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1 August 2025

Department of the Interior (DOI)
Attn: DOI-2025-0004
1849 C Street NW
MS 5020
Washington, D.C. 20240

***RE: Docket No. DOI-2025-0004; National Environmental Policy Act (NEPA)
Implementing Regulations; Interim Final Rule, Request for Comments; NMERT
Project No. NMERT-4815***

To Whom it May Concern:

The New Mexico Department of Game and Fish (Department), New Mexico Interstate Stream Commission (NMISC), New Mexico Department of Agriculture, and New Mexico State Land Office (collectively, "the State Agencies") have reviewed the DOI's Interim final rule entitled National Environmental Policy Act Implementing Regulations (hereafter DOI [2025]) in which the DOI requests comments regarding their partial rescission of, and updates to their remaining, regulations in Title 43, Part 46 of the Code of Federal Regulations implementing the NEPA and their maintenance of NEPA procedures in a *Department of the Interior Handbook: National Environmental Policy Act Implementing Procedures (Handbook)* henceforth. The DOI's existing NEPA implementing regulations were intended to supplement the Council on Environmental Quality's (CEQ's) NEPA regulations. The CEQ's NEPA regulations were repealed in April, 2025 as they had been implemented under a previous Executive Order that was rescinded under Executive Order 14154 Unleashing American Energy (TWH 2025). All federal departments and agencies, including the DOI, were directed by the CEQ to revise their NEPA implementing procedures and regulations consistent with TWH 2025, necessitating the actions outlined in DOI (2025).

The DOI is seeking, and the State Agencies provide, comments regarding the following specific actions in DOI (2025):

- 1) Rescission of multiple sections of NEPA regulations maintained in Title 43, Part 46 of the CFR;

- 2) Revisions to remaining sections of NEPA regulations maintained in the CFR;
- 3) Moving the DOI's remaining NEPA procedures to a separate Handbook.

The combined State Agency comments are structured into the following 3 main themes relevant to NEPA implementation:

- 1) Public comment processes
- 2) Categorical Exclusions and extraordinary circumstances
- 3) Procedural clarifications and recommendations

Public comment processes

The State Agencies appreciate past notices and communications, including letters, emails, and federal register publications, by the DOI and its constituent bureaus regarding NEPA implementation, including availability of Environmental Assessments (EAs) and Environmental Impact Statements (EISs) pertinent to State Agency authorities and expertise for review, for past projects and desire continued engagement with these bureaus on future projects. The State Agencies have the following input on public comment processes, including communications by the DOI and its constituent bureaus to the State Agencies:

- 1) Per Section III.B of DOI (2025), the State Agencies contest that the DOI has good cause for issuing DOI (2025) and having it take effect immediately without first issuing a proposed rule and soliciting public comments for at least 30 days. DOI cites a void created by the rescission of the CEQ's NEPA regulations, which DOI's previous regulations were intended to supplement. However, the CEQ's directive to federal agencies to revise their NEPA implementing procedures and regulations allowed federal agencies 12 months to complete this work and, in the meantime, allowed them to continue following their existing NEPA procedures until new ones could be developed. Therefore, the DOI's argument for good cause for proceeding with an interim final rule is invalid. Additionally, the State Agencies are concerned that DOI (2025) may ultimately not be finalized (e.g., Bosch 2020), potentially leading to confusion over the DOI's official implementation procedures while removing the opportunity for public input into the process.
- 2) There are few references to State agencies and Tribes in DOI (2025) and the Handbook. The State Agencies do appreciate the reference to consultation with relevant State, Tribal, and other agencies to ensure compliance with environmental laws and regulations in Appendix 3 to the Handbook (page 22). However, from the information provided, it appears that State agencies and Tribes **may** lose their ability to review and comment on projects if they are not granted cooperating agency status. While the State Agencies appreciate their current and past opportunities to become cooperating agencies during NEPA implementation, that process often entails lengthy development of Memoranda of Understanding (MOUs) and, because of the many steps involved in being a cooperating agency, it would be extremely burdensome for the State Agencies to

become cooperating agencies for **all** projects pertinent to their authorities and expertise. The State Agencies request that other avenues for communication, consultation, and associated transparency between the DOI and its bureaus and State Agencies regarding NEPA implementation and associated EAs and EISs are implemented and clearly described in the Handbook.

- 3) It is unclear whether there will be opportunities provided for public comments on future revisions to the Handbook. The State Agencies encourage that future revisions are made available for review and comment.
- 4) Both DOI (2025) and the Handbook give substantial discretion to the Responsible Official regarding NEPA implementation, especially for decisions pertinent to whether public comment is necessary or will be sought. In addition, the Handbook outlines a potentially excessively limited scope for public engagement on NEPA implementation moving forward. This limited scope will lessen the transparency of the NEPA implementation process and mitigate the potential for useful input provided through the public comment process, including information from communities directly affected by the proposed action and that may not be known to bureau staff. The DOI may also miss out on best available science that the public or State, Tribal, or local entities may have access to. As an alternative, the State Agencies encourage the DOI to set up identical NEPA processes across its bureaus and consistency between processes for EAs and EISs, including ensuring that all draft EAs, EISs, and supplements to EISs (i.e., Section 3.6.b of the Handbook) are made available for public comment. DOI (2025) describes a process where public comment would be solicited potentially only through Notices of Intent to prepare an EIS (see Scoping and Public Involvement section of Appendix 3 to the Handbook). Commenting at the Notice of Intent stage of the process is insufficient and usually premature because the action agency has not yet analyzed potential effects of the action and has not provided sufficient information for the public to adequately respond. The State Agencies would appreciate the DOI setting up a more robust and consistent process. The DOI bureaus should also address all public comments received on both EAs and EISs, rather than just substantive comments received from Federal, State, Tribal, and local agencies on EISs per Section 2.1 of the Handbook. At the very least, the Department and the NMISC encourage clarification of the sort of factors that might trigger an EA to be released for public comment per Sections 1.5.f.3 and 1.8.b of the Handbook and the Scoping and Public Involvement section of Appendix 3 to the Handbook.
- 5) 30 days should be a minimum, not a maximum, length of time provided for all public comment periods related to NEPA implementation (e.g., Section 2.1.c of the Handbook, Scoping and Public Involvement section of Appendix 3 to the Handbook).

Categorical Exclusions and extraordinary circumstances

The State Agencies appreciate that public notice of the establishment of new Categorical Exclusions (CEs) will be posted in the Federal Register (Title 43 Part 46.205.h.3 in DOI [2025]). However, DOI (2025), the Handbook, and Appendix 3 to the

Handbook give DOI extensive authority to use CEs, potentially without any input from the public (e.g., bureaus **may** require public notification of a decision supported by a CE through publication of documentation of CE reliance per the CE and Extraordinary Circumstances Review Protocol section of Appendix 3 to the Handbook). The State Agencies request clarification that in addition to public notice, a request for a 30-day public comment period (minimum) will be published in the Federal Register for all newly established CEs.

Regarding extraordinary circumstances for CEs, the State Agencies express concern over the removal of the extraordinary circumstance related to violation of “a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment” (Section II.B.2 of DOI [2025]). This removal could lead to laws being broken. The State Agencies note that the Department of Defense (DOD), in its regulations, has not removed this extraordinary circumstance. The State Agencies request that the DOI consider reinstating this extraordinary circumstance, consistent with DOD’s regulations. If this extraordinary circumstance is not reinstated, the Department and NMISC request that if the DOI or any of its bureaus suspect that reliance on a CE with respect to a specific action may break an environmental law, the DOI commits to making the documentation of the CE for that action available for public comment or not pursuing the action.

The Department has the following more specific comments on CEs listed in Appendix 2 to the Handbook, listed by Appendix Section:

- 1) U.S. Fish and Wildlife Service (USFWS), Sections B.4 and B.5: The CE in USFWS, Section B.5 potentially conflicts with that in USFWS, Section B.12 as fire prevention and restoration measures may include hazardous fuel reduction activities. Prescribed burning and fire management activities can also have substantive impacts on wildlife. The Department recommends adding guardrails to the implementation of USFWS, Sections B.4 and B.5 in the form of maximum acreages (e.g., 4,500 acres to match USFWS, Section B.12) to which prescribed burning to improve habitat and fire prevention and restoration measures may be applied to qualify as a CE.
- 2) Bureau of Land Management (BLM), Sections B.7, C.7, C.8, and C.9: Clarify that these CEs only apply when disturbed areas and temporary routes or roads are reclaimed or revegetated using **native** vegetation/vegetative cover.
- 3) BLM, Section C.3: Clarify that this CE only applies when seeding and seedling plantings are of **native** plants.
- 4) BLM, Section C.4: Define what devices constitute “small mechanical devices”.
- 5) BLM, Section F.9: Clarify that trenching can only be performed if precautions are taken to exclude wildlife and avoid unnecessary wildlife entrapment and mortality.
- 6) BLM, Section K.9: Clarify that abandoned buildings can only be removed following survey for, and no observation of resident wildlife in, the building, especially bats.

Procedural clarifications and recommendations

The Department, and in some cases the State Agencies, requests the following clarifications in or modifications to, and makes the following recommendations regarding the content of, the Handbook as listed below by Handbook Section:

- 1) Section 1.1.6.iii.A: as reductions in royalties may impact the implementation of environmental conservation efforts and sustainable practices by industry, thereby having a negative environmental impact, the Department recommends not including royalty reductions in the list of items not subject to NEPA.
- 2) Sections 1.5.d.3 and 2.3.b.3: cumulative effect analysis as described in these Sections is important in areas that have already been extensively impacted by previous development (e.g., CEQ 1997). All DOI bureaus should consider the cumulative effects of other development in project areas as much as possible.
- 3) Section 1.8.b.2: all Notices of Intent for EISs or EAs should include all the factors listed in this Section; the Department recommends changing “may include” to “shall include”.
- 4) Section 2.1.e.ix: fix the URL provided for the USFWS as this page currently states “Content not Available”.
- 5) Section 2.3.6: the Department strongly recommends inclusion of mitigation measures in **all** EISs (i.e., change “Any” to “All” at the beginning of this Section).
- 6) Sections 1.5.f.4 and 2.5.c: the State Agencies request clarification and express concern regarding the statements pertaining to the issuance of EAs or publication of EISs “in as substantially complete form as is possible”. Specifically, does this mean that the DOI proposes to issue or publish incomplete documents that may never be revisited and completed? If so, acting based on substantively incomplete documents may put such actions at risk of litigation and subsequent delays. Moreover, this provides uncertainty for the regulated entities and may have negative consequences for individuals, States, Tribes, and businesses. Further, “substantially complete” is a highly subjective phrase and should be defined or reworded to ensure consistency across DOI-issued and published EAs and EISs in terms of their completeness.
- 7) Section 3.1: the Department recommends including timeframes under which reliance on an existing EIS or EA is appropriate. For example, similar to Sections 3.2.b.1 and 3.2.b.2, reliance on an existing EIS or EA that is fewer than 5 years old may be appropriate; reliance on excessively old documents that do not account for changes in status for federally listed species or changes in environmental conditions is not appropriate.
- 8) Section 4.1: clarify where Records of Decision, decision records, Determinations of NEPA Adequacy, or Findings of No Significant Impact will be published and made publicly available (e.g., will they be published on the websites listed in Section 2.1.e?).
- 9) Section 6.1: the Department recommends adding a definition for “Participating Agency” to this section.
- 10) Section 6.1.j.2: the State Agencies recommend clarifying that when effects are within the DOI’s regulatory authority and control to address and are clearly

triggered by the proposed action, these effects should be analyzed, even if they are remote in time or geographically from the proposed action.

The Department also makes the following recommendation regarding the content of:

- 1) Appendix 1 to the Handbook: include actions that normally require an EIS or EA for the Bureau of Reclamation.
- 2) Appendix 3 to the Handbook: clarify in the Significance, Including Reaching a Finding of No Significant Impact (FONSI) section of this Appendix that greenhouse gas emissions and climate change can, depending on the proposed action, be demonstrated to contribute to any of the five considerations that the Responsible Official may weigh when determining the “significance” of a proposed action and are therefore relevant to this determination process.
- 3) Appendix 3 to the Handbook: clarify where notices of availability of an environmental document for public review or comment will be published (e.g., will they be published on the websites listed in Section 2.1.e of the Handbook?) and how participating agencies will be identified per the Formal Aspects of Environmental Documents section of this Appendix.
- 4) Appendix 3 to the Handbook: clarify how a bureau’s decision to complete an EA or EIS itself (Applicant-Prepared and Contractor-Prepared EAs and EISs section of Appendix 3 to the Handbook) would interplay with the deadlines for EA and EIS preparation outlined in the Handbook (Sections 1.5.f and 2.5).

Thank you for the opportunity to review and comment on the DOI’s NEPA implementing regulations and your consideration of these comments.

Sincerely,

Michael B. Sloane
Director

References

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[TWH] The White House. 2025. Executive Order 14152 Unleashing American Energy. Federal Register 90(18):8353-8359.