CO 81230.
- Delta -- Bill Heddles Recreation Center, 530 Gunnison River Drive, Delta, CO 81416.

See SUPPLEMENTARY INFORMATION section for locations of where copies of the Draft Environmental Impact Statement are available for public review and inspection.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steve McCall, (970) 248-0638; [smccall@uc.usbr.gov](mailto:smccall@uc.usbr.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. Sec. 4332, the Draft Environmental Impact Statement (DEIS) describes the environmental impacts of alternatives to operate the Aspinall Unit to assist in implementing flow recommendations for endangered fish provided by the Upper Colorado River Endangered Fish Recovery Program (Recovery Program). Under the direction of the Recovery Program, Aspinall Unit releases were evaluated beginning in 1992. At the completion of the research, the Recovery Program published the *Flow Recommendations to Benefit Endangered Fishes in the Colorado and Gunnison Rivers* (McAda, 2003). The recommendations include spring peak and base flow targets for various hydrologic conditions in the Gunnison River Basin.

The purpose of modifying operations of the Aspinall Unit is to provide sufficient releases of water at times, quantities, and duration necessary to avoid jeopardy to

Figure 7.6.—Example of NOA and Notice of Public Hearings for DEIS (continued).

endangered fish species and adverse modification of their designated critical habitat in the lower Gunnison River while maintaining the authorized purposes of the Aspinall Unit.

The Upper Colorado River Basin at one time was inhabited by 14 native fish species, four of which are now endangered. These four fish are the Colorado pikeminnow, razorback sucker, bonytail, and humpback chub. They exist only in the Colorado River Basin. The four fish are endangered because of adverse impacts to their habitat over the last 125 years. The two types of habitat impacts that appear to have had the greatest effect have been water development and introduction of non-native fish (McAda, 2003).

The Bureau of Reclamation (Reclamation) is required to comply with the Endangered Species Act (ESA) for operation of its facilities, including the Aspinall Unit. Within the exercise of its discretionary authority, Reclamation must avoid jeopardizing the continued existence of listed species and destroying or adversely modifying designated critical habitat.

Copies of the DEIS are available for public review and inspection at the following locations:

- Main Interior Building, Natural Resources Library, Room 1151, 1849 C Street, NW, Washington, DC 20240-0001.
- Bureau of Reclamation, Denver Office Library, Denver Federal Center, 6<sup>th</sup> and Kipling, Building 67, Room 167, Denver, CO 80225-0007.
- Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 7418, Salt Lake City, UT 84138-1147.

**Figure 7.6.—Example of NOA and Notice of Public Hearings for DEIS (continued).**



- Bureau of Reclamation, Western Colorado Area Office, 2764 Compass Drive, Suite 106, Grand Junction, CO 81506.

**Libraries**

- Delta County Public Library, Delta, Colorado.
- Mesa County Public Library, Grand Junction, Colorado.
- Montrose County Public Library, Grand Junction, Colorado.
- Gunnison County Library, Gunnison, Colorado.

**Background**

The Aspinall Unit, located on the Gunnison River in western Colorado, is an authorized storage unit of the Colorado River Storage Project (CRSP). The Aspinall Unit includes three dams and reservoirs (Blue Mesa, Morrow Point, and Crystal) along a 40-mile reach of the Gunnison River. The Aspinall Unit is one of the four key features of the CRSP intended to develop the water resources of the Upper Colorado River Basin and is operated in accordance with the CRSP Act and applicable Reclamation and other Federal laws.

**Purpose and Need for Action**

Under the proposed action, the Aspinall Unit will be operated to avoid jeopardizing the continued existence of, and assist in the recovery of, the endangered fishes. This will help facilitate future water development to proceed in the Upper Colorado River Basin in compliance with applicable laws, compacts, court decrees, and Indian trust responsibilities. The proposed action is needed because Reclamation is required to comply with the Endangered Species Act for the operation of facilities,

Figure 7.6.—Example of NOA and Notice of Public Hearings for DEIS (continued).

including the Aspinall Unit. Within the exercise of its discretionary authority, Reclamation must avoid jeopardizing the continued existence of listed species or adversely modifying designated critical habitat.

**Proposed Federal Action**

Reclamation proposes to operate the Aspinall Unit to avoid jeopardizing the continued existence of downstream endangered fish species while maintaining and continuing to meet all of the project's authorized purposes. Reclamation would implement the proposed action by modifying the operations of the Aspinall Unit, to the extent possible, to help achieve river flows recommended by the Recovery Program. This change in Aspinall Unit operations would assist in conserving endangered fish in the Gunnison and Colorado rivers and would maintain authorized project purposes.

**Hearing Process Information**

Oral comments at the hearings will be limited to five minutes. The hearing officer may allow any speaker to provide additional oral comments after all persons wishing to comment have been heard. All comments will be formally recorded. Speakers not present when called will lose their privilege in the scheduled order and will be recalled at the end of the scheduled speakers. Speakers are encouraged to provide written versions of their oral comments, and any other additional written materials, for the hearing/administrative record.

Written comments should be received by Reclamation's Western Colorado Area Office using the contact information provided above no later than Friday, April 24, 2009, for inclusion in the hearing/administrative record. Under the NEPA process, written and

**Figure 7.6.—Example of NOA and Notice of Public Hearings for DEIS (continued).**

oral comments, received by the due date, are given the same consideration. Written comments, Reclamation responses, and public hearing statements (oral comments) will be used in the preparation of the final environmental impact statement.

**Public Disclosure**

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_  
Name  
Title  
Region

**Figure 7.6.—Example of NOA and Notice of Public Hearings for DEIS (continued).**

UC-413  
ENV-6.00

Office of the Federal Register  
800 North Capitol Street, NW  
7th Floor, Suite 700  
Washington DC 20001

Subject: Electronic Submission of *Federal Register* Documents – Notice of Availability for the Navajo-Gallup Water Supply Project Planning Report and Final Environmental Impact Statement

Enclosed with this letter are three original signed copies of the *Federal Register* Notice of Availability for the Navajo-Gallup Water Supply Project Planning Report and Final Environmental Impact Statement. Also enclosed is a certified Microsoft Word copy on a compact disk. The disk also contains a label that identifies the document along with our agency billing code. I certify that the disk is a true copy of the original document. **We would like this notice published in the *Federal Register* on Monday, July 6, 2009.**

If you have any questions regarding this Notice of Availability, please contact Jayne Kelleher, Writer/Editor, at 801-524-3680.

Sincerely,

Larry Walkoviak  
Regional Director

Enclosures

bc: 96-42040  
UC-413, UC-720  
WCG-CDeAngelis, WCG-BUlienberg, WCG-TStroh  
WCD-SPowers, WCD-MFrancis  
(w/enclosures)

**Figure 7.7.—Example of letter from a Regional Director to the Office of the Federal Register Transmitting FR Notice for a Delegated EIS.**



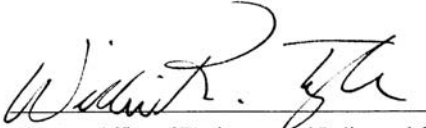
 <p>IN REPLY REFER TO: 96-42030 ENV-6.00</p>	<p>United States Department of the Interior BUREAU OF RECLAMATION Lower Colorado Regional Office P.O. Box 61470 Boulder City, NV 89006-1470</p> <p>FEB 14 2007</p>	
<p>MEMORANDUM</p>		
<p>To: Director, Office of Environmental Policy and Compliance</p>		
<p>From: Jayne Harkins, P.E. <i>Jayne Harkins</i> Acting Regional Director</p>		
<p>Subject: Request for Approval to Print the Draft Environmental Impact Statement (Draft EIS) for the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead</p>		
<p>The subject Draft EIS has been prepared by the Bureau of Reclamation. In accordance with the Environmental Statement Memorandum ESM04-12, we request clearance to print the document. Please document this approval by signing the "concur" line below and returning the signed memorandum to this office.</p>		
<p>If you have questions, please contact Terrance J. Fulp, PhD., at 702-293-8414 or Mr. Randall Peterson at 801-524-3758.</p>		
<p>Concur:</p>		
 Director, Office of Environmental Policy and Compliance		Date: <i>2/14/07</i>
<p>C-033</p>		

Figure 7.8.—Example of memorandum requesting approval to print Nondelegated EIS.

**4310-MN-P**

**DEPARTMENT OF THE INTERIOR**

Truckee River Operating Agreement, California and Nevada

**AGENCY:** Department of the Interior.

**ACTION:** Notice of Availability for a Final Environmental Impact Statement/  
Environmental Impact Report (FEIS/EIR).

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969, as amended, (NEPA) and the California Environmental Quality Act (CEQA), the U.S. Department of the Interior (Interior) and California Department of Water Resources (DWR), as co-lead agencies, have jointly prepared a FEIS/EIR for the Truckee River Operating Agreement (TROA) which would implement Section 205(a) of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act of 1990, Title II of Public Law 101-618 (Settlement Act). The FEIS/EIR has evaluated the proposed action (TROA Alternative), Local Water Supply Alternative, and No Action Alternative. Implementation of the proposed action would not result in any significant adverse environmental effects. A Notice of Availability of the Revised DEIS/EIR was published in the *Federal Register* on August 25, 2004 (69 FR 52303). The public review period on the Revised DEIS/EIR initially ended on October 29, 2004, but was extended to December 30, 2004.

**DATES:** No Federal or State decision will be made on the proposed action until a minimum of 30 days after the release of the FEIS/EIR. After this 30-day period, Interior and DWR will complete their respective Record of Decision (ROD) and Notice of Determination (NOD). The ROD and NOD will identify the action to be implemented.

**Figure 7.9.—Example of NOA for Nondelegated FEIS.**

**ADDRESSES:** A copy of the FEIS/EIR (compact disk or bound) may be obtained by writing to Kenneth Parr, Bureau of Reclamation (Reclamation), 705 North Plaza St., Rm. 320, Carson City, NV 89701 or by calling Reclamation at 800-742-9474 (enter 26) or 775-882-3436 or DWR at 916-651-0746. The FEIS/EIR is also accessible from the following website: <http://www.usbr.gov/mp/troa/>. See Supplementary Information section for locations where the FEIS/EIR is available for public review.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Parr, Reclamation, 775-882-3436, TDD 775-882-3436, fax 775-882-7592, [kparr@mp.usbr.gov](mailto:kparr@mp.usbr.gov); or Michael Cooney, DWR, 916-651-0746, fax 916-651-0766, [mikec@water.ca.gov](mailto:mikec@water.ca.gov). Information is also available at the Bureau of Reclamation website: <http://www.usbr.gov/mp/troa/>.

**SUPPLEMENTARY INFORMATION:** Copies of the FEIS/EIR are available for public review at:

- California Department of Water Resources, Central District Office, 901 P St., Suite 313B, Sacramento, CA 95814.
- Bureau of Reclamation, Public Affairs Office, 2800 Cottage Way, Sacramento, CA 95825.
- Bureau of Reclamation, 705 North Plaza Street, Carson City, NV 89701.
- Fish and Wildlife Service, 1340 Financial Blvd, Rm. 234, Reno, NV 89502.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW, Main Interior Building, Washington, DC 20240-0001.
- At various county libraries; please call 800-742-9474 (enter 26) for locations.

**Figure 7.9.—Example of NOA for nondelegated FEIS (continued).**

**TROA Background**

Section 205(a) of the Settlement Act directs the Secretary of the Interior (Secretary), in conjunction with others, to negotiate an operating agreement governing operation of Federal Truckee River reservoirs and other specified matters. Interior, U.S. Department of Justice, States of California and Nevada, Pyramid Lake Paiute Tribe, Sierra Pacific Power Company, Truckee Meadows Water Authority, and other entities in California and Nevada completed a negotiated agreement (i.e., Negotiated TROA) in February 2007. The Negotiated TROA is available as an appendix to the FEIS/EIR or viewed at <http://www.usbr.gov/mp/troa/>.

TROA would, in part, (1) enhance conditions for the threatened Lahontan cutthroat trout and endangered cui-ui in the Truckee River basin; (2) increase municipal and industrial (M&I) drought protection for Truckee Meadows (Reno-Sparks metropolitan area); (3) improve Truckee River water quality downstream from Sparks, Nevada; and (4) enhance instream flows and recreational opportunities in the Truckee River basin. At the time TROA takes effect, the Settlement Act provides that a permanent allocation between California and Nevada of water in the Lake Tahoe, Truckee River, and Carson River basins will also take effect. Allocation of those waters has been a long-standing issue between the two States; implementation of TROA resolves that issue. In addition, Section 205 of the Settlement Act requires that TROA, among other things, implement the provisions of the Preliminary Settlement Agreement as modified by the Ratification Agreement (PSA) and ensure that water is stored in and released from Federal Truckee River reservoirs to satisfy the exercise of water rights in conformance with the *Orr Ditch* decree and *Truckee River General Electric* decree. PSA

**Figure 7.9.—Example of NOA for Nondelegated FEIS (continued).**



is a 1989 agreement between Sierra Pacific Power Company and the Pyramid Lake Paiute Tribe to change the operation of Federal reservoirs and Sierra Pacific's exercise of its Truckee River water rights to (1) improve spawning conditions for threatened and endangered fish species (cui-ui and Lahontan cutthroat trout) and (2) provide additional M&I water for Truckee Meadows during drought situations. Sierra Pacific's obligations and associated water rights have since been assigned to the Truckee Meadows Water Authority (TMWA).

Before TROA can be approved by the Secretary and the State of California, potential environmental effects of the agreement must be analyzed pursuant to NEPA and CEQA. Accordingly, Interior and DWR have jointly prepared a FEIS/EIR for that purpose. A DEIS/EIR based on an earlier draft agreement was initially prepared and released for public review in February 1998. Subsequently, ongoing negotiations substantially modified the proposed agreement, resulting in the preparation of a Revised DEIS/EIR released in August 2004. The FEIS/EIR contains responses to comments received on the Revised DEIS/EIR.

**Current Activities**

Following agreement to the Negotiated TROA in February 2007 by the negotiators, a FEIS/EIR was completed. The Negotiated TROA is available as an appendix to the FEIS/EIR or viewed at <http://www.usbr.gov/mp/troa/>. The FEIS/EIR considers current conditions as well as three alternatives: (1) No Action Alternative (current reservoir management in the future, without TROA); (2) Local Water Supply Alternative (current reservoir management in the future with modified water sources, without TROA); and (3) TROA (changed reservoir management in the future). Section

**Figure 7.9.—Example of NOA for Nondelegated FEIS (continued).**

205 of the Settlement Act also requires that TROA, once approved, be issued as a Federal Regulation. A draft regulation is being prepared for publication in the *Federal Register* at a later date. The Secretary cannot sign TROA until a ROD has been completed. The State of California cannot sign TROA until it has considered and certified a FEIS/EIR. These and other steps, including approval by the *Orr Ditch and Truckee River General Electric* courts, must be completed before TROA may be implemented.

**Description of Alternatives**

The TROA Alternative is identified in the FEIS/EIR as the preferred and environmentally superior alternative.

**No Action Alternative (No Action).** Under No Action, Truckee River reservoir operations would remain unchanged from current operations and would be consistent with existing court decrees, agreements, and regulations that currently govern surface water management (i.e., operating reservoirs in the Truckee River and Lake Tahoe basins and maintaining current minimum instream flows) in the Truckee River basin. TMWA's existing programs for surface water rights acquisition and groundwater pumping for M&I use would continue. Groundwater pumping and water conservation in Truckee Meadows, however, would satisfy a greater proportion of projected future M&I demand than under current conditions. Groundwater pumping in California would also increase to satisfy a greater projected future M&I demand.

**Local Water Supply Alternative (LWSA).** All elements of Truckee River reservoir operations, river flow management, Truckee River hydroelectric plant operations, minimum reservoir releases, reservoir spill and precautionary release criteria, and water exportation from the upper Truckee River basin and Lake Tahoe basin under

**Figure 7.9.—Example of NOA for Nondelegated FEIS (continued).**

LWSA would be the same as described under No Action. The principal differences between LWSA and No Action would be the source of water used for M&I purposes, extent of water conservation, implementation of a groundwater recharge program in Truckee Meadows, and assumptions regarding governmental decisions concerning approval of new water supply proposals.

**TROA Alternative (TROA).** TROA would modify existing operations of all designated reservoirs to enhance coordination and flexibility while ensuring that existing water rights are served and flood control and dam safety requirements are met. TROA would incorporate, modify, or replace various provisions of the Truckee River Agreement (TRA) and the Tahoe-Prosser Exchange Agreement (TPEA). As negotiated, TROA would supersede all requirements of any agreements concerning the operation of all reservoirs, including those of TRA and TPEA, and would become the sole operating agreement for all designated reservoirs.

All reservoirs would continue to be operated under TROA for the same purposes as under current operations and with most of the same reservoir storage priorities as under No Action and LWSA. The Settlement Act requires that TROA ensure that water is stored in and released from Truckee River reservoirs to satisfy the exercise of water rights in conformance with the *Orr Ditch* decree and *Truckee River General Electric* decree, except for those rights that are voluntarily relinquished by the parties to the PSA, or by any other persons or entities, or which are transferred pursuant to State law.

The primary difference between TROA and the other alternatives is that TROA would provide opportunities for storing and managing various categories of credit water, not provided for in current operations. Signatories to TROA generally would be allowed

**Figure 7.9.—Example of NOA for Nondelegated FEIS (continued).**

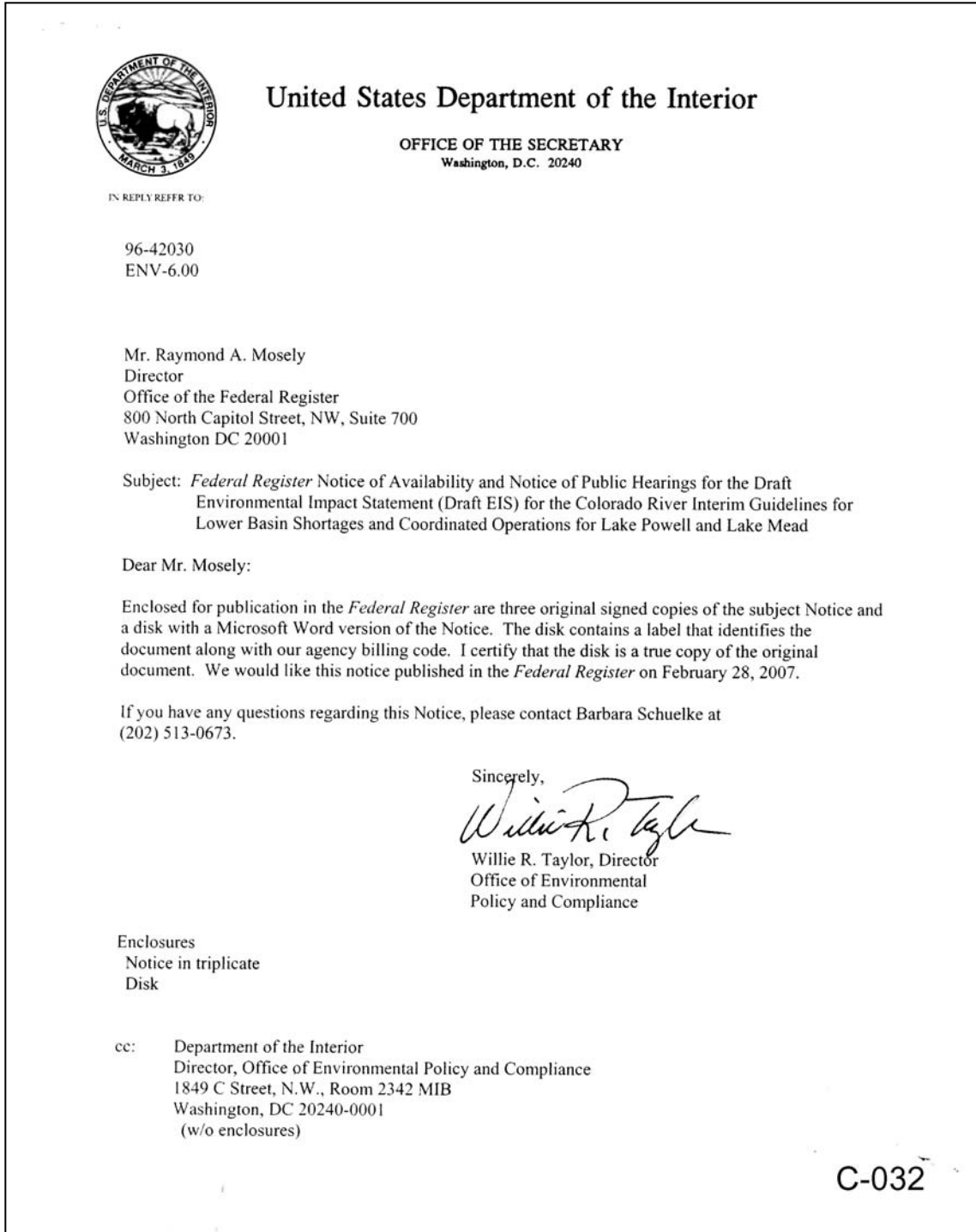
to accumulate credit water in storage by retaining or capturing water in a reservoir that would have otherwise been released from storage or passed through the reservoir to serve their respective downstream water right (e.g., retaining Floriston Rate water that would have been released to serve an *Orr Ditch* decree water right). In cases with a change in the place or type of use, such storage could take place only after a transfer in accordance with applicable State water law. Once accumulated, credit water would be classified by category with a record kept of its storage, exchange, and release. Credit water generally would be retained in storage or exchanged among the reservoirs until needed and released to satisfy its beneficial use. The Interim Storage Agreement (negotiated in accordance with Section 205(b) (3) of the Settlement Act) would be terminated and new storage agreements between the Bureau of Reclamation and TROA signatories desiring to store credit water would be required.

In addition to credit water, TROA also establishes criteria for new wells in the Truckee River Basin in California to minimize short-term reduction in stream flow, provides for the implementation of the interstate allocation between California and Nevada, provides for the settlement of litigation, establishes a habitat restoration fund for the Truckee River, and establishes more strict conditions and approval requirements for pumping or siphoning water from Lake Tahoe, among other benefits.

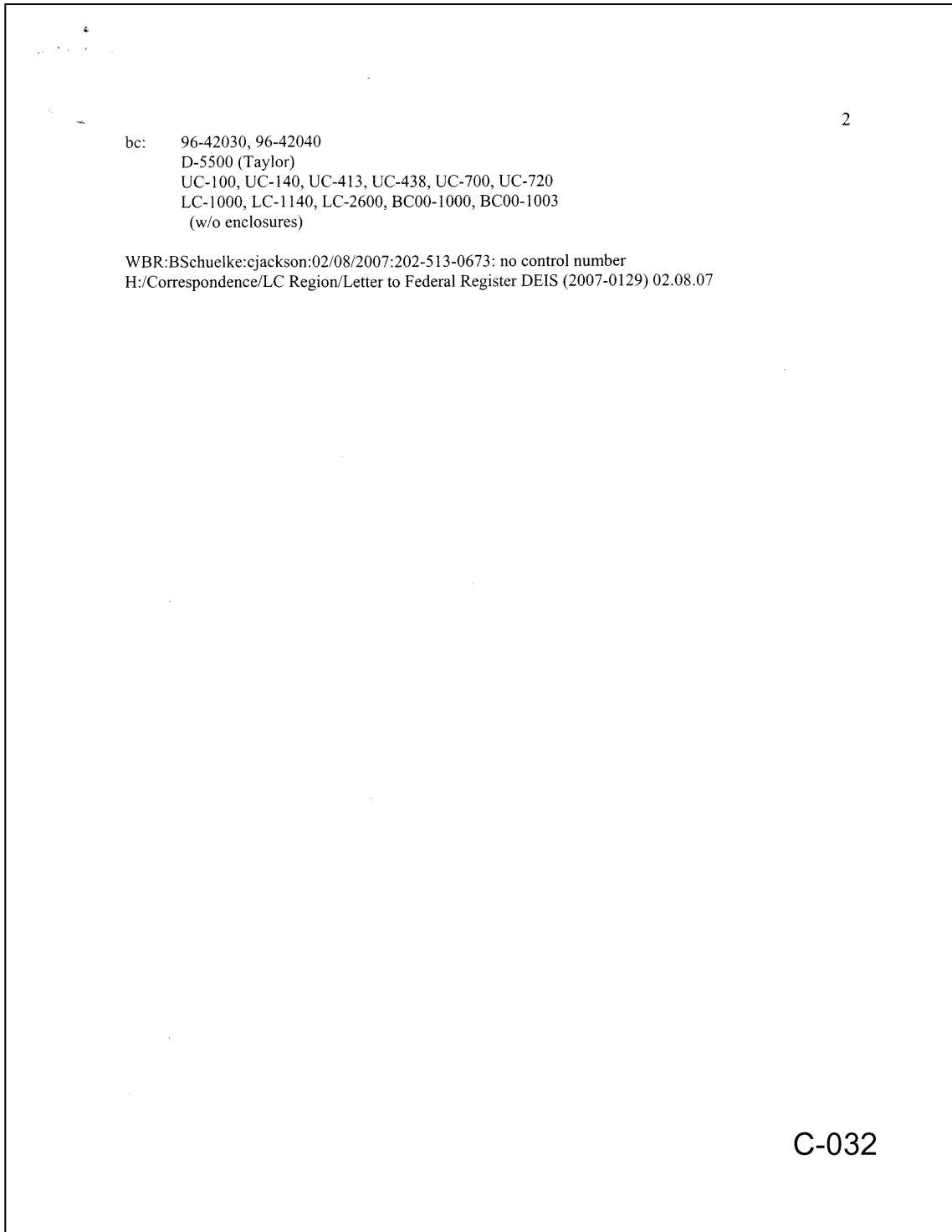
Dated: \_\_\_\_\_

Signed: \_\_\_\_\_  
Willie R. Taylor  
Director, Office of Environmental  
Policy and Compliance

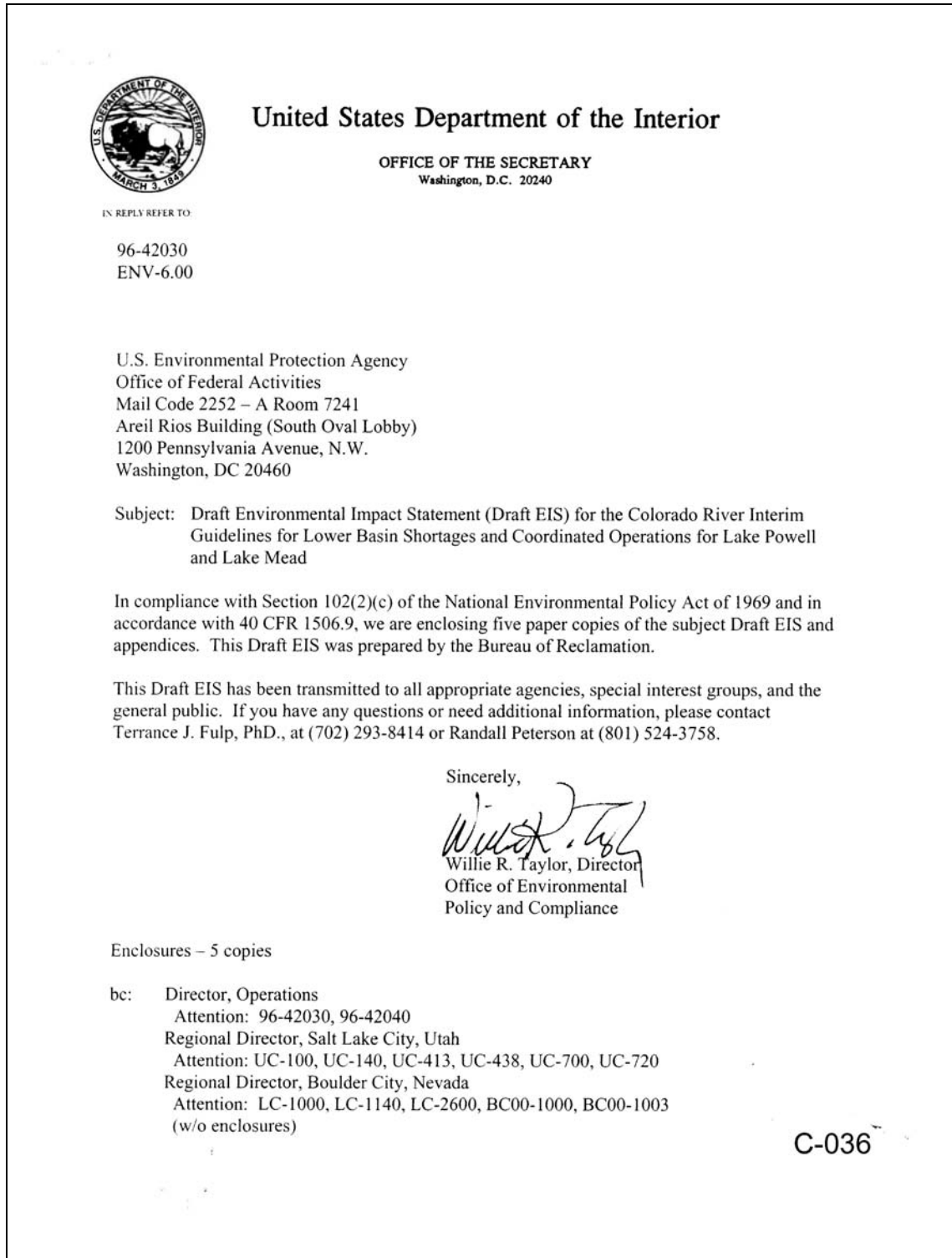
**Figure 7.9.—Example of NOA for Nondelegated FEIS (continued).**



**Figure 7.10.—Example of letter from the Director of OEPC to the Office of the Federal Register transmitting FR Notice for Nondelegated EIS.**



**Figure 7.10.—Example of letter from the Director of OEPC to the Office of the Federal Register transmitting FR Notice for Nondelegated EIS (continued).**



**Figure 7.11.—Example of letter from the Director of OEPC to EPA transmitting Nondelegated EIS.**

UC-413  
ENV-6.00

MEMORANDUM

To: Director, Operations  
Attention: 96-42040 (UC)

From: Larry Walkoviak  
Regional Director

Subject: Navajo-Gallup Water Supply Project Planning Report and Final Environmental Impact Statement (PR/FEIS) – Filing Package (Control No. FES 09-10) – Filing Date July 6, 2009

Attached for your processing and hand delivery to appropriate entities are the following documents for filing the subject PR/FEIS:

1. Regional Director's letter to the Environmental Protection Agency (EPA) transmitting one paper copy of the FEIS (Volumes 1-3) and three copies of the FEIS in electronic format.
2. Regional Director's memorandum to the Office of Environmental Policy and Compliance (OEPC) transmitting one paper copy of the FEIS (Volumes 1-3) and two copies of the FEIS in electronic format.
3. A signed copy of the Notice of Availability for the Navajo-Gallup Water Supply Project PR/FEIS. The signed transmittal letter to the Office of the Federal Register and three signed originals of the Notice of Availability (along with a CD) have already been sent via Federal Express to the Office of the Federal Register for publication. The Notice of Availability will be published in the *Federal Register* on **Monday, July 6, 2009**.
4. Four paper copies of the FEIS, Volumes 1-3. The control number for the PR/FEIS has already been obtained from the Office of Environmental Policy and Compliance. The control number for this PR/FEIS is **FES 09-10**. This number must be printed, stamped, or hand written on the front page or cover sheet of each paper copy of the EIS in the filing package. Of the four paper copies of the document, one copy should be provided to EPA, one copy should be provided to OEPC, one copy should be provided to Interior's Natural Resource Library (no transmittal memorandum is needed), and one copy should be retained in the Liaison's Office for future use.

**Figure 7.12.—Example of memorandum from the Regional Director to the Director, Operations, transmitting filing package to the Regional Liaison.**



5. Seven copies of the FEIS in electronic format. Of the seven copies in electronic format, three copies should be provided to EPA, two copies should be provided to OEPC, one copy should be provided to Interior's Natural Resource Library, and one copy should be retained in the Liaison's Office for future use.

**The actual filing of the PR/FEIS with EPA should occur on Monday, July 6, 2009.** Jayne Kelleher of the regional office will coordinate with you throughout the filing process to ensure that the filing package is processed in accordance with National Environmental Policy Act guidelines. If you have any questions, please contact Ms. Kelleher at 801-524-3680. In addition, please notify Ms. Kelleher immediately upon receipt of this memorandum and attachments and when the documents have been successfully filed.

Attachments

bc: UC-413, UC-720  
WCG-CDeAngelis, WCG-BUilenberg, WCG-TStroh  
WCD-SPowers, WCD-MFrancis  
(w/attachments)

**Figure 7.12.—Example of memorandum from the Regional Director to the Director, Operations, transmitting filing package to the Regional Liaison (continued).**

UC-413  
ENV-6.00

U.S. Environmental Protection Agency  
Office of Federal Activities  
EIS Filing Section  
Ariel Rios Building (South Oval Lobby), Room 7220  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Subject: Navajo-Gallup Water Supply Project Planning Report/Final Environmental Impact Statement

In accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969, we are enclosing five paper copies of the Navajo-Gallup Water Supply Project Planning Report and Final Environmental Impact Statement, Volumes 1-3.

Transmittal to the public will be completed the same day this document is submitted for filing. For further information, please contact Terry Stroh at 970-248-0608.

Sincerely,

Larry Walkoviak  
Regional Director

Enclosures

bc: 96-42040  
UC-413, UC-720  
WCG-CDeAngelis, WCG-BUilenberg, WCG-TStroh  
WCD-SPowers, WCD-MFrancis  
(w/o enclosures)

**Figure 7.13.—Example of letter from the Regional Director to EPA transmitting Delegated EIS.**

UC-413  
ENV-6.00

Memorandum

To: Director, Office of Environmental Policy and Compliance  
Department of the Interior, Washington, D.C.

From: Larry Walkoviak  
Regional Director

Subject: Navajo-Gallup Water Supply Project Planning Report and Final Environmental  
Impact Statement (PR/FEIS)

In accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969, we are attaching one paper copy and two CDs of the PR/FEIS, Volumes 1-3.

If you have any questions or need additional information, please contact Mr. Terry Stroh, Bureau of Reclamation, at 970-248-0608.

Attachments

bc: 96-42040  
UC-413, UC-720  
WCG-CDeAngelis, WCG-BUilenberg, WCG-TStroh  
WCD-SPowers, WCD-MFrancis  
(w/o attachments)

**Figure 7.14.—Example of memorandum to the Director of OEPC transmitting EIS.**



IN REPLY REFER TO:

UC-413  
ENV-6.00

## United States Department of the Interior

### BUREAU OF RECLAMATION

Upper Colorado Regional Office  
125 South State Street, Room 6107  
Salt Lake City, Utah 84138-1147



March 30, 2007

Dear Interested Party:

Enclosed for your review and comment is a copy of the Planning Report and Draft Environmental Impact Statement for the Navajo-Gallup Water Supply Project (PR/DEIS). The PR/DEIS was prepared by the Bureau of Reclamation and provides a discussion for the: (1) various ways to provide a municipal and industrial (M&I) water supply to the Navajo Nation; City of Gallup, New Mexico; and Jicarilla Apache Nation; (2) identification of a preferred alternative; and (3) associated environmental impacts and costs of such an endeavor, should it be undertaken.

The PR/DEIS presents alternatives for providing an anticipated year 2040 M&I water supply for the project area. Alternatives considered include diverting and distributing water from the San Juan River using various configurations, water conservation using existing groundwater supplies, and no action.

The PR/DEIS is now available for a 90-day public review period. Public meetings to obtain input on the PR/DEIS will take place from 6:00 p.m. to 9:00 p.m. and are scheduled as follows:

- **Tuesday, May 22, 2007** – University of New Mexico, Calvin Hall Room 248, 200 College Drive, Gallup, New Mexico
- **Wednesday, May 23, 2007** – Crownpoint Chapter House, Building CO23-001, East Crownpoint Road, Crownpoint, New Mexico
- **Thursday, May 24, 2007** – St. Michaels Chapter House, St Michaels, Arizona
- **Tuesday, June 5, 2007** – Shiprock Chapter House, Highway 61, Shiprock, New Mexico
- **Wednesday, June 6, 2007** – San Juan College, IT Building, Room 7103, 5001 College Blvd., Farmington, New Mexico

To be most helpful, comments on the draft should be as specific as possible and address the adequacy of the document or the merits of the alternatives. Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold

Figure 7.15.—Example of letter to interested parties for DEIS.

your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Reclamation is not required to seek comments on the Planning Report and Final Environmental Impact Statement for the Navajo-Gallup Water Supply Project (PR/FEIS). Therefore, you are encouraged to raise all comments, recommendations, or objections regarding the PR/DEIS so that substantive comments are made available in time for Reclamation to meaningfully consider and respond to in the PR/FEIS.

Written comments from those unable to attend the meetings or those wishing to supplement their comments at the meetings should be addressed to Mr. Rege Leach, Bureau of Reclamation, Western Colorado Area Office, 835 East Second Avenue, Suite 300, Durango, Colorado, 81301. Comments may also be submitted by facsimile at 970-385-6539 or electronically at [navgal@uc.usbr.gov](mailto:navgal@uc.usbr.gov). Under the National Environmental Policy Act process, written and oral comments, received by the due date, are given the same consideration. Comments on the PR/DEIS must be received by Thursday, June 28, 2007.

If you would like further information or additional copies of the PR/DEIS (paper or CD ROM), please contact Mr. Rege Leach at the address given above, or you may contact him directly at 970-385-6500. The PR/DEIS is also available for viewing at the following internet location: <http://www.usbr.gov/uc/rm/navajo/nav-gallup/index.html>.

Thank you for participating in this environmental review process.

Sincerely,

/s/ Rick L. Gold

Rick L. Gold  
Regional Director

Enclosure

bc: Regional Director, Salt Lake City, Utah  
Attention: UC-413, UC-720  
Area Manager, Grand Junction, Colorado  
Attention: WCD-RLeach  
(w/o attachments)

Figure 7.15.—Example of letter to interested parties for DEIS (continued).

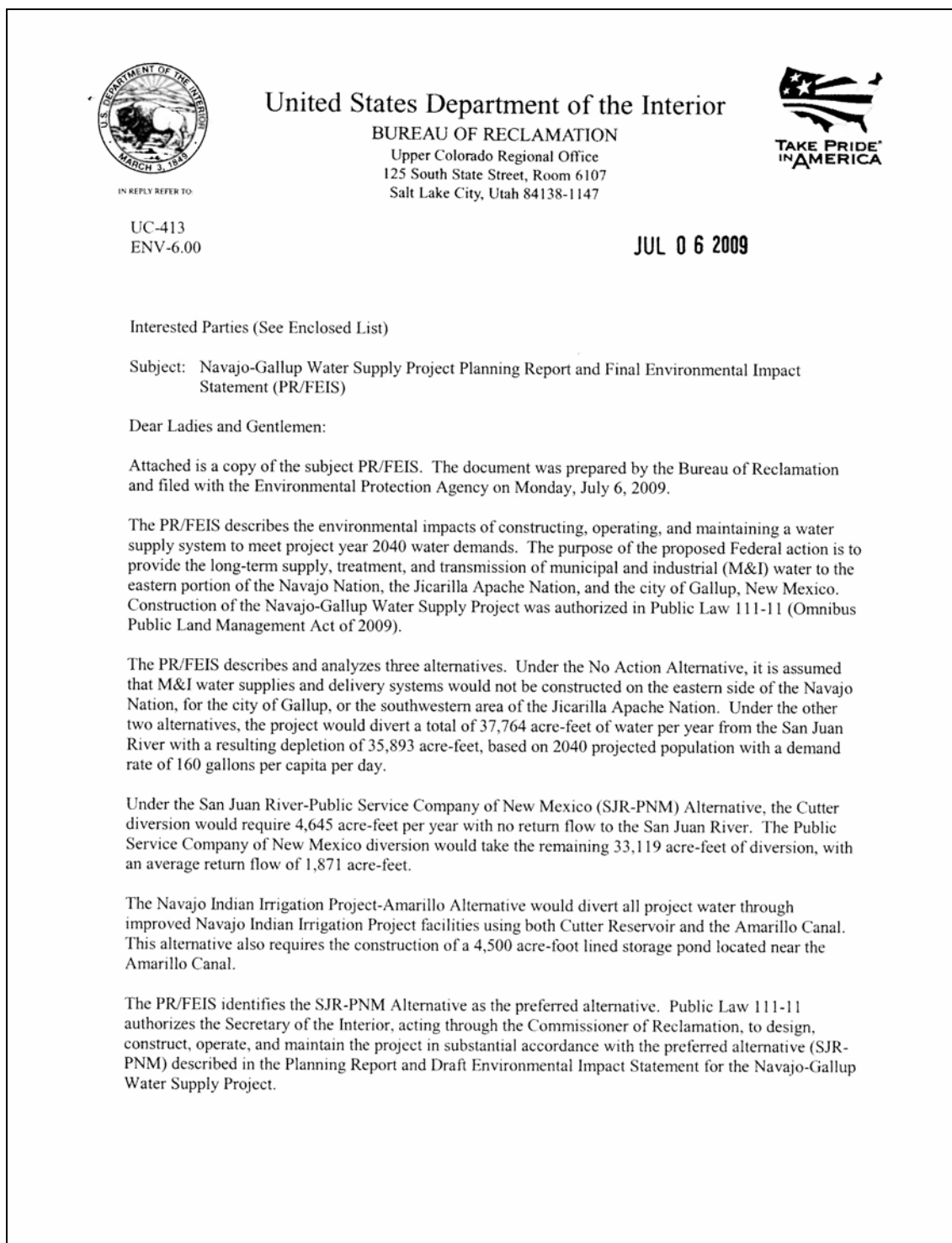
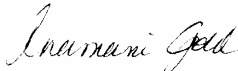


Figure 7.16.—Example of letter to interested parties for FEIS.

If you have questions or need additional copies of the PR/FEIS, please contact Mr. Stan Powers at 970-385-6555, Mr. Terry Stroh at 970-248-0608, or for TDD access call 800-346-4128. The PR/FEIS is also available on Reclamation's web site at <http://www.usbr.gov/uc/> (click on Environmental Documents).

Sincerely,

  
for Larry Walkoviak  
Regional Director

Enclosure

Figure 7.16.—Example of letter to interested parties for FEIS (continued).

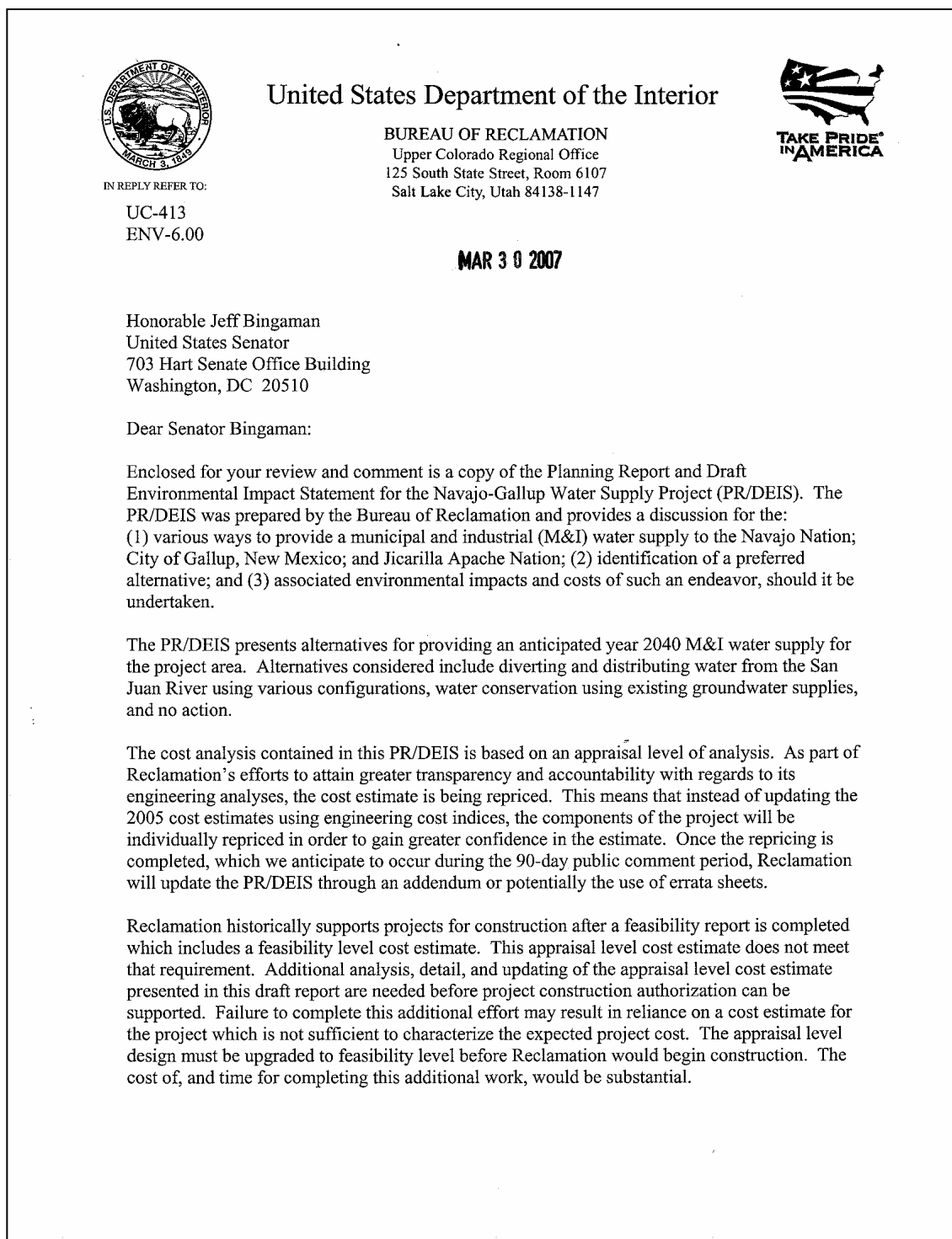


Figure 7.17.—Example of letter to elected officials (optional).



Reclamation has developed this PR/DEIS pursuant to Public Law 92-199 and the general authority to conduct water resources planning under the Reclamation Act of 1902 and all acts amendatory thereof and supplementary thereto. Reclamation, however, does not have the current substantive or budgetary authorization that is required to construct, operate, and maintain any proposed facilities discussed in this PR/DEIS, and it will take an act of Congress to provide such authority. In addition, Reclamation takes no position on whether such a project should be authorized. The indication of a preferred alternative is solely to meet the requirements of the National Environmental Policy Act of 1969 and is not an indication that a particular alternative should be pursued since, as noted earlier, there is no project authorization that would allow Reclamation to commence this project. Finally, we are aware that the Navajo Nation and the State of New Mexico have reached an agreement concerning the settlement of the Navajo's water rights in the San Juan River Basin in New Mexico and that a part of the settlement is the construction, operation, and maintenance of the Navajo-Gallup Water Supply Project. We wish to be clear that neither Reclamation, the Department of the Interior, or the Administration have taken a position on the Navajo-San Juan Settlement executed between the Navajo Nation and the State of New Mexico and that nothing herein is any indication of any position regarding the overall settlement.

The PR/DEIS is now available for a 90-day public review period. Public meetings to obtain input on the PR/DEIS will take place from 6:00 p.m. to 9:00 p.m. and are scheduled as follows:

- **Tuesday, May 22, 2007** – University of New Mexico, Calvin Hall Room 248, 200 College Drive, Gallup, New Mexico
- **Wednesday, May 23, 2007** – Crownpoint Chapter House, Building CO23-001, East Crownpoint Road, Crownpoint, New Mexico
- **Thursday, May 24, 2007** – St. Michaels Chapter House, St Michaels, Arizona
- **Tuesday, June 5, 2007** – Shiprock Chapter House, Highway 61, Shiprock, New Mexico
- **Wednesday, June 6, 2007** – San Juan College, IT Building, Room 7103, 5001 College Blvd., Farmington, New Mexico

To be most helpful, comments on the draft should be as specific as possible and address the adequacy of the document or the merits of the alternatives. Reclamation is not required to seek comments on the final PR/EIS. Therefore, you are encouraged to raise all comments, recommendations, or objections regarding the PR/DEIS so that substantive comments are made available in time for Reclamation to meaningfully consider and respond to them in the final PR/EIS.

Written comments from those unable to attend the meetings or those wishing to supplement their comments at the meetings should be addressed to Mr. Rege Leach, Bureau of Reclamation, Western Colorado Area Office, 835 East Second Avenue, Suite 300, Durango, Colorado 81301.

**Figure 7.17.—Example of letter to elected officials (optional) (continued).**

Comments may also be submitted by facsimile at 970-385-6539 or electronically at [navgal@uc.usbr.gov](mailto:navgal@uc.usbr.gov). Under the National Environmental Policy Act process, written and oral comments, received by the due date, are given the same consideration. Comments on the PR/DEIS must be received by Thursday, June 28, 2007.

If you would like further information or additional copies of the PR/DEIS (paper or CD ROM), please contact Mr. Rege Leach at the address given above, or you may contact him directly at 970-385-6500. The PR/DEIS is also available for viewing at the following internet location: <http://www.usbr.gov/uc/rm/navajo/nav-gallup/index.html>.

Thank you for participating in this environmental review process.

Sincerely,

**RICK L. GOLD**

Rick L. Gold  
Regional Director

Enclosure

bc: Regional Director, Salt Lake City, Utah  
Attention: UC-413, UC-720  
Area Manager, Grand Junction, Colorado  
Attention: WCD-RLeach  
(w/o attachments)

WBR:JKelleher:glittle:03/20/07:801-524-3680  
R:\RMD\JKelleher\Navajo-GallupDEISInterParties

Figure 7.17.—Example of letter to elected officials (optional) (continued).

UC-413  
ENV-6.00

Honorable Joe Shirley  
President, Navajo Nation  
P.O. 9000  
Window Rock, Arizona 86515

Subject: Navajo-Gallup Water Supply Project Planning Report and Final Environmental Impact Statement

Dear Honorable \_\_\_\_\_:

Enclosed is a copy of the Navajo-Gallup Water Supply Project Planning Report and Final Environmental Impact Statement (PR/FEIS). The document was prepared by the Bureau of Reclamation and filed with the Environmental Protection Agency on Monday, July 6, 2009.

The PR/FEIS describes the environmental impacts of constructing, operating, and maintaining a water supply system to meet project year 2040 water demands. The purpose of the proposed federal action is to provide the long-term supply, treatment, and transmission of municipal and industrial (M&I) water to the eastern portion of the Navajo Nation, the Jicarilla Apache Nation, and the city of Gallup, New Mexico. Construction of the Navajo-Gallup Water Supply Project was authorized in Public Law 111-11 (Omnibus Public Land Management Act of 2009).

The PR/FEIS describes and analyzes three alternatives. Under the No Action Alternative, it is assumed that M&I water supplies and delivery systems would not be constructed on the eastern side of the Navajo Nation, for the city of Gallup, or the southwestern area of the Jicarilla Apache Nation. Under the other two alternatives, the project would divert a total of 37,764 acre-feet of water per year from the San Juan River with a resulting depletion of 35,893 acre-feet, based on 2040 projected population with a demand rate of 160 gallons per capita per day.

Under the San Juan River-Public Service Company of New Mexico (SJR-PNM) Alternative, the Cutter diversion would require 4,645 acre-feet per year with no return flow to the San Juan River. The PNM diversion would take the remaining 33,119 acre-feet of diversion, with an average return flow of 1,871 acre-feet.

The Navajo Indian Irrigation Project-Amarillo (NIIP-Amarillo) Alternative would divert all project water through improved NIIP facilities using both Cutter Reservoir and the Amarillo Canal. This alternative also requires the construction of a 4,500 acre-foot lined storage pond located near the Amarillo Canal.

The PR/FEIS identifies the SJR-PNM Alternative as the preferred alternative. Public Law 111-11 authorizes the Secretary of the Interior, acting through the Commissioner of Reclamation, to design, construct, operate, and maintain the project in substantial accordance with the preferred

**Figure 7.18.—Example of letter to affected Indian tribes.**

alternative (SJR-PNM) described in the Planning Report and Draft Environmental Impact Statement for the Navajo-Gallup Water Supply Project.

If you have questions or need additional copies of the PR/FEIS, please contact Mr. Stan Powers at 970-385-6555 or Mr. Terry Stroh at 970-248-0608. The PR/FEIS is also available on Reclamation's web site at <http://www.usbr.gov/uc/> (click on Environmental Documents).

Sincerely,

Larry Walkoviak  
Regional Director

Enclosure

Identical letters sent to the following American Indian Tribal Governments:

Honorable Levi Pesata  
President, Jicarilla Apache Nation  
P.O. Box 507  
Dulce, New Mexico 87528

Honorable Matthew Box  
Chairman, Southern Ute Indian Tribe  
P.O. Box 737  
Ignacio, Colorado 81137

Honorable Ernest House, Sr.  
Chairman, Ute Mountain Ute Tribe  
P.O. Box 248  
Towaoc, Colorado 81334

bc: 96-42040  
UC-413, UC-434, UC-720  
WCG-CDeAngelis, WCG-BUilenberg, WCG-TStroh  
WCD-SPowers, WCD-MFrancis  
(each w/o enclosure)

Figure 7.18.—Example of letter to affected Indian tribes (continued).

**4310-MN-P**

**DEPARTMENT OF THE INTERIOR**

Bureau of Reclamation

Extension of Comment Period for Review of the Draft Environmental Impact Statement for the Cachuma Lake Resource Management Plan, Santa Barbara County, California

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of extension.

**SUMMARY:** The Bureau of Reclamation is extending the review period for the draft Environmental Impact Statement to October 31, 2008. The notice of availability of the DEIS was published in the Federal Register on July 25, 2008 (73 FR 43472). The public review period was originally to end on September 23, 2008.

**DATES:** Submit written comments on the draft Environmental Impact Statement on or before October 31, 2008.

**ADDRESSES:** Send written comments and requests for copies to Mr. Jack Collins, Bureau of Reclamation, 1243 N Street, Fresno, CA 93721; or call 559-349-4544 (TDD 559-487-5409); or e-mail [jcollins@mp.usbr.gov](mailto:jcollins@mp.usbr.gov). The draft Environmental Impact Statement is also accessible from the following website:

*[http://www.usbr.gov/mp/nepa/nepa\\_projdetails.cfm?Project\\_ID=283m](http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=283m)*

See SUPPLEMENTARY INFORMATION section for locations where copies of the draft Environmental Impact Statement are available for public review.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jack Collins, 559-349-4544 (TDD 559-487-5409); [jcollins@mp.usbr.gov](mailto:jcollins@mp.usbr.gov).

1

**Figure 7.19.—Example of news release for an NOA and Notice of Public Hearings for DEIS.**

**SUPPLEMENTARY INFORMATION:** Due to public interest in an extended comment period, Reclamation is revising the close of the comment period to October 31, 2008.

Copies of the draft Environmental Impact Statement are available for public review at the following locations:

- Bureau of Reclamation, Mid-Pacific Region, Regional Library, 2800 Cottage Way, Sacramento, CA 95825.
- Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno, CA 93721.
- Cachuma Lake State Recreation Area, Highway 154, Santa Barbara, CA 93105.
- Santa Maria Public Library, 420 South Broadway Avenue, Santa Maria, CA 93454.
- Santa Barbara Public Library, Central Location, 40 East Anapamu Street, Santa Barbara, CA 93101.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW., Main Interior Building, Washington, DC 20240-0001.

**Public Disclosure**

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment - including your personal identifying information - may be made publicly available at any

**Figure 7.19.—Example of news release for an NOA and Notice of Public Hearings for DEIS (continued).**

time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 12, 2008

Signed: /s/ Susan M. Fry  
Susan M. Fry  
Regional Environmental Officer  
Mid-Pacific Region

**Figure 7.19.—Example of news release for an NOA and Notice of Public Hearings for DEIS (continued).**

**4310-MN-P**

**DEPARTMENT OF THE INTERIOR**

Bureau of Reclamation

Notice of Cancellation of Environmental Impact Statement/Environmental Impact Report  
on the Proposed Amendment of the Water Service Contract Between the United States of  
America and the Sacramento Municipal Utility District, Sacramento, California

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of cancellation.

**SUMMARY:** The Bureau of Reclamation and the Sacramento Municipal Utility District  
are canceling plans to continue work on a joint environmental impact  
statement/environmental impact report on a proposed amendment of the water service  
contract between the United States and Sacramento Municipal Utility District. The  
reason for canceling is that the project will be addressed as part of the environmental  
review processes for both the Freeport Regional Water Project and the American River  
Division long-term contract renewal.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rob Schroeder, Bureau of  
Reclamation, (916) 989-7274.

**SUPPLEMENTARY INFORMATION:** The Bureau of Reclamation and the  
Sacramento Municipal Utility District had proposed to amend the existing contract to

**Figure 7.20.—Example of news release for an NOA for FEIS.**



change the point of diversion of 30,000 acre-feet annually of contract water for municipal and industrial uses for Sacramento County Water Agency.

Dated:           (date signed)          

Signed:   /s/ Frank Michny            
Frank Michny  
Regional Environmental Officer  
Mid-Pacific Region

**Figure 7.20.—Example of news release for an NOA for FEIS.**

**4310-MN-P**

**DEPARTMENT OF THE INTERIOR**

Bureau of Reclamation

Cachuma Lake Resource Management Plan, Santa Barbara County, California

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of extension of public comment period for review of the Draft Environmental Impact Statement (DEIS).

**SUMMARY:** The Bureau of Reclamation is extending the review period for the DEIS to October 31, 2008. The notice of availability of the DEIS was published in the *Federal Register* on July 25, 2008 (73 FR 43472). The public review period was originally to end on September 23, 2008.

**DATES:** Written comments on the DEIS will be accepted on or before October 31, 2008.

**ADDRESSES:** Send written comments on the DEIS and requests for copies to Mr. Jack Collins, Bureau of Reclamation, 1243 N Street, Fresno, CA 93721; or call 559-349-4544 (TDD 559-487-5409); or e-mail [jcollins@mp.usbr.gov](mailto:jcollins@mp.usbr.gov). The DEIS is also accessible from the following website:

[http://www.usbr.gov/mp/nepa/nepa\\_projdetails.cfm?Project\\_ID=283m](http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=283m).

See Supplementary Information section for locations where copies of the DEIS are available for public review.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jack Collins, 559-349-4544 (TDD 559-487-5409); [jcollins@mp.usbr.gov](mailto:jcollins@mp.usbr.gov).

**Figure 7.21.—Example of Notice of Extension of Public Comment Period.**

**SUPPLEMENTARY INFORMATION:** Due to public interest in an extended comment period, Reclamation is revising the close of the comment period to October 31, 2008.

Copies of the DEIS are available for public review at the following locations:

- Bureau of Reclamation, Mid-Pacific Region, Regional Library, 2800 Cottage Way, Sacramento, CA 95825.
- Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno, CA 93721.
- Cachuma Lake State Recreation Area, Highway 154, Santa Barbara, CA 93105.
- Santa Maria Public Library, 420 South Broadway Avenue, Santa Maria, CA 93454.
- Santa Barbara Public Library, Central Location, 40 East Anapamu Street, Santa Barbara, CA 93101.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW., Main Interior Building, Washington, DC 20240-0001.

**Public Disclosure**

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment - including your personal identifying information - may be made publicly available at any

**Figure 7.21.—Example of Notice of Extension of Public Comment Period (continued).**

time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 12, 2008

Signed: /s/ Susan M. Fry  
Susan M. Fry  
Regional Environmental Officer  
Mid-Pacific Region

**Figure 7.21.—Example of Notice of Extension of Public Comment Period (continued).**

**4310-MN-P**

**DEPARTMENT OF THE INTERIOR**

Bureau of Reclamation

Environmental Impact Statement/Environmental Impact Report on the Proposed  
Amendment of the Water Service Contract Between the United States of America and  
the Sacramento Municipal Utility District, Sacramento, California

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of cancellation.

**SUMMARY:** The Bureau of Reclamation (Reclamation) and the Sacramento  
Municipal Utility District (SMUD) are canceling plans to continue work on a joint  
environmental impact statement/environmental impact report (EIS/EIR) on a proposed  
amendment of the water service contract between the United States and SMUD. The  
reason for canceling is that the project will be addressed as part of the environmental  
review processes for both the Freeport Regional Water Project and the American River  
Division long-term contract renewal.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rob Schroeder, Reclamation,  
at (916) 989-7274.

**SUPPLEMENTARY INFORMATION:** Reclamation and SMUD had proposed to  
amend the existing contract to change the point of diversion of 30,000 acre-feet

**Figure 7.22.—Example of Notice of Cancellation.**

annually of contract water for municipal and industrial uses for Sacramento County  
Water Agency.

Dated: (date signed)

Signed: /s/ Frank Michny  
Frank Michny  
Regional Environmental Officer  
Mid-Pacific Region

**Figure 7.22.—Example of Notice of Cancellation (continued).**

# Chapter 7 Useful Links

Administrative Procedures Act

<http://www.archives.gov/federal-register/laws/administrative-procedure/557.html>

Clean Air Act

<http://www.epa.gov/air/caa/>

Clean Water Act

<http://epw.senate.gov/water.pdf>

Departmental Manual

[http://elips.doi.gov/app\\_dm/index.cfm?fuseaction=home](http://elips.doi.gov/app_dm/index.cfm?fuseaction=home)

Endangered Species Act

<http://www.fws.gov/endangered/esa-library/pdf/ESAall.pdf>

ESM 10-14

<http://oepec.doi.gov/ESM/ESM%2010-14%20%28State%20and%20Local%20Agency%20Review%20of%20Enviro%20Statements%29.pdf>

ESM 10-15

<http://oepec.doi.gov/ESM/ESM%2010-15%20%28Pub%20and%20Dist%20of%20DOI%20NEPA%20Documents%20Electronic%20Methods%29.pdf>

ESM 10-17

[http://oepec.doi.gov/ESM/ESM%2010-17%20\(Tiered%20and%20Transference%20of%20Analyses\).pdf](http://oepec.doi.gov/ESM/ESM%2010-17%20(Tiered%20and%20Transference%20of%20Analyses).pdf)

ESM 11-2

<http://oepec.doi.gov/ESM/ESM%2011-2%20%28Procedures%20for%20Approving%20and%20Filing%20EISs%29.pdf>

Federal Register Document Drafting Handbook

<http://www.archives.gov/federal-register/write/handbook/ddh.pdf>

National Environmental Policy Act

[http://ceq.hss.doe.gov/laws\\_and\\_executive\\_orders/the\\_nepa\\_statute.html](http://ceq.hss.doe.gov/laws_and_executive_orders/the_nepa_statute.html)

Reclamation Manual, AMD- 01-02

<http://www.usbr.gov/recman/adm/adm01-02.pdf>

National Environmental Policy Act Handbook

40 CFR 1500-1508

[http://ceq.hss.doe.gov/ceq\\_regulations/regulations.html](http://ceq.hss.doe.gov/ceq_regulations/regulations.html)

43 CFR 46

<http://www.doi.gov/oepr/nepafr/docs/Federal%20Register%20October%202015,%202008%20NEPA.pdf>



## Chapter 8

# Environmental Impact Statement— Content

## 8.1 Preparation (40 CFR 1501 through 1502 and 43 CFR 46.415)

To achieve NEPA's purposes for an EIS (see chapters 2 and 3), Reclamation offices shall prepare EISs in the following manner:

EISs shall:

- Be prepared by an interdisciplinary team, formed as soon as an EIS is determined to be likely, and integrated into all aspects of project development.
- Be analytic rather than encyclopedic.
- Discuss impacts in proportion to their significance, with only a brief discussion of less-than-significant issues. As in an EA, only enough discussion should be included to show why more study is not warranted.
- Be concise and no longer than absolutely necessary to comply with NEPA and CEQ regulations. Length should vary primarily with potential environmental issues and then with project complexity.
- State how alternatives considered in the EIS and decisions based on it will or will not achieve the objectives defined in Sections 101 and 102(1) of NEPA and other environmental laws and policies.
- Present a range of alternatives to be considered by the ultimate agency decisionmakers.

The document should not be written in such a way that it appears to justify decisions already made or to promote an alternative. The analysis must remain objective and free from editorial comment.

EIS preparers should strive to keep EISs within the normal 150-page limit set by the CEQ regulations. For proposals of unusual scope and complexity, the CEQ regulations state that documents shall normally not exceed 300 pages in length. However, proposals of great complexity sometimes result in EISs that require more analyses and documentation and can be even greater in length. This

should be the exception and not the norm. The document should be written in a clear, concise fashion, based on the necessary environmental analysis. Every attempt should be made to avoid overly technical language or jargon. The text and appropriate graphics should be presented so the decisionmakers and the public can readily understand them.

## **8.2 Format and Organization (40 CFR 1502.10 and 43 CFR 46.415)**

CEQ regulations (40 CFR 1502.10) identify a preferred standard format that can be modified to fit a particular situation. The regional and Policy and Administration environmental staff should be consulted before a nonstandard format is used.

The standard CEQ format includes:

- a. Cover sheet
- b. Summary
- c. Table of contents
- d. Purpose of and need for action
- e. Alternatives including the proposed action
- f. Affected environment
- g. Environmental consequences
- h. List of preparers
- i. Distribution list
- j. Index
- k. Appendices (if any)

Sections a, b, c, h, i, and j are required and shall be in any format used. The substance of sections d, e, f, g, and k shall also be included in any EIS.

The EIS may be organized in several ways. Some of the more common variations are:

- A combined “Affected Environment” and “Environmental Consequences” discussion
- Separate “Affected Environment” and “Environmental Consequences” sections
- Display effects on an alternative-by-alternative basis, analyzing each affected resource or feature under one alternative before turning to the next alternative and its effects

- Describe one affected resource, or a group of similar resources, followed by a comparison of the impacts of each alternative upon it on an alternative-by-alternative basis

All of these approaches, or different combinations of them, are acceptable. Generally, the combined “Affected Environment/Environmental Consequences” chapter is more difficult to write but is considered by some to be easier for the reader, and it reduces redundancy. An EIS with more than a few alternatives and resources to be analyzed may use separate chapters to best present the information so readers can compare alternatives. The EIS team should carefully consider which of these presentations is most appropriate for a particular EIS. Each environmental resource or feature should be analyzed by alternative in the same manner; each should have the net environmental effects, or residual impacts, given in summary form either at the beginning or end of the discussion. When the analyses are complete, their net effects should be summarized and placed in tabular form at the conclusion of the section.

Alternatives and resources should be presented in the same order throughout the document. Generally, the no action alternative is presented first to form the basis for comparison of impacts among the action alternatives. If the impacts of an alternative are the same as those of a previously presented alternative, then this fact should be noted, and the impacts should not necessarily be restated. If the impacts of the alternative are significantly different than those of the previously presented alternatives, these significant impacts should be described in detail.

When listed species or designated critical habitat, ITAs, sacred sites, or environmental justice may be affected, impacts should be specifically addressed in separate, identified sections. If appropriate, the EIS should explicitly state that there are no ITA or environmental justice issues related to the proposed action.

### **8.2.1 Organization by Affected Resources or Features**

The most commonly used organization of analysis is by affected resource area (e.g., water quality impacts are discussed in one location for all the alternatives). If the affected resources approach is used, the resources to be affected are discussed along with historic and present conditions and no action conditions; then, the impacts of the alternatives on the affected resource or feature are presented alternative by alternative and are compared to the no action alternative. If a resource or feature will not be affected by the alternatives, and the resource or feature is of significant local concern, the fact that the parameter will not be affected should be stated. The fact that alternatives may have the same or similar impacts should be stated and supported—it is not necessary to redescribe each and every impact of similar alternatives upon a given resource or feature.

### **8.2.2 Organization on an Alternative-by-Alternative Basis**

The impacts analysis can, instead, be presented on an alternative-by-alternative basis, in which all of the impacts of one alternative for all of the affected resource areas are grouped together; then, the impacts of the next alternative are presented, etc. If the alternative-by-alternative approach is used, the impacts of each alternative are described on a resource-by-resource basis under each alternative. The impacts of the action alternatives are determined by comparison to the no action alternative. In the absence of reasonably foreseeable changes, the no action alternative may be no different than the existing affected environment. If it is different, the differences between the existing affected environment and the no action alternative should be discussed.

When separate alternatives have the same impact on a resource or feature, redundancy can be reduced by analyzing the impacts of one alternative and simply referring back to that analysis for other alternatives with similar impacts.

### **8.3 Cover Sheet (40 CFR 1502.11)**

CEQ regulations require the use of a cover sheet, unless there is a compelling reason not to do so. The cover sheet should not exceed one page (figure 8.1) and should include:

- A list of the responsible agencies, including the lead agency and any cooperating agencies.
- The title of the proposed action (and, if appropriate, the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.
- The name, address, and telephone number of the person at Reclamation who can supply additional information. In most cases, this person will have had overall direct responsibility for the development of the EIS.
- A designation of the statement as a draft or final, or as a draft or final supplement, and the name of any other document with which it is integrated (EIS/feasibility study, etc.).
- A one-paragraph abstract of the EIS to include a statement as to whether the EIS is intended to serve any other review or compliance requirements (i.e., Section 404(r) exemption or compliance with EOs 11988 and 11990).
- Due date for comments in the case of a DEIS.

## **8.4 Summary (40 CFR 1502.12)**

The summary may be a separate document to stand in place of the EIS and can be circulated separately if the EIS is unusually long. It should adequately and accurately summarize the EIS and contain at least four elements—the purpose and need statement, the alternatives considered, a comparison of impacts of the alternatives, and identification of the preferred alternative (if known for the DEIS, and always for the FEIS). The summary shall emphasize the major conclusions, areas of controversy, issues raised by agencies and the public, and the issues to be resolved, including the choice of alternatives. It should include a clear definition of the action and the alternatives considered in the EIS (including the no action alternative). It should also include a comparison of the alternatives that highlights unresolved or controversial issues, with appropriate discussion of ITA, sacred sites, and environmental justice issues. It should not contain material not found in the main EIS and should be less than 15 pages long. The format should parallel the format of the EIS.

## **8.5 Purpose and Need Statement (40 CFR 1502.13)**

This section shall present a brief statement explaining why the action is being considered—the underlying purpose and need to which the agency is responding. This brief statement is a critical element that sets the overall direction of the process and serves as an important screening criterion for determining which alternatives are reasonable. All reasonable alternatives examined in detail must meet the defined purpose and need.

Interior's regulations at 43 CFR 46.420(a)(1) indicate that, in accordance with 40 CFR 1502.13, “purpose” and “need” may be described as distinct aspects defining the underlying situation that the agency is responding to. The “need” for action is the underlying problem the agency wants to fix or the opportunity to which the agency is responding with the action. The “purpose” is the goals or objectives that the agency is trying to achieve. Under this language, the purpose may be equated with the desired future condition. Note that this separate treatment of purpose and need is not required, and a single brief statement addressing purpose and need together may be adequate. The presentation is at the responsible official's discretion.

A brief background discussion may be included for additional information, as appropriate. Appropriate background information can include a brief history leading to the current situation, a summary of the authorizations that exist for the action, the legal constraints that limit action, and other information that assists a

reader in understanding how the purpose of and need for the project came to exist. This background discussion should be general and not tied to any specific alternative.

Care must be taken to ensure an objective presentation rather than a justification. A purpose and need statement will generally allow a limited range of reasonable alternatives. If a purpose and need statement appears to allow only one reasonable solution, the statement, as well as the reasons for rejecting other alternatives, should be re-examined and confirmed or revised, as appropriate.

### **8.5.1 Defining the Federal Action**

Simultaneously with the development of the purpose and need statement, the EIS should define, in a brief statement, what Federal action is under consideration. The Federal action is not necessarily the same thing as the preferred alternative, nor (especially for applicant-driven actions) the proposed action. The Federal action is the general response to the purpose and need and has a number of alternatives. For example, if the purpose and need statement indicates that a refuge is suffering from disease problems because of low water during the summer months, the proposed Federal action could be defined as supplying water to the refuge; the alternatives would encompass ways in which to supply water to the refuge (ground water, pipeline, new reservoir, etc.).

The proposed action should be defined in terms of the Federal decision to be made. When the proposed action is related to other actions—especially other Federal actions—a careful consideration of the independent value of the proposed action should be made. When the independence of the proposed action is not clear, it may be appropriate to expand the scope to include those other actions.

## **8.6 Description of Alternatives (40 CFR 1502.14 and 43 CFR 46.415 (b) and 46.110)**

The CEQ NEPA regulations characterize the alternatives chapter as “the heart of the environmental impact statement.” When preparing a planning report/environmental impact statement (PR/EIS), the PR portion must consider the P&G, and the EIS portion must consider CEQ regulations. Whenever two similar, but different, levels of requirements are to be met, every effort should be made to meet both levels of requirements. In every case, Reclamation shall meet the most extensive analysis requirements that are applicable. The discussion of alternatives shall include:

- Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

- Devote substantial treatment to each alternative considered in detail (reasonable alternatives), including the preferred alternative, so that reviewers may evaluate their comparative merits.
- Include reasonable alternatives not within the jurisdiction of the lead agency.
- Include the no action alternative. “No action” may be interpreted differently depending upon the nature of the proposal. No action can mean “no change” from current management or operations; or in a case where a new project is proposed, it can mean “no project.”
- Identify the agency’s preferred alternative, if one or more exists in the DEIS, and identify such alternatives in the FEIS.
- Include appropriate mitigation measures not already included in the alternatives. This will include identification of mitigation measures requested by an agency with jurisdiction by law, but not included. The reasons for not including the recommendations should be provided.

Reclamation will identify any consensus-based alternative(s) developed using consensus-based management.

The physical features and operational criteria of each reasonable alternative should be described in a concise fashion and a map included, if needed, to distinguish among alternatives. The descriptions are to help the reader understand the environmental impacts that will be discussed later.

A recommended order for the presentation of alternatives is:

- General discussion of the basis for the selection of alternatives (linkage between underlying purpose and need for action and alternatives).
- No action.
- Action alternatives—The alternatives should be presented in a logical order. This may be from simplest to most complex, or the preferred alternative may be first, or some other logical sequence may be followed. The same order of presentation should be used throughout the document. Note that the preferred alternative should be identified (if known for the DEIS, and always for the FEIS). Brief summary of alternatives considered, but not studied in detail, along with the reasons for their having been eliminated.

When preparing an EIS, the preferred alternative and other action alternatives studied in detail should receive comparable levels of analysis. CEQ requires the environmental impacts of the preferred alternative and reasonable alternatives to be presented in comparative form, sharply defining the issues and providing a clear basis for choice (§ 1502.14). The emphasis is upon comparability of the environmental effects, not on whether every alternative has been developed to exactly the same degree of detail. The presentation of alternatives should focus on differences—where alternatives are the same, the text can be reduced by referring to the descriptions of alternatives already discussed. Mitigating measures to reduce or eliminate adverse environmental consequences should be integrated into the action alternatives.

### **8.6.1 No Action Alternative**

A no action alternative must always be evaluated in the EIS. Because the no action alternative is the basis to which all other alternatives are compared, it should be presented first, so the reader can easily compare the other alternatives to it. “No action” represents a projection of current conditions and reasonably foreseeable actions to the most reasonable future responses or conditions that could occur during the life of the project without any action alternatives being implemented.

The no action alternative should not automatically be considered the same as the existing condition of the affected environment because reasonably foreseeable future actions may occur whether or not any of the project action alternatives are chosen. When the no action alternative is different from the existing condition, as projected into the future, the differences should be clearly defined. Differences could result from other water development projects, land use changes, municipal development, or other actions. “No action” is, therefore, often described as “the future without the project.” Sufficient discussion should be devoted to the no action alternative so that readers can make the needed comparisons for the evaluation. For O&M studies, the no action alternative assumes continuing current O&M activities with no change.

For projects with staged development, in which major features have been constructed but the project is not yet operational, it is not appropriate to select a no action alternative that assumes existing project facilities would not be used or would be removed. The appropriate characterization would be to assume an operational scenario based on those existing facilities. In some cases, however, it may not be possible to operate a project that is only partially constructed. In those instances, the no action alternative could describe a situation in which existing facilities would not be put into service. Authorized projects in the area being carried out by Reclamation, other Federal agencies, or other entities, with a reasonable certainty of occurring, should be considered in the no action alternative as being constructed. A project may be reasonably foreseeable if it is



included in a party's master plans or development plans, the necessary approvals have been granted, funds appropriated, and other necessary compliance requirements met.

### **8.6.2 Action Alternatives**

In examining the range of alternatives, CEQ's memorandum of July 22, 1983, states, in part, that "an agency's responsibilities to examine alternative sites have always been bounded by some notion of feasibility." CEQ stresses that agencies should not disregard the "common sense realities" of a given situation in developing alternatives. While this guidance is aimed at considering alternatives to an applicant's proposal, it has equal relevance in considering proposals generated within Reclamation (i.e., when considering the range of viable alternatives to the preferred action, the agency should strive for a realistic range of alternatives that reasonably could be considered and that will accomplish the project purpose and need). The range should include alternatives based upon input from other agencies, the public at large, and local community interests. If one or more community alternative(s) exist, and it is feasible and practical, it should be included in the EIS.

The lead agency has the ultimate responsibility to determine the appropriate range of alternatives. This decision can be controversial. Where substantial controversy may exist concerning the range selected, the criteria used to limit the alternatives should be explicitly defined by Reclamation and logically supported.

Action alternatives include the proposed action and all other feasible and reasonable alternatives that will be evaluated in the EIS. Reclamation must consider potentially reasonable alternatives beyond its own jurisdiction and consider the jurisdictions of other agencies (Federal and otherwise) when determining what reasonable alternatives should be considered. If an alternative outside an agency's authority became the preferred alternative, implementation would depend on a change in authorization, a change of lead Federal agency to one with the appropriate authority, or a transfer of the project to a non-Federal entity. It could also lead to the cancellation of the project.

Each action alternative should address the purpose of and need for the action as described in the "Purpose and Need" chapter of the document. The discussion of alternatives should also state how each alternative would or would not achieve the requirements of Section 101 and 102 (1) of NEPA and other environmental laws and policies. The appropriate discussion should be presented for each alternative so that reviewers may evaluate the environmental impacts of each alternative by comparing them to the no action alternative. The proposed action (see section 7.5.1) should be identified in the document to make the readers aware of the action that is being contemplated, allowing them to focus their review on that action.

Because issues and objectives may be complex and sometimes competing, a particular alternative should be a distinctly different approach from others and may emphasize the achievement of some objectives at the expense of others. Minor variations should be considered subalternatives rather than separate alternatives. Any reasonable alternative with anticipated environmental consequences that differ significantly from those of the preferred alternative should be considered a major alternative and analyzed fully.

For clarity, each major alternative should be given a descriptive name, number, or letter, although a descriptive name is preferred to a number or letter. When an alternative is assigned a number or letter the first time it is presented, and, thereafter, it is presented by the letter or number, it can be problematic because it is difficult for most readers to retain and associate the number or letter with that particular alternative throughout the remainder of the EIS. For instance, it is easier for the reader to associate an alternative with a name like “San Juan Alignment” than it is to retain “Alternative 3” or “Alternative C.” In addition, it is easier to change the order in which alternatives designated by name appear than it is to change those designated by letter or number.

The discussion of the alternatives should conclude with a graphic comparison of the alternatives that is based mainly on the impact summaries found in the “Environmental Consequences” chapter.

Mitigation measures and environmental commitments that are to be incorporated as a result of the EIS’s analyses should be integrated into the appropriate alternatives. These mitigation measures then become an integral part of those alternatives—in other words, those particular alternatives cannot be described without the mitigation measures. However, other alternatives without the integrated mitigation measures may also be reasonable and should still be included.

Any additional mitigation measures not integrated into the action alternatives will be included in the “Environmental Commitments” section of the EIS. For those mitigation measures requiring approval or permits from another entity, agreement may be necessary with the USACE, Service, BIA, and other responsible Federal agencies and should be described in the “Consultation and Coordination” chapter of the EIS.

The discussion of the alternatives should include, where appropriate:

- Location of alternatives and alternative project features, including a legal description and a map or sketch
- Amount and ownership of lands to be affected
- Area to be disturbed

- Numbers, locations, and photographs or drawings of structures to be constructed, including utilities
- Water and wastewater quantities, wastewater disposal plans, and water conservation measures
- Mitigation plans and landscape restoration plans
- Costs associated with the alternative, including those for mitigation
- Descriptions of operational criteria

### **8.6.3 Alternatives Eliminated from Detailed Study**

Other alternatives considered, but not found to be technically feasible or reasonable, should be presented briefly, along with the reasons they were eliminated from further analysis. Examples of reasons for elimination include:

- Failure of the alternative to meet the requirements of the purpose and need for the action.
- The alternative is prohibitively greater in cost or in environmental impacts than the other alternative.
- The alternative cannot be reasonably implemented, whether because of technical limitations or other considerations.

This list is for example purposes only, and many factors may play a role in appropriately limiting the range of alternatives considered, including the ability to meet the need in a timely fashion, social and economic factors, and legal constraints. The instruction in the CEQ regulations to “Include reasonable alternatives not within the jurisdiction of the lead agency” (40 CFR 1502.14(c)) indicates that alternatives beyond an agency’s authority may be included, but other factors may still cause such an alternative to be unreasonable and not analyzed in detail.

A complete listing of all alternatives seriously considered or publicly discussed in the scoping process should be included. If the public involvement process was unusually complex, it may be appropriate to provide an appendix that summarizes those alternatives identified during public involvement and later considered and eliminated.

The issue of reasonableness is a judgment call by Reclamation. Usually, after scoping an action, Reclamation will have an idea if an alternative may be unreasonable to implement due to social, cultural, or political realities. During the process of eliminating alternatives, the interdisciplinary team should develop a set

of screening criteria against which all alternatives should be measured. This will assist in making the process more objective and defensible. The criteria could include such items as cost limits, geographic boundaries, scheduling goals, or time constraints. Some of these items may be dictated by the authorization for the project.

#### **8.6.4 Identifying a Preferred Alternative**

Reclamation shall identify an agency-preferred alternative in the FEIS (unless prohibited by law) (40 CFR 1502.14(e) and 43 CFR 46.425). It should be noted that CEQ regulations do not require the identification of a preferred alternative in a DEIS if none has been determined. If an alternative exists which has the consensus of the affected community and it is reasonable and practicable, meets the purpose and need for action, and is within Reclamation's statutory authority to implement, Reclamation should designate it as the preferred alternative or explicitly explain why it was not so designated (43 CFR 46.110).

The preferred alternative should be an alternative that completes the action and that best meets the purpose and need for the action as defined in the EIS. Defining the preferred alternative does not define the agency's final decision. It is not necessary to provide a separate discussion in the EIS on the rationale for selection of a preferred alternative. That specific discussion is most appropriate for the ROD. The intention is to let the public know what the agency considers the best alternative, based upon the information available. Public comments or other considerations may result in a change in the preferred alternative and may even result in the final decision (recorded in the ROD) not being the preferred alternative in either the DEIS or the FEIS.

#### **8.6.5 Environmentally Preferable Alternative**

The alternative, or alternatives, considered to be environmentally preferable may be specified. The "environmentally preferable alternative" is defined as "the alternative that will best promote the national environmental policy as expressed in NEPA's Section 101." Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative that best protects, preserves, and enhances historic, cultural, and natural resources (CEQ's Forty Most Asked Questions, No. 6a). To be selected for implementation, the environmentally preferable alternative must be a reasonable alternative (40 CFR 1502.14 (a)). Reclamation must identify the environmentally preferable alternative in the ROD and may do so in the FEIS. Reclamation must consider, but is not obligated to select, the environmentally preferable alternative in its decision on the proposal (40 CFR 1505.2 (a) and 43 CFR 46.450).

### **8.6.6 Summary Comparison of Alternative Impacts**

A summary table comparing the impacts of all alternatives (including no action) should be attached to the end of the alternatives chapter. Whenever possible, numerical comparisons should be used. Brief narrative comparisons are permissible if numerical comparisons cannot be made. In the case of the PR/EIS, tables displaying information required by the P&G should be included. The graphic display should provide a comparison of the tradeoffs between alternatives and a listing of proportionate effects and merits of each alternative. If more explanation is required, footnotes may be used to qualify the importance of a particular impact.

## **8.7 Affected Environment (40 CFR 1502.15)**

This section should begin with a general description of the physical environment of the project area and a map defining the project area, the associated ecosystem(s), and the affected environment. The entire area of potential effect is included in the discussion of affected environment, including potentially affected areas outside the immediate project area. If available, the historic changes and trends affecting a resource or feature, up to and including present conditions, should be described to set the stage for the projection of future changes and trends concerning the resource or feature. Emphasis should be placed on environmental parameters that would be significantly affected by the alternatives. Only brief treatment should be given to characteristics that would not be affected. This brief treatment can include a statement that no further analysis of the resource is included in the EIS. All EISs should include a clearly labeled discussion of cultural resources, sacred sites, ITAs, and environmental justice.

For critical environmental areas or issues—such as ITAs, invasive species, environmental justice, cultural resources, and T&E species—a brief discussion of ongoing activities that may affect them is needed. When ongoing activities may be having significant effects upon these areas or issues, the discussion should summarize both the significance of the ongoing effect and what specific ongoing activity is causing the effect, even when the alternatives do not address these effects.

The general description constitutes a basis from which specific environmental effects can be assessed. The general description should include not only the physical setting for the project, but it should describe those features—geographic, cultural, recreational, or unique or significant wildlife or vegetation—that distinguish the affected area from other areas.

When discussing the area resource or feature affected by each alternative, the discussions become far more specific than in the general description and provide

details on those features which would be affected by the project. For instance, if alternative B is found in the Sonoran Desert Life Zone but is in an area with a high number of Joshua trees, the Sonoran Desert Life Zone should be discussed in the general description, and the specific description of the Joshua trees should be saved for the vegetation parameter under the alternative. This organization allows the flexibility to provide a complete general description of the project area, while at the same time avoiding detailed and specific description of parameters that will only be affected by one alternative.

If two or more alternatives share the same affected environment (as will often be the case), it is not necessary to repeat the description of that environment. Instead, reference should be made to the description already provided. For instance, if the preferred alternative would affect 300 acres of riparian vegetation, the area should be described in sufficient detail that the extent and severity of the impact on it are understood. However, if another alternative involves the same 300 acres of riparian vegetation, plus an additional 50-acre parcel of the same vegetation, the description of the original 300 acres would not be repeated for this other alternative.

## **8.8 Environmental Consequences (40 CFR 1502.16)**

This discussion forms the basis for the comparison of alternatives. The impacts of each alternative should be quantified and analyzed separately in an organized and logical manner. This impact analysis should include at least the following items:

- The direct effects and their significance
- The indirect effects and their significance
- Quantification of the impact (when possible)
- Mitigation for the impact
- The resultant net, or residual, impact
- Cumulative effects
- ITAs
- Indian sacred sites

The impact analysis should focus on potentially significant effects and should not include discussion of impacts that are minor and short term.

Whenever possible, data from the Service, U.S. Geological Survey, or other technically acceptable sources should be used to support the impact analysis.

CEQ characterization of “effect,” as described in Section 1508.8, cites:

- a. Direct effects, which are caused by the action and occur at the same time and place.
- b. Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.<sup>1</sup> Indirect effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

The terms “effects” and “impacts,” as used in these regulations, are synonymous. Effects include those involving ecological (natural resources and the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health resources, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if the agency believes that the net effect will be beneficial.

The analysis will compare the reasonable action alternatives to the no action alternative to determine the net effect or impact of each of the action alternatives. This allows the analysis to focus upon the impacts that would be the result of the action under consideration, sharply distinguishing the different impacts associated with each of the alternatives.

This section should also include discussions of any potential conflicts with existing land use policies or energy requirements of the various alternatives and any differences in energy conservation potential, ITAs, Indian sacred sites, and environmental justice. An example of a residual or net impact:

If the preferred alternative of a certain project would result in the loss of 300 acres of riparian vegetation, and Reclamation has developed a mitigation plan that would mitigate for this 300 acres of riparian vegetation, then the net loss, or residual impact of the proposal on riparian vegetation, amounts to 0 acres.

If, however, alternative B would result in the loss of 350 acres of riparian vegetation, and the mitigation plan is the same (mitigation of only 300 acres), the net effect of alternative B would be the loss of 50 acres of nonmitigated riparian vegetation.

This same procedure should be followed throughout the impact analysis of all the parameters. Once the residual or net impacts have been determined, they are transferred to a chart that can be used to compile the tabular comparison of alternatives.

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<sup>1</sup> This definition is consistent with “reasonably certain to occur” definition in ESA regulations.

### **8.8.1 Issue Tracking**

All discussions of potential impact areas should track the same basic sets of issues that have been identified by scoping. The EIS should be prepared so that any reader can track any of the identified issues easily and quickly throughout the document. This can be done in headings, footers, side icons, and other methods.

### **8.8.2 Analysis in the Absence of Information (40 CFR 1502.22 and 43 CFR 46.125)**

When the agency is evaluating reasonably foreseeable adverse impacts, and there is incomplete or unavailable information, the agency shall make clear that such information is lacking. Every effort should be made to collect all information essential to a reasoned choice between alternatives. If the information relevant to a reasoned choice cannot be collected because of exorbitant cost or because no means exists to gather the information (i.e., it does not exist, or there is no way to get it), the agency shall, in the EIS:

- State that such information is incomplete or not available
- Indicate the relevance of the incomplete or unavailable information to reasonably foreseeable adverse impacts
- Include a summary of existing credible scientific evidence relevant to the foreseeable adverse impact
- Include an evaluation of the reasonably foreseeable adverse impact, based upon theory or research methods generally acceptable to the scientific community

Reasonably foreseeable adverse impacts must be within the “rule of reason” standard (i.e., it is based upon credible scientific evidence and the agency’s efforts to take a hard look at the information,<sup>2</sup> not just conjecture. Impacts of low probability but having catastrophic consequences, if supported by credible evidence and the rule of reason, must be displayed (§ 1502.22 (b)).

The EIS analysis is not limited to readily available information. If information exists that is relevant to a potentially significant adverse impact, that information should be included in the analysis. If new information is needed that is relevant to reasonably foreseeable significant adverse impact and that can be gathered at reasonable expense, the information should be gathered and incorporated into the analysis. Exorbitant costs may preclude the gathering of information desired for the best possible analysis. All costs must be considered when making this determination, including such things as social costs, delays, opportunity costs, and nontimely fulfillment of statutory mandates. This determination should be

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<sup>2</sup> See *Oregon Natural Resources Council v. Lowe*, 109F.3d 521 (9<sup>th</sup> Cir. 1997)



made by the responsible official and the reasons documented as part of the discussion required by 40 CFR 1502.22 and this section. See also this handbook's discussion of Adaptive Management (section 8.9).

### **8.8.3 Direct and Indirect Impacts (40 CFR 1502.16 (a)(b) and 40 CFR 1508.8)**

The direct and indirect impacts on the human and natural environment also must be identified and quantified. Project activities may directly result in the relocation of people, power lines, pipelines, oil and gas wells, mining roads, and railroads and may also result in such indirect impacts as the loss of agricultural lands. These relocations and losses, and the indirect losses associated with them, must be identified and quantified, as appropriate. Additional social and economic impacts, such as impacts to cultural or ethnic groups, should be addressed.

Impacts may be either beneficial or adverse. Examples of some environmental parameters that may be affected by the preferred alternative are identified in Section 8.7, Affected Environment.

The appropriate investigations, data collection, and data analysis that are required to identify and quantify direct and indirect impacts and to develop project features, including enhancement and mitigation features, should be conducted by technically qualified persons.

Some examples of direct impacts are those associated with highway and railroad relocations; reductions in downstream flows; loss of a natural stream or river; or losses of fish, wildlife, endangered species, archeological sites, farmland, wetlands, homes, oil wells, or unique areas caused by the construction of a dam and related water conveyance system.

Although indirect impacts are frequently difficult to identify and measure, the indirect impacts that can reasonably be expected to occur, should Reclamation proceed with a given proposal, need to be analyzed. However, such potential indirect effects can only be meaningfully analyzed if they are measurably different from no action conditions.

Indirect effects, as defined in the CEQ regulations (40 CFR 1508.8(b)), may include growth-inducing effects, changes in land use, changes in population density, or changes in growth rate and related effects on natural systems. The potential for a Reclamation proposal to cause these types of indirect effects must be examined in light of whether the proposal is the principal cause of these effects (the "but-for" issue) or is incidental (secondary) to effects that are likely to occur anyway because of some other activities. Future development projects may be determined by reviewing local planning documents and zoning ordinances. If the proposal's effects are incidental to development and land use that is planned and addressed in local planning documents, this should be documented, and no further analysis is necessary. Other types of analysis may also adequately document that

Reclamation actions do not have indirect effects. For example, analysis may show that Reclamation actions related to water supply delivery are not responsible for indirect effects when the water supply is a replacement supply or when it can be demonstrated that other water supply alternatives would reasonably be implemented (because of cost and availability) in lieu of the Reclamation action. See discussions in Section 4.13, Changing Water Use, and Section 11.6, How Much is Enough? in this handbook.

State and local administrative requirements that could have an effect on the proposal or range of alternatives must be considered in arriving at a net impact scenario. However, there must be a high degree of certainty that applicable legal requirements (e.g., issuance of permits) would be implemented in a timely manner should the Federal action take place.

#### **8.8.4 Cost-Benefit Analysis of Alternatives (40 CFR 1502.23)**

An EIS is not required to contain a cost-benefit analysis if such an analysis is not relevant to the choice among action alternatives. The situation calling for such an analysis will likely be rare but may occur in some proposals for environmental enhancement and other projects. If a cost-benefit analysis is relevant to the choice among environmentally different alternatives, it shall be included in the EIS—either in the text or appendices.

#### **8.8.5 Cumulative Impacts (40 CFR 1508.7, 1508.25, and 43 CFR 46.115)**

CEQ regulations implementing NEPA define cumulative impacts as:

The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Cumulative impacts are to be considered along with direct and indirect effects in determining the scope of an EIS. The scoping process should be designed to identify associated actions (past, present, or future) which, when viewed with the proposed or alternative actions, may have cumulative significant impacts. Future cumulative impacts should not be speculative but should be based upon known or reasonably foreseeable long-range plans, regulations, operating agreements, or other information that establishes them as reasonably foreseeable. An office may establish explicit criteria for an individual EIS to define future actions which are reasonably foreseeable in a particular situation.

Note that the definition of cumulative impacts is different under NEPA than ESA. CEQ's definition in its NEPA regulations is broader than the ESA and encompasses all reasonably foreseeable future actions, including Federal actions.

Cumulative impacts under the ESA include those actions under NEPA (State, tribal, local, and private actions) but exclude Federal actions unrelated to the proposed action that have not undergone ESA Section 7 consultation. This distinction should be noted if a BA is being integrated into the NEPA document as opposed to being appended to it.

Cumulative impacts can be categorized as additive or interactive. An additive impact emerges from persistent additions from one kind of source, whether through time or space. An interactive impact results from more than one kind of source. Piecemeal physical destruction of wetlands is additive; physical destruction of wetlands combined with damage from toxic substances is interactive.

The courts have addressed different aspects of cumulative effects analysis in NEPA documents, including an agency's failure to address additive and interactive effects and the methodology used to analyze cumulative effects. Reclamation needs to undertake a thorough analysis of cumulative effects in its NEPA documents and to ensure that the scientific methodology it is using is appropriate and accurate. CEQ guidance (June 24, 2005) and Interior regulations (43 CFR 46.115) both indicate that an exhaustive analysis of past actions is not necessary. Past actions are to be analyzed in the context of the information's usefulness to the agency's analysis of the proposed action and alternatives. Reclamation retains considerable discretion "as to extent of such inquiry and the appropriate level of explanation."

Cumulative impacts can be presented in the document in a variety of ways. Inclusion of past and present cumulative impacts in the affected environment and reasonably foreseeable future actions in the no action alternative is encouraged. This approach aids the reader in making the comparison of action alternative effects to no action as required by CEQ regulations (40 CFR 1502.14). Alternatively, a separate section that consolidates all cumulative impacts can be prepared, but this approach often results in repeating background information and leads to a disjointed analysis. While commonly used, this approach is not now generally recommended. Either of these presentations can also be used with a resource by resource basis, which is recommended. That is, when discussing wetlands, for example, all the direct, indirect, residual, net, and cumulative impacts to wetlands related to the alternative being presented would be described.

While an expectation exists among reviewers and the public that there will be a separate section discussing cumulative impacts, the most appropriate means to include cumulative impacts within the document is at the discretion of Reclamation. There is no required format for presenting cumulative impacts. It is required, however, to include cumulative impacts within the scope of the analysis. It is recommended that the discussion(s) of cumulative impacts be clearly labeled so that, even if not in a unique section, the reader can readily find and understand how cumulative effects are presented in the document.

### **8.8.6 Energy and Depletable Resources (40 CFR 1502.16(e) and EO 13514)**

Energy requirements and conservation potential shall be discussed, as applicable, as part of the EIS for each alternative. This discussion shall include appropriate analysis of energy usage and alternative energy sources.

### **8.8.7 Mitigation Measures (40 CFR 1502.14 (f), 1502.16 (h), 1508.20, and 43 CFR 46.130)**

A discussion of reasonable and appropriate mitigation is required for identified impacts. When the proposed action is an applicant's proposal, the proposal must include, at a minimum, those design elements required to comply with all applicable environmental laws. Reclamation should analyze the applicant's proposal and may propose additional, reasonable mitigation to address impacts. This additional mitigation may, with the applicant's approval, be integrated into the proposal or may be presented as a separate alternative.

Mitigation measures can include proposals that avoid an impact, changes that minimize an impact, actions that reduce an impact, or actions that compensate for the impact. Effective mitigation should result in a real change to an impact. Mitigation can relate to either site-specific effects (the most usual case) or to ecosystem effects.

The effects of mitigation measures should be analyzed in the Environmental Consequences discussion in two ways. First, the impacts of the mitigation feature will be discussed. For example, if Reclamation purchases a 500-acre farm as wildlife habitat replacement, certain social and economic impacts occur by taking this farm out of agricultural production and off the local tax rolls. These impacts come from the purchase of the mitigation feature and need to be analyzed. Second, the mitigation potential of the habitat replacement area and the extent to which this will reduce the impacts on a given environmental resource or feature should be addressed. In the case of the 500-acre farm, this would be an analysis of its habitat potential and how much this would lessen the impact on wildlife habitat. The change in net wildlife habitat due to the alternative under discussion, including the 500-acre habitat replacement, is the impact.

### **8.8.8 Unavoidable Adverse Impacts (NEPA Section 102(2)(c)(ii) and 40 CFR 1502.16)**

Unavoidable adverse impacts are those environmental consequences of an action that cannot be avoided, either by changing the nature of the action or through mitigation if the action is undertaken. The discussion of impacts for all alternatives will include a discussion of the adverse impacts that cannot be avoided. These should also be highlighted in the summary discussion of alternatives.

### **8.8.9 Relationship Between Short-Term Uses and Long-Term Productivity (NEPA Section 102(2)(c)(iv) and 40 CFR 1502.16)**

Each resource area should include a discussion of long-term versus short-term effects (positive and negative). When a short-term positive effect is counterbalanced by a long-term negative effect (and vice versa), this should be highlighted in alternative descriptions. This is an area where analysis is difficult, and some special effort may be required to develop an adequate analysis.

### **8.8.10 Irreversible and Irretrievable Commitments of Resources (NEPA Section 102(2)(c)(v) and 40 CFR 1502.16)**

NEPA requires that the environmental analysis identify “any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented.” The Act, CEQ NEPA regulations, and NEPA guidance, however, do not define “resources” and how this requirement is to be applied.

Reclamation and other Federal agencies have interpreted irreversible and irretrievable commitments to mean the use of nonrenewable resources and the effects this use would have for the future. **Irreversible commitment of resources** occurs as a result of the use or destruction of a specific resource (e.g., minerals extraction, destruction of cultural resources) which cannot be replaced or, at a minimum, restored over a long period of time and possibly at great expense. **Irretrievable commitment of resources** refers to actions resulting in the loss of production or use of natural resources. It represents opportunities foregone for the period of time that a resource cannot be used (e.g., land conversion to new uses; construction of levees preventing the natural flooding of flood plains).

The analysis shall, for each alternative, identify those commitments of resources that are irreversible and irretrievable.

### **8.8.11 Environmental Justice (EO 12898)**

When potential impacts to minority or low-income populations are identified, the chapter describing environmental impacts will contain a section entitled Environmental Justice. The section will include a full analysis of such impacts, or a summary of impacts will be fully described elsewhere in the chapter. When impacts to a minority or low-income population are identified, the discussion should address whether the populations are being disproportionately affected by the action and the reasonable efforts made to avoid any disproportionate effect. If the alternative had no disproportionate impact on minority or low-income populations, this should be so stated. Finally, the discussion of public involvement in the EIS will include a summary of the efforts made to ensure that

all income groups and minority populations within the area potentially affected by the action were included in the public involvement process, including the means used to overcome language and cultural barriers to participation.

#### **8.8.12 Impacts on Other Federal and Non-Federal Projects and Plans (40 CFR 1502.16(c))**

Every EIS shall discuss all related Federal and non-Federal projects in the study area. The effects of the proposed action, either positive or negative, shall be presented in the EIS and shared as soon as available with the Federal or non-Federal project operators. Possible conflicts with all existing land use plans, policies, and controls shall be discussed. Reasonable options to avoid and/or mitigate negative effects should be investigated and presented in the EIS.

#### **8.8.13 International Impacts (43 CFR 46.170 and EO 12114)**

Reclamation will consider the effects of Federal actions upon the environment outside the United States. This consideration shall follow the provisions and procedures of EO 12114. The effects encompass transboundary effects resulting from Federal actions within the United States and may be addressed appropriately in either an EA or an EIS. When transboundary effects are an issue for a proposed action, Reclamation shall coordinate with Interior through OEPC. Interior shall consult with the Department of State, which is responsible for coordination of all communications with foreign governments. Additionally, where international boundary commissions exist (with Mexico and Canada) and are applicable to the proposed action, appropriate information concerning potential effects shall be shared with such commissions.

NEPA practitioners should be aware that the application of NEPA in regard to transboundary effects of Federal actions has been undergoing legal review. Consequently, for any Reclamation action that could have transboundary effects, the appropriate Reclamation office should contact the Office of the Solicitor for guidance on how to proceed.

#### **8.8.14 Indian Trust Assets**

All EISs shall address the potential effects of alternatives upon ITAs. The discussion of ITAs should appear in a clearly labeled section. (See Indian Trust Asset Policy and Guidance.) If no effects to ITAs are foreseen, the EIS should explicitly say so.

#### **8.8.15 Indian Sacred Sites**

All EISs shall address the potential effects of alternatives upon Indian sacred sites, consistent with EO 13007. When there are potentially significant impacts, there should be a discussion under a separately labeled section in the

Environmental Consequences section. When there are no impacts or only “insignificant” ones, the scoping section should contain a discussion of the impacts or a statement that there are none.

## **8.9 Adaptive Management (43 CFR 46.145 and 522 DM 1)**

Sometimes there is not sufficient scientific data or knowledge available to make an accurate prediction regarding the social, economic, and ecological impacts of a proposed action or alternatives, or from proposed mitigation. If the impacts could be significant and there is considerable controversy over the outcome, the decisionmaker should consider developing an adaptive management program to monitor the results of the decision.

Adaptive management is not specifically defined in CEQ regulations or guidance. Adaptive management provides for adjustments to management actions or alternatives based upon new information. Given that adaptive management is only applicable where uncertainty exists concerning impacts, it is unlikely that adaptive management can be applied to a proposed action being addressed by an EA.

Adaptive management may be carried out by appropriate staff and managers according to the following steps:

- Determine measurable goals for outcome of management actions.
- Outline current understanding of system functions and outputs.
- Establish quantified objectives and controls.
- Initiate the action.
- Monitor and evaluate the outcomes.
- Review goals and objectives.
- Redirect the action, if necessary.

An adaptive management plan should be developed in coordination and collaboration with other governmental agencies, stakeholders, and interest groups, as appropriate. The proposed plan should be detailed in the DEIS for public review and comment. The ROD would lay out the final plan as part of the Environmental Commitments program. If it becomes necessary to adjust an action or alternative, additional NEPA compliance may be required if the change is not within the range evaluated in the original NEPA analysis. The public should be made aware in the ROD that this possibility exists. Additional information on adaptive management can be found online in the 2007 Department publication entitled, Adaptive Management – The U.S. Department of the Interior Technical Guide, at <http://www.doi.gov/initiatives/AdaptiveManagement/index.html> (See also ESM 10-20.)

## **8.10 Consultation, Coordination, and Cooperation**

This chapter of the EIS should describe the history of relevant public involvement activities that have taken place or are expected to take place during the planning of the project. The history should include any information sessions held to improve the public's understanding of the NEPA process. The chapter should provide a listing of the official cooperating agencies and the names of any other agencies or technical experts that were consulted and contributed to the EIS analysis. The chapter should also include separate, titled sections summarizing or describing public involvement activities undertaken to identify and assess impacts to ITAs and minority or low-income populations.

This chapter may contain a listing or description of specific work meetings, scoping sessions, public meetings, news releases, newsletters, and any other consultation and coordination activities. It should include discussions and consultation with agencies or experts who provided significant information for the analysis, including FWCA recommendations, ESA consultation, and cultural resources coordination. Times and dates of meetings or activities, and the purpose and results of the meetings or activities, should be included.

### **8.10.1 Related Laws, Rules, Regulations, and Executive Orders**

CEQ regulations (40 CFR 1500.2 and 1502.25) encourage related environmental laws, rules, regulations, and EOs to be integrated concurrently to the fullest extent possible in an EIS. Brief explanations of how the EIS has complied with these legal requirements may be added to the Consultation and Coordination chapter or to the Purpose and Need chapter.

The EIS shall list all Federal permits, licenses, and other entitlements that must be obtained to implement the proposal and include the status of meeting such requirements. The laws, rules, regulations, and EOs that usually are addressed in an EIS include:

- Clean Water Act of 1977, P.L. 95-217
- Endangered Species Act of 1973, P.L. 93-205
- Fish and Wildlife Coordination Act, P.L. 85-624
- Migratory Bird Treaty Act (16 U.S.C. 703-711)
- Wild and Scenic Rivers Act, P.L. 90-542
- National Historic Preservation Act of 1966, P.L. 89-665, as amended by P.L. 95-515



- Executive Orders 11988 (Floodplain Management), 11990 (Protection of Wetlands), 12898 (Environmental Justice), 13007 (Indian Sacred Sites), 13112 (Invasive Species), and 13186 (Migratory Birds)
- CEQ memorandum dated August 11, 1980, Prime and Unique Agricultural Lands and the National Environmental Policy Act

Additional permits, compliance activities, and other processes may be necessary for State, tribal, local municipality, or other Federal agency compliance. Chapter 3 has additional information on the requirements of related laws, rules, regulations, and EOs. A list of other related environmental laws and EOs is included in chapter 12.

### **8.10.2 Cooperating Agencies**

**(40 CFR 1501.6, 1508.5, and 1508.15; 43 CFR 46.155, 46.225, and 46.230)**

Cooperating agencies are governmental entities with jurisdiction by law or special expertise in the proposed action or potential issues. Cooperating agencies may be Federal or non-Federal (i.e., tribal, State, local). Nongovernmental entities may not be cooperating agencies. A governmental entity is generally an entity with the ability to tax. A cooperating agency provides information, data, and analysis related to its specific area of jurisdiction and expertise. Generally, a cooperating agency will use its own funds for this activity.

Cooperating agencies are to be invited by the lead agency or may request to participate in a particular EIS as a cooperating agency. Interior regulations require that all eligible governmental entities be invited to be cooperating agencies. Additionally, Reclamation must consider any request by a governmental entity to be a cooperation agency and, if the request is denied, must provide the reasons in the EIS. The EIS should identify all agencies that are cooperators.

Each cooperating agency should have an MOU signed between Reclamation and the cooperating agency. Such an MOU is required if the cooperating agency is a non-Federal agency and is recommended if the cooperating agency is a Federal agency. The MOU lays out the respective roles, issues to be addressed, schedules, and staff commitments and should be developed early in the EIS process. MOUs with non-Federal agencies must include a confidentiality commitment. Where potential conflicts exist with State public disclosure laws, consult your solicitor.

Reclamation will collaborate to the fullest extent possible with all cooperating agencies concerning those issues related to their jurisdiction and/or special expertise. Cooperating agencies should participate in scoping and provide requested information, staff, and analysis within the agreed upon timeframes.

Cooperating agencies do not have a veto over the scope of the action, the range of alternatives, or the lead agency's purpose and need. The responsibility of the lead agency to determine that the NEPA analysis is appropriate is not changed by the existence of cooperating agencies. However, every effort should be made to resolve all issues raised by a cooperating agency early in the process and under the terms of the MOU.

The requirement for cooperating agencies to be invited applies only to EISs but should be considered, as appropriate, for EAs.

### **8.10.3 Distribution List**

An EIS distribution list is required and may be included in the Consultation and Coordination chapter or as an attachment (see figure 8.2 for a suggested distribution list, which will be project specific for each EIS).

In the FEIS, the distribution list should be updated to include other agencies, organizations, and individuals who requested copies of the FEIS, and an asterisk (\*) may be included before those organizations or individuals who commented on the DEIS. A double asterisk (\*\*) may be used to denote those who made statements or commented at the public hearings.

## **8.11 List of Preparers and Other Sections (40 CFR 1502.17)**

The EIS shall list the names, together with the qualifications (expertise, experience, professional discipline), of the persons who were primarily responsible for preparing the EIS.

Figure 8.3 is an example of a list of preparers. The list will include persons from other agencies who furnish substantive information, as well as people who provide information under contract or cooperative agreement, since all disciplines may not be represented on Reclamation staffs.

A References Cited section should be included after the list of preparers, which may be followed by an optional glossary. An optional list of abbreviations and acronyms can be included as appropriate.

## **8.12 Environmental Commitments**

The DEIS and FEIS shall present reasonable mitigation proposals for all alternatives analyzed in detail. A separate list of commitments is recommended in the FEIS for the preferred alternative. If the preferred alternative from the FEIS is selected in the ROD, this list can be used to meet the requirement to

identify mitigation in the ROD (see Section 9.3, Environmental Commitments). If a different alternative is selected in the ROD, however, a comparable list, relative to the selected alternative, shall be developed for the ROD.

### 8.13 Index

The index, which is required for the FEIS and recommended for the DEIS, should be arranged in a double-column format and placed at the end of the report, before appendices and attachments. The style for entries may be found in the 2008 Government Printing Office Style Manual. To prepare an adequate index, the following points should be kept in mind:

- An introduction to the index should be prepared to explain symbols or abbreviations used. The introduction also explains anything unique or different about the index.
- The index is a listing of names, places, and topics in alphabetical order with page numbers indicating where they are discussed. It helps the reader find information. Therefore, headings and topics selected should be those most familiar to the average reader. However, the index may be cross-referenced with the specialist in mind.
- The index should be as specific as possible. For example, biological entries should be at the species level; air quality entries should be by components (sulfur dioxide, particulates); socio-economic entries would be by specific unit of measurement (housing, elementary schools, police protection, fire protection); and so on.
- Two categories—one specific and one general—should not be enumerated for the same entry. For example, if a species like “bald eagle” is enumerated under “endangered species,” the general heading should not also be enumerated (an entry “endangered species” could be used, but it should be further broken down into species).

Example:

*Endangered Species*  
 Bald Eagle, 17, 34, 85  
 California Condor, 26, 85, 101

The subtopics under the main topics above are listed in alphabetical order. This is the preferred way, unless some other arrangement is required for consistency or logic. For example, a chronological arrangement could be used when timing is important.

- A large number of undifferentiated page listings after a topic in the index should be avoided. A good index entry should not exceed 5 to 6 page numbers. In some cases, the page listings may approach 9 to 10 page numbers, but this number of listings should be rare. If the page number listings following an entry exceed 10 page references, an attempt should be made to further break this topic into subtopics.

Examples:

*Bad Listing*

Schools, 5, 10, 17, 25, 36, 108, 119, 124, 138, 145,  
176, 201, 209, 215-219, 224

*Good Listing:*

School, 5, 25, 108, 224  
Junior High, 10, 17, 36, 215-219  
Senior High, 119, 124, 201  
Junior College, 138, 145, 176, 209

- The most common synonyms should be used as cross-references. When a large part of the expected readership might be familiar with one particular term rather than its synonyms, both terms and cross-references should be indexed (generally from the less well-known term to the better known one). For example, if a number of readers use the term “air pollution” and are not familiar with the fact that such topics are discussed under “air quality,” then “air pollution” should be an index entry which refers the reader to “air quality.”
- Items that might be confusing to the reader should be defined. For example:

Water and Power Resources Service (see Bureau of Reclamation)

Bureau of Reclamation (formerly Water and Power Resources Service)

- Material in footnotes should also be referenced in the index if it contains significant information. In addition, index material in plates, tables, and maps should be indexed.
- A common mistake in preparing indexes is to heavily index the first 50 pages of the document and then slide over the remaining pages. To avoid this error, some criterion of selection has to be

used to pick out the significant topics. For the EIS, impacts, description of environmental parameters, and the comparison of alternatives are the most important topics.

An ideal index should cover the complete contents of a document, including the summary, introduction, footnotes, and bibliography if these contain important information not found elsewhere in the document. However, if it becomes necessary to make choices, the most significant topics should receive the best coverage in the index.

The key element in any index is consistency. Once a certain selection method has been used, it should be used throughout. Once symbols, abbreviations, or acronyms have been designated, these same symbols, abbreviations, and acronyms should be used throughout. An arbitrary and preselected index should not be imposed on the document. The index must grow from within the document. Reclamation may prepare the index or it may be prepared under contract.

The index should not be prepared until the document has received final review and has final page numbers. When authorization to print the EIS is received, the index can be prepared and added.

## **8.14 Attachments and Appendices**

Attachments are for amplification or support of critical analysis of the EIS. They are not a data bank and library for its total reference support. They should contain only major substantiating data, essential relevant descriptions of environmental components, important professional reports, copies of major legislative and executive documents, and other information necessary for complete use of the EIS for analytical and decisionmaking purposes. Negotiated agreements regarding various compliance requirements (endangered species, cultural resources) are also included.

CEQ regulations (40 CFR 1502.18) state that:

If an agency prepares an appendix to an EIS, the appendix shall:

Consist of material prepared in connection with an EIS (as distinct from material that is not so prepared and that is incorporated by reference (1502.21)).

Normally consist of material which substantiates any analysis fundamental to the EIS.

Normally be analytic and relevant to the decision to be made.

Be circulated with the EIS or be readily available on request.

Typical material in attachments includes:

- A listing of all the environmental commitments made for any aspect of the proposal covered by the EIS. It should be included in both the DEIS (if available) and FEIS. (See Section 8.12, Environmental Commitments, and Section 9.3, Environmental Commitments.)
- Letters and comments received on the DEIS (see section 8.15.2).
- FWCA recommendations with analysis of the disposition of the recommendations made. The recommendations and Reclamation's responses should be included as a part of the Consultation and Coordination chapter. If not too long, the FWCA report may be attached.
- Documentation of compliance with other legal requirements (ESA, NEPA, and others).

## **8.15 FEIS**

### **8.15.1 Revising the DEIS**

After public circulation of the DEIS, the public and other agencies will generally provide comments on the DEIS. Reclamation shall assess and consider the comments, both individually and collectively, and respond to the comments in one of several ways, as described below (40 CFR 1503.4).

If (and only if) the only changes needed to the DEIS are minor factual corrections, the FEIS may consist of an errata sheet attached to the draft statement. In these cases, only the comments, the responses, and the changes need be circulated; however, the entire draft document, with the new cover sheet and errata, will be filed as the FEIS (see section 8.15.3).

Changes to the EIS involving new or modified alternatives that do not have any significant differences in environmental impacts compared to alternatives analyzed in the draft may be fully incorporated into the document and circulated as the FEIS. A modified analysis that is within the range of impacts analyzed in the draft, or that does not significantly change the results relative to impacts in the draft, may also be integrated into the document and circulated as the FEIS. New alternatives, modified alternatives, or new analyses that are outside the range displayed in the DEIS, or that are significantly different from the alternatives or analysis presented in the draft, will require the circulation of a supplemental or revised DEIS.

The discussion on supplemental EISs (section 7.11) described appropriate actions if the changes to the proposed action are substantial and relevant to environmental concerns or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action.

### **8.15.2 Responding to Comments**

Substantive comments must be specifically identified in and attached to the FEIS, and a Reclamation response provided. Comments can be received in various media, and each missive received must be examined to determine the number and nature of substantive comments. Comments simply expressing support or nonsupport need not be displayed. Responses to comments must be factual and nonargumentative, and should clearly address the issue(s) raised. In preparing the FEIS, CEQ regulations in 40 CFR 1503.4 (b) state that responses to comments may include:

- Modifying alternatives, including the proposed action
- Developing and further evaluating alternatives not given serious consideration
- Supplementing, improving, or modifying the analyses
- Making factual corrections
- Explaining why the comments do not warrant further agency response, citing the sources, authorities, or reasons that support Reclamation's position and, if appropriate, indicating those circumstances which would trigger agency reappraisal or further response
- Acknowledging the comment if it is simply offering an opinion or if it contains advice not pertinent to the EIS.

#### **8.15.2.1 Format of Responses to Comments**

Two commonly used formats for comments and responses exist: (1) the comment and response are placed opposite each other on the same page, and (2) the responses to comments follow each letter. When comments are repetitive, the significant comments may be summarized and consolidated to condense the volume of the responses. Even in this case, all comments should be addressed and a clear reference to each comment made so that an individual commenter can track individual comments. Some circumstances may dictate an alternative approach that would be more effective. Any corrections to the body of the statement should be referenced by section title and/or page number so the reviewer will be able to find the new material. A list of the commenters may be provided before the Comment and Response section to aid in identifying the location of the comments. The preferred approach is to place letters received in the same order as they appear on the distribution list.

**8.15.2.2 Public Hearing Comments**

If public hearing(s) on the DEIS were held, the comments received should be summarized and included in the Response to Comments attachment. All substantive comments received at the hearing should be reviewed and responded to in a manner similar to that described in section 8.15.2. The entire verbatim testimony should not be included in the FEIS, nor should hearing transcripts be appended to the FEIS. The hearings, including all relevant and substantive comments, should be summarized and included in the Response to Comments attachment. For each individual who testifies, the relevant points that directly pertain to the document or the proposal should be specifically identified and answered. Relevant points include questions on the proposal or the analysis, contradictions, identification of new data, or discussion of deficiencies or omissions. Expressions of support or opposition to a proposal need not be acknowledged. Each individual who made the effort to testify should be acknowledged.

It is permissible to group commenters and their concerns in those instances where numerous similar concerns were raised. In this case, the issue should be listed, identifying all the individuals who expressed the concern, followed by a response.

Where verbal comments are received in a nonhearing format (i.e., where no formal record is made), it is recommended that the commenter be asked to provide any substantive comments in writing.

**8.15.2.3 Request for a Time Extension to Prepare Comments**

The request for a comment period time extension may originate with the public, other agencies, or from within Reclamation. The decision to extend the comment period is the responsibility of the originating office.

If a general extension of time is granted, a notice should be prepared by the originating office and placed in the FR. The manager will also notify EPA of the extension. The originating office will also publish a news release on the time extension.

**8.15.2.4 Late Comments**

The lead agency will establish a timeframe for comments (minimum 45 days). This timeframe may be extended at the discretion of the lead agency. However, an agency does not need to delay issuance of an FEIS when any Federal, State, local agency, or tribal government, from which comments are expected, does not provide comments within the prescribed time period (43 CFR 46.435(d)). Every reasonable effort should be made to accommodate such entities; however, where delays are unreasonable, the FEIS may be published without such late comments. Some explanation should be provided in the EIS for this situation.



### **8.15.3 Abbreviated FEIS**

An abbreviated FEIS may be prepared when the only changes to the DEIS are: (1) to make factual correction(s), or (2) to explain why the comments on the DEIS do not warrant further response.

The following format is recommended for abbreviated FEISs:

- Cover sheet—Prepared according to 40 CFR 1502.11.
- Foreword—Explains that the document is an abbreviated FEIS and that its contents must be integrated with the DEIS (giving name, filing number, date of issuance, and availability source) to be considered a complete document reflecting the full proposal, its alternatives, and all significant environmental impacts.
- Errata sheet(s)—Prepared according to 40 CFR 1503.4(c).
- Comments and responses—Prepared according to 40 CFR 1503.4 and organized according to section 8.15.2 of this handbook. The abbreviated FEIS should contain the summary from the DEIS, the DEIS distribution list, and a list of agencies, organizations, and persons who commented on the DEIS.

Once prepared, only the abbreviated FEIS is distributed to the public.

Draft Environmental Impact Statement  
Delta Export Water Contracting Program  
Fresno, Kern, Kings, Madera, Merced, San Joaquin, Tulare, Monterey,  
San Benito, Santa Clara, and Santa Cruz Counties, California

Prepared by \_\_\_\_\_  
In cooperation with \_\_\_\_\_

This Environmental Impact Statement (EIS) is prepared in compliance with the National Environmental Policy Act (NEPA) and Bureau of Reclamation (Reclamation) NEPA procedures.

Reclamation is proposing to resume long-term contracting of approximately 1.5 million acre-feet/year (af/yr) of available and uncommitted water from the Central Valley Project (CVP). The water proposed for contracting originates from existing storage reservoirs in the northern CVP (Shasta, Trinity River, and American River Divisions). The 1.5 million af/yr would be sufficient to meet a portion of the 3.4 million af/yr of the identified CVP water needs.

This EIS analyzes the impacts of Reclamation's Proposed Action in the Delta Export Service Area (DESA), which calls for contracting up to 880,150 af/yr of firm yield and intermittent water within the DESA for agricultural, municipal and industrial, and wildlife refuge uses. In addition to the Proposed Action, the EIS also analyzes the impacts of several alternatives, including the No Action alternative.

The EIS focuses on the regional impacts of water contracting within the DESA, emphasizing impacts on surface water, groundwater, fish and wildlife, recreation, aesthetics, economics, land use, and cultural resources. The EIS also assesses cumulative impacts of water contracting within all three service areas (Sacramento River, American River, and Delta Export) on CVP-wide resources, the Sacramento-San Joaquin Delta, and San Francisco Bay. Subsequent site-specific NEPA reviews, of much narrower scope, will be conducted prior to execution of contracts with individual agencies.

Comments must be received by \_\_\_\_\_.

For further information regarding this EIS, contact Mr. Bill Payne, Bureau of Reclamation, MP-750, 2800 Cottage Way, Sacramento, California 95825-1898, telephone 916/978-5488.

Figure 8.1.—Example of an EIS cover sheet.

## **SUGGESTED DISTRIBUTION LIST**

To be distributed for review and comment

1. Federal agencies (Washington level)
2. National environmental groups

To be distributed for information

1. U.S. Senators
2. U.S. Representatives

To be distributed by the Regional Director or Area Office for review and comment

1. Federal agencies (local level)
2. Governors of the states affected by the project
3. Potentially affected Indian tribes
4. State agencies
5. Local agencies, private organizations, and individuals
6. State and local environmental groups
7. Identified potentially affected individuals, including Indian trust beneficiaries and trustees.

To be distributed by the Regional Director or Area Office for information

1. U.S. Senators (local offices)
2. U.S. Representatives (local offices)
3. State Senators
4. State Representatives
5. Libraries
6. News media

**Figure 8.2.—Example of a distribution list.**

**LIST OF PREPARERS**

This environmental impact statement was prepared by Bureau of Reclamation, Lower Colorado Region, Post Office Box 427, Boulder City, Nevada 89005. A list of persons who prepared various sections of the statement, significant background material, or participated to a significant degree in preparing the statement is presented below:

Name	Qualifications	Participation
Richard G. Bauman	B.S. Wildlife Biology; Natural Resources protection, USFS, 4 years	Biological Resources data collection and analysis
Thomas G. Burbey	B.S. Civil Engineering; water resource planning and project operation, Bureau of Reclamation, 19 years	Water quality surface and ground-water resources
Donald C. Campbell	B.S. Forestry; land management and land acquisition, Corps of Engineers, National Park Service, and Bureau of Reclamation, 20 years	Portions of EIS
Gail E. Cordy	B.S., M.S. Geology; Engineering Geologist, Dames and Moore, 2 years; Bureau of Reclamation, 1 year	Geology portion of EIS
E. Frank Disanza	B.S. Engineering, P.E.; Civil Engineer, Bureau of Reclamation, 6 years	Planning team leader; overall review
Bruce E. Ellis	B.A. Anthropology; Environmental Specialist, Bureau of Reclamation, 3 years	Overall EIS Coordinator assembly and editing of EIS, impact tables, summary, Indian Trust Assets
Bradley K. Flint	Realty technician; Bureau of Reclamation, Power, 4 years	Land use and ownership maps
Christopher R. Gehlker	B.A. Economics; Economist, Corps of Engineers, 8 years; Planning economist, Bureau of Reclamation, 1 year	Economic and social assessment

**Figure 8.3.—Example of a list of preparers.**

# Chapter 8 Useful Links

CEQ Guidance

[http://ceq.hss.doe.gov/nepa/regs/Guidance\\_on\\_CE.pdf](http://ceq.hss.doe.gov/nepa/regs/Guidance_on_CE.pdf)

CEQ's Forty Most Asked Questions

<http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm>

CEQ's Guidance on Transboundary Effects

<http://ceq.hss.doe.gov/nepa/regs/transguide.html>

CEQ's Memorandum of July 22, 1983

<http://ceq.hss.doe.gov/nepa/regs/1983/1983guid.htm>

Clean Water Act

<http://epw.senate.gov/water.pdf>

Endangered Species Act

<http://www.fws.gov/endangered/esa-library/pdf/ESAall.pdf>

EO 11988 - Floodplains

<http://www.fema.gov/plan/ehp/ehplaws/eo11988.shtm>

EO 11990 - Protection of Wetlands

<http://water.epa.gov/lawsregs/guidance/wetlands/eo11990.cfm>

EO 12114 - Environmental Effects Abroad of Major Federal Actions

<http://www.archives.gov/federal-register/codification/executive-order/12114.html>

EO 12898 - Environmental Justice

<http://www.archives.gov/federal-register/executive-orders/pdf/12898.pdf>

EO 13007 – Indian Sacred Sites

<http://www.achp.gov/EO13007.html>

EO 13112 – Invasive Species

<http://ceq.hss.doe.gov/nepa/regs/eos/eo13112.html>

EO 13186 - Migratory Birds

[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001\\_register&docid=fr17ja01-142.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001_register&docid=fr17ja01-142.pdf)

EO 13514 – Federal Leadership in Environmental, Energy, and Economic Performance

[http://www.whitehouse.gov/assets/documents/2009fedleader\\_eo\\_rel.pdf](http://www.whitehouse.gov/assets/documents/2009fedleader_eo_rel.pdf)

ESM 10-20 – Coordinating Adaptive Management and NEPA Processes

<http://oepec.doi.gov/ESM/ESM%2010-20%20%28Adaptive%20Management%20and%20NEPA%29.pdf>

Fish and Wildlife Coordination Act

<http://www.usbr.gov/power/legislation/fwca.pdf>

Migratory Bird Treaty Act

<http://www.fws.gov/laws/lawsdigest/MIGTREA.HTML>

National Historic Preservation Act

<http://www.achp.gov/docs/nhpa%202008-final.pdf>

Prime or Unique Agricultural Lands and the National Environmental Policy Act

<http://ceq.hss.doe.gov/nepa/regs/exec81180.html>

Section 101 and 102 (1) of NEPA

[http://ceq.hss.doe.gov/laws\\_and\\_executive\\_orders/the\\_nepa\\_statute.html](http://ceq.hss.doe.gov/laws_and_executive_orders/the_nepa_statute.html)

Section 404 of the Clean Water Act

<http://epw.senate.gov/water.pdf>

Selected Policies, Guidance, and Procedures for Working with Federally Recognized Indian Tribes

<http://www.usbr.gov/native/policy/index.html>

Wild and Scenic Rivers Act

<http://www.rivers.gov/publications/wsr-act.pdf>

2008 Government Printing Office Style Manual

<http://www.gpoaccess.gov/stylemanual/browse.html>

40 CFR 1500-1508

[http://ceq.hss.doe.gov/ceq\\_regulations/regulations.html](http://ceq.hss.doe.gov/ceq_regulations/regulations.html)

43 CFR 46

<http://www.doi.gov/oepec/nepafr/docs/Federal%20Register%20October%2015,%202008%20NEPA.pdf>

## Chapter 9

# Record of Decision

The ROD is a concise public record of an agency's decision or an agency's recommendation to Congress. It is prepared at the end of an EIS process and may not be finalized until at least 30 days after publication of the NOA of the FEIS in the FR. The ROD may be a separate document, or it may be integrated into any other appropriate decision document.

### 9.1 When to Issue a Record of Decision (40 CFR 1506.10(b)(2))

The ROD cannot be issued until at least 30 days after EPA has published the NOA for the FEIS. It can be released later, at the discretion of the lead agency. If there is a decision made to select the no action alternative (as a decision, not as a determination that no decision exists), a ROD should be issued documenting that decision. In the unusual circumstance where an EIS was prepared for an action and, upon further analysis, Reclamation determines there is no decision to be made, a ROD will not be issued.

### 9.2 Content (40 CFR 1505.2 and 43 CFR 46.110)

A ROD shall be prepared to accompany a decisionmaking package through the decision process. A ROD will apply only to actions for which an EIS has been prepared. There is no required format for a ROD, but certain topics must be addressed. The ROD, whether separate or as part of another decision document, must address:

- The decision and the alternatives considered, which should be the same ones covered in the EIS or PR/EIS, including the preferred plan. The decision should be within the range of alternatives addressed in the FEIS.
- The alternative(s) considered to be environmentally preferable.
- The factors that were considered with respect to the alternatives. Factors—including considerations of national policy—that were evaluated will be identified, and the ROD will state how those considerations entered into the decision. Additional factors that may be weighed include environmental impacts; social, economic, or

technical considerations; Reclamation's statutory mission and authorities; water policy directives; and other related factors. If the information is included in existing decision documents, the final ROD will need to identify the alternative selected.

- Whether or not all practicable means to avoid or minimize environmental harm for the alternative selected have been adopted, and if not, why. A summary of environmental commitments and mitigation measures should be presented, where applicable.
- Any monitoring and enforcement program established to ensure that identified mitigation measures are accomplished. The ROD should also address actions Reclamation would take if monitoring shows that mitigation is inadequate, unnecessary, or unsuccessful (also, see section 8.12, Environmental Commitments). See figure 9.1 for an example of a ROD.

Additionally, the ROD should address significant comments received on the FEIS during the period between the filing of the FEIS with EPA and preparation of the ROD, along with Reclamation's responses, as appropriate. See further discussion in section 9.4 below. Significant issues raised on the FEIS should generally be identified in the transmittal of the ROD. There is no appeals process provided for RODs under the CEQ regulations.

The ROD will also include a statement that there will be no impacts to ITAs or a statement describing the expected impacts of the proposed action on ITAs; a listing of any unresolved ITA issues; a list of commitments to prevent, mitigate, or compensate adverse impacts to ITAs; and a summary of any mitigation, monitoring, and enforcement programs related to ITAs (Reclamation memo, December 15, 1993).

The ROD should explain how the outcome of community involvement in the NEPA process may have influenced the final decision (i.e., consideration of any community alternatives, mitigation measures, and monitoring plans that were developed using consensus-based management, if applicable). (See Guidance Memorandum entitled Guidance on Use of Consensus-Based Management in the National Environmental Policy Act (NEPA) Process, September 21, 2004, in attachments). On items where consensus was reached within the community and Reclamation decided to take a different course, the ROD should explain what legal and substantive considerations entered into the decision.

The ROD must discuss any consensus-based alternatives developed during the EIS process. This discussion should include how consensus-based management was applied to the process and what alternatives (if any) were developed using consensus-based management.



## 9.3 Environmental Commitments

In all cases of NEPA compliance, means to mitigate significant adverse environmental impacts should be presented and adopted, wherever possible. NEPA does not require mitigation measures to be adopted for all impacts; however, it does encourage mitigation of impacts to the fullest extent possible and wherever practicable. Additionally, other statutes (e.g., ESA, NHPA) may require mitigation actions, which should also be identified here. Any environmental mitigation or enhancement measures that Reclamation plans to implement are termed “environmental commitments.” Once in the ROD, these are legal commitments, and Reclamation has clear obligations to implement them. They must be presented clearly in the final NEPA document and ROD or FONSI (as applicable), funded appropriately, included in plans and specifications, and followed as an integral part of the action to ensure that they are implemented and operating as planned. Specifications writers and inspectors should be very aware of environmental commitments as they conduct their work to ensure the commitments are integrated with other project work.

### 9.3.1 List of Environmental Commitments

A list of environmental commitments is an appropriate part of any environmental document and is especially important in a ROD, when the list of commitments is a part of the required description of the action. If there are no environmental commitments, this fact should be noted. Figure 9.1 includes an example of a ROD that contains a list of environmental commitments. The list of environmental commitments should consist of those identified in the compliance documents, MOUs, and/or correspondence with other agencies and public or private entities.

Types of environmental commitments include, but are not restricted to, the following examples. An actual list should specifically define the actions to be taken.

- Protection and enhancement of Federal- and State-listed threatened and endangered species
- Protection and enhancement of wetlands
- Protection and avoidance of historic properties
- Protection and enhancement of rare and unique areas
- Maintenance of streamflow (especially low flows)
- Proper disposal of hazardous waste materials

- Construction and provision for the O&M of recreation areas
- Leaving selected areas of standing timber within the conservation pool elevation
- Providing multiple-level water outlet structures for downstream releases
- Spacing power lines to prevent bird electrocution
- Watering disturbed areas for dust abatement

## 9.4 Addressing Comments on the FEIS

The ROD would generally contain a summary of the substantive comments received on the FEIS. This summary should be brief and should only address the significant issues raised by the comments received. Only in special circumstances should any specific comments be responded to in the ROD. If the comments raise significant issues that have not been addressed, the need to supplement the FEIS should be considered and a determination made (please see section 7.11, Supplemental Statements, in chapter 7). The ROD should also identify particular areas of controversy and any unresolved issues that exist.

## 9.5 Processing the ROD

A draft ROD will generally be prepared by the staff responsible for developing the EIS or PR/EIS. After approval by the program or area manager, the draft ROD is usually submitted to the Office of the Director, who has the authority to sign the ROD. The appropriate staff in these offices (most likely the environmental staff) will review the ROD for policy compliance and format. Staff in these offices may already be involved in drafting the ROD. Any necessary revisions will usually be made by the originating office. For EISs prepared in the area offices and regional offices, the Regional Director usually signs the ROD. The Commissioner, the Assistant Secretary for Water and Science, or the Secretary may sign some controversial or programmatic RODs. Upon signature, the signed original will be returned to the originating office for retention. A ROD cannot be executed until 30 days have elapsed after EPA publishes notification of FEIS filing in the FR, except under the conditions of 40 CFR 1506.10.

On actions requiring a decision by the Secretary, the ROD is usually prepared for the Commissioner's signature with a line for the Secretary's signature. The ROD will be transmitted from the Commissioner, through the Assistant Secretary for Water and Science for concurrence, and then to the Secretary. RODs are

considered public documents and must be provided to the public upon request (40 CFR 1506.6 (b)). There is no requirement to formally publish the ROD in the FR or the media. However, the responsible official in the region must ensure that the affected public is aware of the availability of the ROD. Appropriate means must be used to ensure widespread notification to involved agencies, organizations, and communities.

## **9.6 Rescinding a ROD**

Sometimes, because of procedural errors or administrative decisions, the rescission of a ROD will have to take place. In order to rescind a ROD, Reclamation should develop a notice for the FR that is similar to a Notice of Cancellation, but it will be a Notice of Rescission. Development of notices must follow the format requirements of the FR. To ensure consistency with current format requirements, the notice should be sent via e-mail to the Federal Register Liaison Officer currently located in Denver (84-213000).

## **9.7 Implementing the Decision (40 CFR 1505.3)**

Reclamation offices shall provide for appropriate monitoring to ensure that decisions are carried out in accordance with commitments made in the ROD. As prescribed by CEQ regulations, Reclamation shall implement mitigation and other conditions established in the EIS. As a lead agency, Reclamation is also required to:

- Include appropriate conditions in grants, permits, or other approval
- Condition funding of actions on performance of mitigation
- Inform, upon request, cooperating or commenting agencies on progress in carrying out mitigation measures that were proposed and adopted by the agency making the decision
- Make available to the public, upon request, the results of relevant monitoring

### **9.7.1 Environmental Commitments Program**

For RODs that include environmental commitments, the appropriate program director, usually the Regional Director, should consider developing an environmental commitments program. The environmental commitments program helps to ensure that all environmental project features (mitigation and enhancement) are included, developed, and operated concurrent with other project features. There is no required content or format for the program, but it is

recommended that an environmental commitments program include the preparation of an environmental commitments plan (ECP); if necessary, a program to adaptively manage the outcome of the decision; an environmental commitments checklist (ECC); and postconstruction environmental commitment summaries.

### **9.7.2 Environmental Commitment Plan**

The ECP is a master in-house environmental management plan for projects requiring the preparation of NEPA documents. The ECP is based on the list of environmental commitments included in the NEPA document and other subsequent commitments such as those listed in the Clean Water Act 404 permits, MOAs, and correspondence with other agencies, private entities, etc. The ECP should be prepared prior to the initiation of the action. The responsible director or the designated representative(s) should approve the ECP and identify the means of determining successful completion of the commitments.

### **9.7.3 Environmental Commitment Checklist**

The ECC should be a part of the ECP. It lists and summarizes the commitments from the ECP that are related to specific construction activities (whether they are performed in-house or by contractors) that are to be followed and/or monitored in the field. The project features identified in these commitments should be made a part of any construction contract or other appropriate action.

### **9.7.4 Adaptive Management Program**

If it is necessary to develop an adaptive management program, the ROD should outline the elements of the program, which should have been discussed in more detail in the text of the EIS (i.e., who was involved in the development of the program, which entities will conduct the monitoring, indicators of change, how new information will be analyzed and evaluated, and the timeframe for the program). The ROD should indicate how the public will be kept informed about the progress of the program. The ROD should indicate that additional NEPA compliance may be necessary if new information requires reconsideration of the decision.

### **9.7.5 Postdecision Environmental Commitment Summary**

After construction or implementation of the appropriate environmental commitments associated with project features identified in the ECP and ECC, it is recommended that within 1 year, and periodically thereafter as appropriate, following construction, a postdecision environmental commitment summary be prepared. This helps ensure that mitigation is being carried out in accordance with 40 CFR 1505.3. It is suggested that the summary address the status of environmental commitments (e.g., when they were implemented, the effectiveness

of the mitigating activity, any suggested improvements, and others). The summary may also include recommendations for the inclusion of additional environmental project features.

The area manager or responsible director should approve the postdecision environmental commitment summary. As appropriate, it is included in the project package that is provided to the operating office or agency for future followup actions. Periodic monitoring for compliance with the continuing activities listed in the postdecision environmental compliance summary should be incorporated into the ECP.

The regional office should receive copies of these summaries and make them available to the public upon request.

**RECORD OF DECISION**

*for the*

**FINAL ENVIRONMENTAL IMPACT STATEMENT**

**ANGOSTURA UNIT**

**CONTRACT NEGOTIATION AND WATER MANAGEMENT**

*in the*

Cheyenne River Basin  
South Dakota

January 2003

*Approved*

---

Regional Director  
Bureau of Reclamation, Great Plains Region

Date

Figure 9.1.—Example of a ROD.

Record of Decision  
Cheyenne River Basin, South Dakota

Angostura Unit: Contract Negotiation and Water Management  
Final Environmental Impact Statement

January 2003

### SUMMARY OF ACTION

The Bureau of Reclamation (Reclamation) has completed a final environmental impact statement (EIS) on the proposed renewal of a long-term water service contract for the Angostura Unit in the Cheyenne River Basin in South Dakota. Under the contract, water service will continue to be provided for agricultural irrigation uses in accordance with Reclamation law and policy. In addition, the contract includes provisions intended to increase operational efficiency and protect environmental resources. The final EIS was prepared in cooperation with the Angostura Irrigation District, Oglala Sioux Tribe, Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, South Dakota Department of Game, Fish and Parks, U.S. Geological Survey, U.S. Natural Resources Conservation Service, U.S. Bureau of Indian Affairs, and the South Dakota Department of Environment and Natural Resources. The U.S. Environmental Protection Agency and the U.S. Fish and Wildlife Service also participated in the project under their statutory authorities.

This Record of Decision (ROD) documents Reclamation's decision to provide long-term water service for the Angostura Unit. This ROD has been prepared in accordance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality's NEPA implementing regulations (40 CFR 1500-1508), and Reclamation's NEPA Handbook. The decision made herein is based on the information and analysis contained within the final EIS for the Angostura Unit: Contract Negotiation and Water Management, published in August 2002, and on the results of consultation and coordination with public agencies, tribes, the irrigation district, special interest groups, and individuals. Reclamation has considered all comments received on the proposed contract in developing this ROD. This action is consistent with the provisions of the 1939 Reclamation Project Act, as supplemented on July 2, 1956 (70 Stat. 483), which provides contractors a first right to renew long-term water service contracts.

### RECLAMATION'S DECISION

Reclamation has decided to implement the Improved Efficiencies Alternative (Reclamation's Preferred Alternative) as described in the final EIS. This alternative provides for continued irrigation through execution of a 25-year contract with the District and incorporates features intended to address issues raised during public scoping, including concerns regarding water quantity and quality, stream corridor health, reservoir operations, and fisheries.

In making this decision, Reclamation will take steps to increase efficiency of both the District's water delivery system and on-farm water use. Efficiency improvements would include measures such as lining canals and laterals, putting laterals into pipe, improving water measuring devices, leveling fields, irrigating by gated pipe or sprinkler, installing automated turnouts, providing education on irrigation and instituting Best Management Practices (BMPs). Specific locations for implementing these measures have not been determined. These efficiencies are expected to result in saved water that could then be used, subject to current authorization and law, for recreation, fisheries, downstream flows, irrigation or other uses. Reclamation will establish a

Figure 9.1.—Example of a ROD (continued).

public process to determine how best to use the saved water. Efficiency improvement savings are estimated to be 1,870 to 3,200 acre feet annually from delivery system improvements and another 4,320 to 6,160 acre feet from on-farm improvements. Together, delivery system and on-farm improvements could provide an estimated 6,190 to 9,360 acre feet of saved water annually. Water savings will not be immediate and are expected to develop over time as improved efficiency measures are implemented.

This decision will be implemented by approving and executing a long-term water service contract, including appropriate environmental provisions which have been negotiated with, agreed to by, and made a part of the contract to be executed with the Angostura Irrigation District. Several environmental commitments will be implemented by Reclamation as described in the **ENVIRONMENTAL COMMITMENTS** section of this ROD. No significant adverse impacts are anticipated to result from implementing this alternative.

#### **ALTERNATIVES CONSIDERED IN THE FINAL EIS**

Reclamation carefully considered public comments, NEPA and its implementing regulations, and Reclamation law in determining the range of contract renewal alternatives to be addressed in the final EIS. The contract renewal process involved a variety of interested and affected parties with diverse views about contract renewal of the federal irrigation project within the Cheyenne River Basin, which is reflected in the diversity of the alternatives. The draft and final EIS considered four alternatives with varying objectives, including the Improved Efficiencies Alternative (Reclamation's Preferred Alternative) described in the preceding section (**RECLAMATION'S DECISION**). The other three alternatives considered in detail in the final EIS are summarized below.

##### No Action Alternative

Under this alternative, Reclamation would renew the existing water service contract with the District for a 25-year term, making only minor modifications to assure that the new contract conformed with Reclamation law and the agency's contract policy. Reservoir storage, releases to the river and deliveries to the District would continue in the same patterns established under the previous contract. The District would be able to irrigate up to the full 12,218 acres within their boundaries. Recreation and fisheries in the reservoir and flows in the river downstream of the dam would be dependent on inflows into the reservoir, and would be secondary to District irrigation.

##### Reestablishment of Natural Flows Below the Dam Alternative

This alternative would reestablish, as closely as possible, natural flows in the Cheyenne River downstream of Angostura Dam by setting new operating criteria for the reservoir. Radial gates at the dam would be opened and inflows to the reservoir would be allowed to pass through to the river below. The maximum reservoir elevation would equal the spillway crest elevation of 3,157.2 feet.

Figure 9.1.—Example of a ROD (continued).



Record of Decision  
Cheyenne River Basin, South Dakota

Angostura Unit: Contract Negotiation and Water Management  
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This alternative would not provide water for irrigation and no contract would be signed with the District.

**Reservoir Recreation and Fisheries Alternative**

This alternative would identify reservoir recreation and fisheries as the management priority for Angostura Reservoir. A minimum reservoir elevation of 3170 feet would be established to maximize availability of boat ramps and boater access to the reservoir. In addition, this alternative would set target elevations of 3187.2 feet December-May; 3186 feet in June; 3185 feet in July; and 3184 feet August-December. These targets would facilitate beach establishment, promote fish propagation, and maintain a larger reservoir water surface area. Water conservation measures would be used when the reservoir elevation dropped below 3173 feet to minimize drawdown.

Irrigation would be secondary to reservoir recreation and fisheries, and subordinate to meeting the target reservoir elevations. Consequently, the contract signed with the District would specify that when water was available up to 12,218 acres could be irrigated, but when there is no water available in excess of the established targets, there would be no irrigation deliveries.

**ENVIRONMENTALLY PREFERABLE ALTERNATIVE**

NEPA defines the environmentally preferable alternative as “. . . *the alternative that will promote the national environmental policy as expressed in NEPA. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources.*” It is implicit in NEPA that the environmentally preferable alternative must be reasonable and feasible to implement.

Based on the environmental analysis in the final EIS, each alternative was ranked on its relative impact on biological, physical and essential resources. For each resource evaluated, the alternatives were given a rank from 1-4 with 1 representing the least impact on the resource of the four alternatives. For example, surface water quality resource impacts were measured based on impacts to the reservoir eutrophication index, reservoir total dissolved solids (TDS), and river TDS. When the rankings for each of the resource measures was totaled, the No Action, Improved Efficiencies, Reservoir Recreation and Fisheries Alternative all received a score of 3, while Reestablishment of Natural Flows Below the Dam Alternative received a score of 9. The conclusion from this ranking was that three alternatives would have similar impacts and the Reestablishment of Natural Flows would have the greatest impacts on surface water quality.

When the rankings for all biological and physical resources were totaled, the Improved Efficiencies Alternative had the lowest overall score. In addition, the Improved Efficiencies Alternative had the lowest score when the rankings for all resources were totaled. Thus, the Improved Efficiencies Alternative had the least adverse impacts to resources when compared to

**Figure 9.1.—Example of a ROD (continued).**

Record of Decision  
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each of the other alternatives analyzed and has been determined to be the Environmentally Preferable Alternative.

#### BASIS FOR DECISION

Public input was considered by Reclamation in developing alternatives to be examined in detail in the draft EIS. The major areas of public concern included the new water service contract, the Winters Doctrine and Tribal water rights, water quantity and quality, reservoir operations, sedimentation, riparian zones along the river, reservoir and stream fisheries, wildlife, economic benefits/impacts, cultural resources and Indian Trust Assets.

The final EIS and the negotiated contract address concerns associated with the Winters Doctrine and Tribal water rights. The following provision from the proposed contract addresses these concerns and is consistent with how they were addressed in the final EIS: *"Nothing in this Contract shall be construed as affecting the obligations of the United States or the Trust responsibilities of the Secretary [of the Interior] to any Indian or Indian Tribe; or as impairing the rights of any Indian or Indian Tribe including any prior paramount rights or Federally reserved rights, to the water of the Cheyenne River established under existing treaties, compacts, or law."*

Protection of surface water, both quantity and quality, was of particular interest during development of the EIS and contract negotiations. Based on the analysis in the final EIS, the Improved Efficiencies Alternative would be superior to the other alternatives evaluated in terms of impacts on water quantity and quality, including social and economic effects. Specifically, the Improved Efficiencies Alternative would improve water utilization by reducing the water necessary for irrigation of District lands. Under the Improved Efficiencies Alternative, irrigating 12,218 acres would require 33,600 AF/year, while the No Action and Reservoir Recreation and Fisheries Alternatives would require 41,800 AF/year to irrigate 12,218 acres. (No irrigation deliveries would be made under the Reestablishment of Natural Flows Below the Dam Alternative.) The saved water would then be available to mitigate or improve water quantity and quality related concerns. In addition, this alternative would result in some improvement in the reservoir eutrophication index and TDS load in the reservoir when compared to existing conditions.

The Improved Efficiencies Alternative would also be superior to other alternatives in the areas of irrigation and recreation economics. Annually, District farming activities generate \$525,000 in benefits to the nation, \$1,160,000 in household income from all sectors, \$540,000 in agricultural income, and provide 47 jobs. The Improved Efficiencies Alternative is the only alternative evaluated that would improve on these values. From a recreational standpoint, current operations of Angostura Reservoir account for 271,000 visitor days annually, which generate an estimated \$7,080,000 of total benefits, \$1,200,000 in household income, and 92 jobs. The Improved Efficiencies Alternative provides for some flexibility in operations, and depending on reservoir

Figure 9.1.—Example of a ROD (continued).

elevation, could contribute from 7,900 to 14,600 additional visitor days of use and from \$207,000 to \$382,000 of additional revenues annually from recreational activities.

Reclamation also evaluated the effects of the proposed alternatives on fisheries, wildlife, wetlands, sediment, the stream corridor, and cultural and paleontological resources. The alternative with the least adverse effects or the greatest benefits, varied among resources. For example, for the stream corridor and wildlife resources, the Reestablishment of Natural Flows Below the Dam Alternative would provide the greatest benefits, while the Reservoir Recreation and Fisheries Alternative would provide the most benefits to wetlands, and cultural and paleontological resources. In terms of sediment buildup within the reservoir and sediment impacts on water quality downstream of the reservoir, the No Action, Improved Efficiencies, and Reservoir Recreation and Fisheries Alternatives would have similar affects, while the Reestablishment of Natural Flows Below the Dam Alternative would result in greater impacts than the other alternatives. Finally, the Improved Efficiencies and Reservoir Recreation and Fisheries Alternatives would be the most beneficial for the reservoir fisheries resource. Overall, when the impact indicators for these resources were ranked and these values totaled, the Improved Efficiencies and Reservoir Recreation and Fisheries Alternatives' scores were similar and more favorable than the other two alternatives.

Reclamation's decision to implement the Improved Efficiencies Alternative is based on the following rationale. First, the Improved Efficiencies Alternative was determined to be the Environmentally Preferable Alternative, providing the greatest overall resource benefits of any of the alternatives. Second, the Improved Efficiencies Alternative would have less impacts to resources identified as important to the public (water quantity, water quality, irrigation and recreation) than any of the other alternatives. And finally, the major advantage provided by the Improved Efficiencies Alternative is the ability to use water saved through efficiency improvements to address future resource needs – an option unavailable under any of the other alternatives.

#### **ENVIRONMENTAL COMMITMENTS AND MONITORING**

The following measures will be implemented as integral parts of the decision made herein to provide for desirable environmental benefits.

Irrigation District's Commitments:

1. The District will participate in a public process established to develop recommendations for the use of saved water once the quantity saved is determined.
2. The District will participate in the State of South Dakota's permit review process for changes in use or place of use of saved water, if the District is deemed a necessary party.

**Figure 9.1.—Example of a ROD (continued).**

Record of Decision  
Cheyenne River Basin, South Dakota

Angostura Unit: Contract Negotiation and Water Management  
Final Environmental Impact Statement  
January 2003

Reclamation's Commitments:

1. Reclamation will assess delivery system and on-farm efficiency prior to and subsequent to efficiency improvements. Based on this information along with other applicable data and considerations, Reclamation will use established hydrologic methodologies to determine the quantity of water saved. The general goal is to increase the District's delivery system efficiency by an average of 5% and on-farm efficiencies by an average of 10%. Achievement of these goals will, in part, depend on the amount of funding available to accomplish efficiency improvements.
2. Reclamation will lead and facilitate a public process to develop recommendations for the use of saved water once the quantity saved is determined.
3. If a State of South Dakota permit is necessary for changes in use or place of use of saved water, Reclamation will obtain or work with other entities to obtain appropriate permits.
4. Reclamation will be responsible for implementing system efficiency improvements, subject to availability of funds. Reclamation will seek willing partners to develop on-farm efficiency improvements.
5. Reclamation will work to secure funding sources, as appropriate, to fund implementation of delivery system and on-farm efficiency improvements.
6. Reclamation will develop a plan to monitor water quality and fish health in the Cheyenne River from the dam downstream to Red Shirt, SD.

**Figure 9.1.—Example of a ROD (continued).**

# Chapter 9 Useful Links

ESA

<http://www.fws.gov/endangered/esa-library/pdf/ESAall.pdf>

NHPA

<http://www.achp.gov/docs/nhpa%202008-final.pdf>

Section 404 of the Clean Water Act

<http://epw.senate.gov/water.pdf>

## Chapter 10

# Other Agency NEPA Documents

### 10.1 Review of Other NEPA Documents (40 CFR 1503.2 and 516 DM 4)

Reclamation has a responsibility to comment on environmental impacts discussed in another agency's NEPA documents when those impacts are within Reclamation's jurisdiction, expertise, or authority. Areas of Reclamation's expertise and/or jurisdiction include pollution control, energy, land use, and natural resources management (FR, December 21, 1984).

EISs and other environmental documents sent to Interior for environmental review (ER) are posted on an OEPC Web site that is updated daily and also displays the previous 3 months of ERs. This database is located at: <http://www.doi.gov/oepec/nrm.html>. Most ERs are distributed by this system, except those that are still published on paper or CD-ROM. OEPC distributes ERs to all potentially affected bureaus, with the Policy and Administration office serving as the designated point of contact for Reclamation. Policy and Administration is responsible for distributing ERs within Reclamation for review and comment, and coordinating any response, as appropriate. As part of this process, Policy and Administration will notify the appropriate regional and area office ER points of contact when ERs are posted on the Web site and forward any electronic or paper documents/CD ROMS for review. Deadlines for comment are specified by OEPC or the Federal agency requesting comments in the OEPC memo that distributes the ER for review. Timeframes for response within Reclamation and designation of signatory level for Reclamation will be established by Policy and Administration, depending on the scope of any Reclamation comments and how many regions may be affected.

Policy and Administration will take the lead at consolidating Reclamation comments that impact Reclamation-wide policies or programs or in cases where several regions have comments. Either the Director of Policy and Administration or the Commissioner would sign any Reclamation-wide comments, as appropriate. In some cases, Reclamation comments are relevant to only one or a few regions; therefore, Policy and Administration would ask one of the affected regions to serve as the coordinator of Reclamation comments. In these cases, the appropriate Regional Director would submit Reclamation comments and send a copy to Policy and Administration.

Bureaus and offices in Interior may send their NEPA documents to the Commissioner for review. These should be redirected to Policy and Administration and should be treated the same way as documents from other

Federal agencies. Policy and Administration will determine no review is necessary by Reclamation, review them, or send them to the proper regional, area, or other office as appropriate.

If a Reclamation regional office receives a request for review of a NEPA document directly from another Federal agency, bureau, or departmental office, the regional or area office should inform Policy and Administration of the request and should determine the manner of the response.

## **10.2 Comments on Other NEPA Documents**

Comments should be limited to significant matters affecting Reclamation policy, projects, and facilities, or falling within Reclamation's expertise. The following are suggested for official comments:

- Does the proposed action relate to a Reclamation activity (water or power development) or affect Reclamation lands? If it does not, that should be stated. Does it relate to the expertise of Reclamation? If it does neither, a "no comment" letter or response should be considered.
- The focus should be on substantive, rather than editorial, comments.
- Trivia should be avoided. The focus should be on serious errors or omissions which lead to misunderstanding of impacts.
- The critique should not just point out deficiencies—suggestions for alternative language and sources for data should be offered.
- The critique should concentrate on better analysis of impacts.

CEQ has published appendix II to its NEPA regulations, which identifies the jurisdiction by law and/or special expertise of the various Federal agencies.

## **10.3 Procedure for Referrals of Other NEPA Documents (40 CFR 1504.1-.3 and 516 DM 4.7 C)**

EPA is required to review and comment publicly on all EISs and must refer the situation to CEQ for resolution if it determines an action is environmentally unsatisfactory.

Reclamation may also make a recommendation to refer another agency's EIS to CEQ for resolution of unresolved issues through the Commissioner and Interior. The referral process to CEQ should be considered a last resort, to be used only after concerted and timely attempts to resolve the issue at the local level have failed.

The following procedures shall be followed if referral to CEQ is necessary:

- Advise the agency, at the earliest possible time, that the issue will be referred to CEQ unless a satisfactory agreement is reached.
- Include such advisement in Reclamation's comments on the other agency's DEIS.
- Identify any essential information that is lacking and provide a suggested timeframe for its submittal.
- Transmit a documentation package, including the above information, to the Commissioner, who forwards the notification of a referral to the Department.
- Interior will send the documentation package to CEQ to demonstrate that the agency has been advised of a planned referral.

If the matter is not resolved during the DEIS stage, Reclamation shall deliver its referral to CEQ no later than 25 days after the FEIS has been made available to the public. CEQ will not accept a referral after the 25-day period unless an extension has been granted by the agency producing the document. The referral shall consist of:

- A copy of the letter signed by the Commissioner and sent to the agency, informing it of the referral and the reasons for the referral, and requesting that no action be taken to implement the matter until CEQ acts upon the referral.
- A statement supported by data leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or environmental quality. The statement shall:
  - Identify the issues or facts in the controversy
  - Identify any existing environmental requirements or policies that would be violated by the matter
  - Present the reasons Reclamation believes the matter is environmentally unsatisfactory



- Contain a finding by Reclamation regarding whether or not the issue is of national importance or a threat to national environmental resources or policies
- Review the steps taken by Reclamation to bring its concern to the attention of the lead agency at the earliest possible time
- Provide Reclamation's recommendations concerning a mitigation alternative, further study, or other course of action (including abandonment) necessary to remedy the situation

# Chapter 10 Useful Links

Federal Register, December 21, 1984

<http://ceq.hss.doe.gov/nepa/regs/ceq/iii-7app2.pdf>

## Chapter 11

# Recurring NEPA Issues

Over a period of time, and as a result of Reclamation training, workshops, and similar activities, certain issues seem to resurface on a regular basis within the various regions and across a broad spectrum of Reclamation activities in the West. A number of these issues are identified in the following sections, along with a short discussion and guidance, where applicable. There are no clear answers to some of these issues, which is why they recur. When these difficult questions arise, the issues may be discussed with NEPA staff in Policy and Administration, other Reclamation NEPA practitioners, and the Solicitor's Office to develop a solution that is in compliance with applicable regulations or procedures. This approach ensures that the decision is not arbitrary or capricious and documents the rationale as a matter of record.

## 11.1 Identifying Purpose and Need Early in the Process

The need for an accurate (and adequate) purpose and need statement early in the NEPA process cannot be overstated. This statement gives direction to the entire process and ensures alternatives are designed to address project goals. Simply stated, the purpose and need statement identifies what is to be accomplished. Before proceeding with a NEPA process, goals should be established and articulated. Purpose and need statements have often been inadequate in describing the necessity for the proposed action and in defining the scope of the alternatives to be considered. An inadequate definition of the purpose of and need for a project can lead to an inordinate array of alternatives—many of which will be beyond the scope of the proposed action. A concise purpose and need statement, at the initiation of the NEPA process, tends to limit the range of alternatives (thereby reducing the level of effort) and serves as a guide for selecting alternatives. In the absence of a concise purpose and need statement, the selection process will appear arbitrary and will be subject to criticism. This discussion is in the context of the EIS process but is generally applicable to the development of the need statement in the EA process as well.

## 11.2 Public Involvement Challenges

The public involvement process often does not reach all elements of the interested public as well as desired. The typical process of one or more scoping meetings may reach only stakeholders who are familiar with the process and who have responded, to some degree, to this process. This process does not necessarily ensure the participation or eventual buy-in of persons unfamiliar with the process or holding diverse or uncompromising interests. It is vital that creative,

nontraditional means be considered and used, as appropriate, to notify and involve all segments of the public. Greater use of local newspapers, community newsletters, radio, television, and the Internet, in languages of cultures within the community, is helpful in getting better representation of community interests in the NEPA process. Personal visits with local community leaders can be vital to understanding local concerns and improving local involvement.

Because most of the public does not deal with NEPA, there is understandable confusion concerning what NEPA is and how best to participate. There are resources available to assist in this area. For instance, CEQ has published, *A Citizen's Guide to the NEPA, Having Your Voice Heard* ([http://ceq.hss.doe.gov/nepa/Citizens\\_Guide\\_Dec07.pdf](http://ceq.hss.doe.gov/nepa/Citizens_Guide_Dec07.pdf)). Interior NEPA regulations (43 CFR 46.200) recommend that Interior agencies provide, as practicable, community-based training to promote efficiency in the NEPA process. The regulations also encourage (43 CFR 46.110) consensus-based management to improve community and interested parties' effective participation in the NEPA process. These techniques—and others—should be applied as practicable to the NEPA process, especially when a high degree of public interest exists.

When working with Indian tribes, it should be kept in mind that Indian tribes are not just another stakeholder but are sovereign entities and should be consulted individually on a government-to-government basis. Reclamation has prepared guidance to assist in this effort: *Protocol Guidelines: Consulting with Indian Tribal Governments* (<http://www.usbr.gov/native/naao/policies/protguide.pdf>).

The issues identified by the public involvement process often drive the entire NEPA process. The widest reasonable involvement of various interested parties significantly improves the integrity of the entire process.

### **11.3 Establishing Realistic Timeframes for NEPA Processes**

Federal agencies at times have failed to allow sufficient time to complete the NEPA process. Most often this occurs due to a need to move forward with an action because of regulatory or other deadlines and an agency's failure to adequately gauge how much time is needed to complete all the necessary consultations and analyses.

It is important to use NEPA as a tool to assist those responsible for making the best decisions possible, not just as a procedural "hoop" that must be jumped through. Agencies must plan in advance how much time and resources are necessary to complete the appropriate analysis and prepare the NEPA document.

It is not unusual for a “typical” EIS to take 2 to 3 years. Areas in which schedules are often longer than expected include scoping, alternative development, analyses (especially if modeling is involved), integrating compliance with other environmental laws into the NEPA process, working with cooperating agencies, data collection, and responding to comments on the DEIS. When developing a schedule, resist the temptation to assume that only factual corrections on the DEIS will be needed and that the FEIS will be easy and quick to prepare. Experience has shown that this is often not the case. It is often helpful to consider the length of time it took to prepare EISs on similar actions when developing schedules and overall timeframes for completing the NEPA document.

Interior regulations (43 CFR 46.240) now require Reclamation to explicitly set time limits for the entire NEPA process. These time limits shall be developed in consultation with cooperating agencies and reflect both the requirements of 40 CFR 1501.8 and the proposal specific issues, interests, and controversies.

## **11.4 Need for After-Project Followup**

As part of any environmental compliance activity, some environmental commitments are invariably made. These may be requirements resulting from ESA and NHPA consultations, agreement to implement recommendations of an FWCA report, or simply the environmental commitments of a NEPA document, which are written statements of intent, made by Reclamation, to mitigate or lessen environmental consequences associated with project activities. Environmental commitments can also address activities that restore or enhance environmental quality. These commitments are made in most environmental compliance documents (e.g., EAs, biological assessments, and EISs). The Reclamation office responsible for implementing the proposed action needs to follow up on environmental commitments made as part of the Reclamation decision on an action to ensure that these commitments are being fulfilled. This includes monitoring the effectiveness of commitments that are actually implemented to ensure that they meet stated goals of mitigation and/or enhancement. The findings should be documented and made part of the project files.

Environmental commitments should be viewed as a part of the action for which the agency may be held accountable. The terms of a ROD are enforceable by agencies and private parties. (See CEQ’s Forty Most Asked Questions, No. 34d.) Additionally, as new projects/activities are proposed, review and regulatory agencies may view past performance as an indication of future performance. Legitimate proposals for new activities can be jeopardized by past failures to honor commitments. NEPA documents, besides just listing environmental commitments, should include a process/program to identify specifically how the commitments will be met. Postdecisional monitoring is required by 40 CFR 1505.2(c), which states (in part): “A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.”

## 11.5 Doing NEPA on Decisions Already Made

NEPA compliance is required before any discretionary Federal action with potentially significant environmental impacts is initiated. Decisions should not be made without full compliance with NEPA. To do this is illegal and a violation of NEPA. The one exception to this requirement is in emergency situations. Reclamation may take urgent actions necessary to control immediate impacts of an emergency situation to life, property, or important resources (43 CFR 46.150).

Complying with NEPA after a decision has been made may cause the proposed Reclamation action to be halted, regardless of the merits of the proposed activity, because of legal challenges. Additionally, lack of a NEPA analysis may result in selecting an action that is not the best available alternative. The identification and analysis of alternatives contribute valuable information to the decisionmaking process. Other elements of the NEPA process also provide value, such as identifying measures that would avoid or mitigate significant impacts and an opportunity for the public to provide input into the decisionmaking process. Failure to carry out the NEPA process before a decision is made may result in decisions that are not beneficial to Reclamation and the environment.

## 11.6 How Much Is Enough?

NEPA sets forth a process to assist Federal agencies in making more informed decisions on actions that they undertake; however, before determining how or whether to proceed with a proposed action, there are many decisions that need to be made. These process decisions and the depth of analysis and/or scope of effort needed to make them have led to considerable discussion among NEPA practitioners, often culminating in the question, “How much is enough?” This question frequently arises during scoping—in the identification of the depth and extent of analysis regarding specific issues and when identifying the number/range of alternatives that need to be considered. Also, it frequently occurs during consultations with other agencies regarding the amount of information needed to make a determination of effect on resources. Unfortunately, with the sole exception of page limits, there is no specific guidance provided, in either NEPA or its implementing regulations, on this question.

There are, however, a number of references that suggest NEPA documents should be succinct statements, written in plain language, and detailed only to the point that it helps the reader understand the project, alternatives, and impacts. The sections of the CEQ NEPA regulations which address these topics are located at: 1500.1(b), 1500.4, 1501.2(b), 1501.7(a)(2) and (3), and Section 1502.22. A CEQ Guidance Memorandum, dated July 1983, also provides further discussion on this topic. The principal points coming out of the CEQ regulations and guidance are that Federal agencies should: (1) focus only on significant effects,

thus allowing a cutoff point to be defined by a lack of significance in the analysis; and (2) provide an adequate range of reasonable alternatives that allows decisionmakers to make informed decisions about the proposed actions.

The CEQ regulations do not put any consistent or explicit limit on the geographic or temporal scope to be examined (the “How far do you follow the impact?” issue). Wherever potentially significant impacts can be identified that are the result of any of the alternatives under consideration, those impacts should be presented, regardless of geographic location or how removed in time they may be. Where the impacts of an alternative are so attenuated as to be insignificant, or impossible to determine, the analysis can stop. The scope of an analysis can be an area of significant controversy, and the reasons an analysis is limited should be documented.

In responding to a question about how many alternatives must be considered, CEQ states that, “What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case” (CEQ’s Forty Most Asked Questions, No. 1b). This answer can be applied to any aspect of the NEPA process. The determination of a reasonable range must initially rest with the interdisciplinary preparers of the NEPA document. This can change during scoping, public meetings, and review of draft documents, and, of course, it is heavily influenced by the particular environmental issues involved.

There are several additional tests, all somewhat related and overlapping, which can be applied to appropriately limit the scope (i.e., identify when to determine enough is enough). The first is the “but for” argument. This consists of determining what would happen in the environment “but for” the proposed action. Those changes that would occur in the environment regardless of whether the proposed action is implemented are not analyzed as impacts of the proposed action. This is typically determined when the no action is developed because the no action should include those actions which would occur if the proposed action is not implemented. A typical example of this limit to NEPA analysis is a housing development which is going to occur regardless of whether Reclamation agrees to supply water or not. In this example, the no action alternative should reflect a reasonable alternative water supply and include the housing development. The alternatives would also include the housing development. Therefore, since the housing development would be a feature of the environment in all alternatives, the comparison of the no action alternative to the action alternatives would not display any effects of the housing development.

A second test revolves around the extent of agency discretion. Those actions for which Reclamation has no discretion to act differently (i.e., where there are no alternatives) are not subject to NEPA (43 CFR 46.100). An example would be where Congress has directed Reclamation to provide water to a specific community. While it may be appropriate to analyze the ways to provide that water, the provision of water to another community may not be a reasonable

alternative. These situations require careful reading of the authorizing statute and involvement of the Solicitor's Office to ensure it is appropriate to limit the analysis.

The Supreme Court recently articulated (in *Department of Transportation v. Public Citizen*, 124 S. Ct. 2204 (2004)) an additional test, that of reasonable causation. The Supreme Court discusses this in terms of the "familiar doctrine of proximate cause from tort law" and indicates that, in addition to the "but for" test, discussed above, a "reasonably close causal relationship" must exist between the proposed action and the environmental effect. Where it is believed that such reasonable causation does not exist, it may be appropriate to exclude such analysis from a NEPA document; however, this depends on legal definitions and interpretations that should be discussed with the Solicitor's Office before being applied to the scope of a NEPA analysis.

Finally, there is a brief discussion in section 3.5.3 describing how a Federal agency may limit the scope of analysis to a small part of a larger project when the larger project is non-Federal. There is a minimal level of Federal involvement that is necessary to trigger a requirement for analysis of the entire action as an indirect effect of the Federal action. This minimal level is not explicitly defined, but CEQ has recognized that such a limit of scope can be appropriate (see 52 FR 22517 (June 12, 1987)). As with agency discretion and reasonable causation, applying this concept to a particular project should be discussed with the Solicitor's Office.

## 11.7 Climate Change

The subject of climate change has become a commonly raised issue in the NEPA process. As a result, it is recommended that climate change should be considered, to the extent it applies, in every NEPA analysis. There are two possible interpretations of climate change with respect to a Reclamation proposed action. The first interpretation is whether Reclamation's action is a potentially significant contributor to climate change. The second is what effects climate change may have upon a Reclamation proposed action. For either case, it is recommended that a discussion of climate change be included in the EA or EIS, even if it is determined that climate change is not a factor for a particular action.

Reclamation's proposed actions—typically involving moving and/or managing water in different ways—generally are not considered to be potentially significant contributors to climate change. If an action involves a substantial release of greenhouse gases (e.g., carbon dioxide [CO<sub>2</sub>], methane [CH<sub>4</sub>], nitrous oxide [N<sub>2</sub>O], hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride [SF<sub>6</sub>], and other fluorinated gases including nitrogen trifluoride [NF<sub>3</sub>] and hydrofluorinated ethers), it may be reasonable to develop an analysis of the quantity of such greenhouse gases produced and relate that to other regional, national, or global sources to establish context and intensity.



Climate changes may have significant effects on how Reclamation projects operate and even whether the projects are viable, depending upon the local climate changes that may occur. The potential for climate change will likely affect all the alternatives (including no action) and triggers a potentially broad range of appropriate analysis for the NEPA document. A series of considerations are suggested to determine the appropriate analysis for any particular proposal. These considerations are:

- Is climate relevant to the proposed action?
- Is the timeframe for analysis long enough for climate change to be relevant?
- What relevant regional/local projections of climate change are available?
- If relevant regional/local projections are available, do they suggest significant change in a way that would affect the proposed action?
- If the proposal has an official partner, does that partner have State or local climate change analysis requirements that are appropriate for the NEPA analysis as well?
- Does the information available indicate that climate change would have a potentially significant effect upon Reclamation's proposal?

As these considerations are examined, different options for addressing climate change in the NEPA process become more appropriate. If climate is not relevant, or if the project timeframe is too short for climate change to have an effect, a brief statement that climate change is not relevant is appropriate.

When the proposal may be affected by climate change, but no relevant regional/local climate projections are available, a generic discussion of climate change theory and current literature may be all that is reasonable. If the effect is potentially significant to the decision, be aware of 40 CFR 1502.22 and 43 CFR 46.125, addressing incomplete or unavailable information.

Where a cooperating agency or partner agency has climate change analysis requirements, based upon law or regulation, it may be appropriate to use the partner's required analysis as long as that analysis is acceptable to Reclamation in a technical sense and appropriate for a NEPA analysis.

When the available information indicates a potentially significant effect upon Reclamation's proposal, a more detailed discussion can be appropriate. This analysis can take the form of a literature review and qualitative analysis, or a quantitative sensitivity/effects analysis. This level of analysis is complex and can

be time consuming, and the question of exorbitant costs may become a factor. However, where climate change has a clear potential to significantly affect the proposal, all reasonable efforts should be made to obtain the appropriate information and analysis.

# Chapter 11 Useful Links

A Citizen's Guide to NEPA, Having Your Voice Heard  
[http://ceq.hss.doe.gov/nepa/Citizens\\_Guide\\_Dec07.pdf](http://ceq.hss.doe.gov/nepa/Citizens_Guide_Dec07.pdf)

CEQ's 40 Most Asked Questions  
<http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm>

CEQ's Memorandum of July 22, 1983  
<http://ceq.hss.doe.gov/nepa/regs/1983/1983guid.htm>

ESA  
<http://www.fws.gov/endangered/esa-library/pdf/ESAall.pdf>

Fish and Wildlife Coordination Act  
<http://www.fws.gov/laws/lawsdigest/FWCOORD.HTML>

National Historic Preservation Act  
<http://www.achp.gov/docs/nhpa%202008-final.pdf>

Protocol Guidelines: Consulting with Indian Tribal Governments  
<http://www.usbr.gov/native/naao/policies/protguide.pdf>

40 CFR 1500-1508  
[http://ceq.hss.doe.gov/ceq\\_regulations/regulations.html](http://ceq.hss.doe.gov/ceq_regulations/regulations.html)

43 CFR 46  
<http://www.doi.gov/oepc/nepafr/docs/Federal%20Register%20October%202015,%202008%20NEPA.pdf>

## Chapter 12

# NEPA References

### 12.1 Who to Ask About NEPA in Reclamation

There will be many times when NEPA compliance requirements and procedures are not clear. When questions arise, this NEPA Handbook, and the policies, regulations, and laws it references, should be consulted first. If a course of action is still not clear, regional and Policy and Administration environmental staff, as well as the Solicitor and OEPC, are available for further assistance. Also, Reclamation has established a team of individuals representing NEPA expertise in each region and in Denver. This team is available to provide assistance when difficult NEPA issues occur.