



## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

[RR83530000, 256R5065C6, RX.59389832.1009676]

### National Environmental Policy Act Implementing Procedures for the Bureau of Reclamation (516 DM 14)

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of revisions.

**SUMMARY:** This notice announces the revision of seven categorical exclusions (CEs) listed in the Bureau of Reclamation's procedures for compliance with the National Environmental Policy Act of 1969 (NEPA). The revisions clarify existing CEs on certain financial assistance funding, water-related contracting, and use authorization actions to allow for more consistent interpretation and more efficient review of appropriate actions based on the Reclamation's experience implementing these CEs.

**DATES:** The revised categorical exclusions are incorporated into Reclamation's NEPA procedures, located at Chapter 14 of Part 516 of the Departmental Manual (516 DM 14), effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** The revised CEs can be found at the web address for Reclamation's revised NEPA procedures, 516 DM 14: <https://www.doi.gov/document-library/departmental-manual/516-dm-14-managing-nepa-process-bureau-reclamation>.

**FOR FURTHER INFORMATION CONTACT:** Shane Hunt (he/him) via phone at 916-202-7158, or via email at [usbr\\_ce@usbr.gov](mailto:usbr_ce@usbr.gov). Individuals who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

## **SUPPLEMENTARY INFORMATION:**

### **Background.**

The Bureau of Reclamation (Reclamation) was established in 1902. Its original mission was civil works construction to develop the water resources of the arid Western United States to promote the settlement and economic development of that region. Reclamation developed hundreds of projects to store and deliver water. That substantial infrastructure development contributed to making Reclamation the largest wholesale supplier of water and the second largest producer of hydropower in the United States.

On June 7, 2024, the Department of the Interior (Department) published a Federal Register notice (89 FR 48674) proposing revisions to seven categorical exclusions (CEs) in Reclamation's NEPA implementing procedures, 516 DM 14. During the 30-day comment period, Reclamation received 14 comment letters and emails. A detailed summary of comments on the proposed revisions and Reclamation's responses are noted below.

Reclamation has reviewed the comments and has taken them into consideration in finalizing the revised CEs. Reclamation continues to find it appropriate to revise the seven CEs to promote consistent interpretation and application by eliminating confusing or outdated terminology and authorities, as well as clarifying the scope of activities and constraints. Reclamation edited the revised CEs to respond to comments, as noted below, and revised the CEs in 516 DM 14, section 14.5, paragraph D entitled, "Operation and Maintenance Activities," and paragraph F entitled, "Financial Assistance, Loans, and Funding."

### **Comments on the Proposal.**

The Department solicited comments from the public on the potential revisions to the CEs through a 30-day public comment period, announced in the Federal Register on June 7, 2024 (89 FR 48674). Reclamation considered all comments received to date, and

Reclamation has responded, as provided below, to all substantive issues raised in the public comments.

Reclamation received 14 letters and emails from state governments, water and irrigation districts, water user organizations, and Tribal Nations. Individual comments included several that restated the objectives, limitations, and rationale for the proposed CE revisions, several that expressed general support or opposition for the proposed CE revisions, and several that provided more extensive detailed comments regarding the proposed CE revisions.

Reclamation appreciates the interest and participation of all respondents. Reclamation has noted the comments that provided general support and general opposition. For comments providing additional detail, questions, and suggestions, Reclamation, where appropriate, grouped the common comments and responds to the comments as follows:

*Comment 1—Transparency and public input:* Commenter expressed concern that the CE revisions would shift the analysis of project impacts to an internal process without public input.

*Response 1—* The Council on Environmental Quality (CEQ) and Department's NEPA implementing regulations do not require public notice for an agency to use a CE. As provided in CEQ regulations and guidance, establishing, revising, and appropriately using CEs is consistent with NEPA. CEs are not exemptions or waivers from NEPA. Rather, they are a type of NEPA review intended to accomplish the purposes of NEPA, efficiently and effectively. The establishment and revision of a CE is a public process through which the agency must demonstrate that the category of actions would not normally have significant effects, individually or in the aggregate. Having made such a demonstration, subject to public review and comment, the agency may then apply the CE to complete the NEPA environmental review process for proposals that do not require an

environmental assessment (EA) or environmental impact statement (EIS), which are more resource intensive than applying a CE. Reclamation has and will continue to meet requirements under NEPA and other laws and regulations, ensuring the appropriate level of analysis and public engagement, consistent with regulations and policies.

*Comment 2—Scope of CE D4:* Commenters recommended adding language to CE D4 to clearly cover Warren Act contracts, administrative operating agreements, and other administrative actions.

*Response 2—* The scope of the revised CE language already captured many of the suggested additions. A Warren Act contract is a type of "water-related contracts" covered under the proposed revision, as it is a legally binding agreement to which Reclamation is a party, pursuant to its authority under Federal law that allows for water to be stored. A commenter suggested including "administrative operating agreements." CE D4 includes the administration of operation and maintenance contracts, which addresses the suggested inclusion of "administrative operating agreements." Reclamation considers the suggested inclusion of other "administrative actions" to be overly broad. The text of D4 does include administration of water-related contracts, which would include many "administrative actions." For these reasons, Reclamation declines to adopt these suggestions.

*Comment 3—Concerns regarding Tribal resources and consultation:* Commenters expressed concerns that CE D8 and CE E1 have the potential to adversely affect Tribal resources and that Reclamation may not adequately conduct Tribal consultation or implement National Historic Preservation Act Programmatic Agreements when relying on the CEs.

*Response 3—* Reclamation met with both Tribes that commented on the proposal to better understand their concerns. Many of the concerns were related to compliance with laws and policies other than NEPA. The level of NEPA analysis, including the use

of a CE, does not affect Reclamation's obligations under other laws, including the Native American Graves Protection and Repatriation Act, the National Historic Preservation Act, and the Archaeological Resources Protection Act, and related policies, or its obligation to engage in government-to-government consultation, in cases where that obligation arises. Furthermore, when relying on the CEs, Reclamation will review the proposed action against the extraordinary circumstances listed in the Department's NEPA regulations at 43 CFR 46.215, which include in part, consideration of impacts on public health and safety; natural resources and unique geographic characteristics as historic or cultural resources; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks, sole or principal drinking water aquifers; prime farmlands; wetlands; floodplains; national monuments; migratory birds; and other ecologically significant or critical areas; unresolved conflicts concerning alternative uses of available resources; unique or unknown environmental risks; precedent for future decision-making; historic properties; listed species or critical habitat; low income or minority populations; access by Indian religious practitioners to, and for ceremonial use of, Indian sacred sites and the physical integrity of those sites; and contribution to the introduction, continued existence, or spread of invasive plants or non-native invasive species. Reclamation will document the evaluation in a CE Checklist. If any extraordinary circumstance exists, Reclamation will conduct additional NEPA analysis. In addition, Reclamation must follow Departmental policy and procedures regarding Tribal consultation (512 DM 4, 512 DM 5), regardless of level of NEPA review.

*Comment 4—Concerns regarding National Historic Preservation Act*

*Compliance:* A commenter expressed concerns about how a change in the CEs might affect National Historic Preservation Act Section 106 compliance, especially in the context of region-wide programmatic agreements, and the potential for Federal actions to affect historic properties of religious and cultural significance to Indian Tribes.

*Response 4*— As noted in comment and response 3, actions reviewed under the revised CEs are still subject to other Federal laws, including the Native American Graves Protection and Repatriation Act, the National Historic Preservation Act and the Archaeological Resources Protection Act; to Departmental policies; and to the extraordinary circumstances review outlined in 43 CFR 46.215, which include consideration of Tribal and cultural resources, and Reclamation will document the evaluation in a CE Checklist. The level of NEPA analysis does not affect Reclamation’s obligations under any of the cultural resource laws or policies.

*Comment 5*—*Expressed concerns with use of undefined terms like “minor,” “localized,” “temporary,” “interim,” and “related” in the proposed CE revisions:* Commenters were concerned that the terms “minor,” “localized,” “temporary,” “interim,” and “related” in the CEs are undefined or lacked specificity. Commenters recommended defining, replacing or establishing a quantified threshold. One commenter recommended replacing the term “minor” with the term “does not allow for or lead to a major public or private action” for CEs D4 and E1.

*Response 5*— CEQ guidance<sup>1</sup> advises agencies to “clearly define the eligible category of actions, as well as any physical, temporal, or environmental factors that would constrain its use.” Reclamation’s revised CEs are intended to appropriately define and limit use to only those actions that normally do not have a significant effect on the human environment, individually or in the aggregate. Reclamation considered the specific language recommendations, concerns, and other suggestions on this topic. After careful consideration, Reclamation decided not to modify the identified terms because these terms as currently used sufficiently describe the CEs, while allowing Reclamation

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<sup>1</sup> See CEQ’s 2010 guidance on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act, p. 5, [https://ceq.doe.gov/docs/ceq-regulations-and-guidance/NEPA\\_CE\\_Guidance\\_Nov232010.pdf](https://ceq.doe.gov/docs/ceq-regulations-and-guidance/NEPA_CE_Guidance_Nov232010.pdf).

to apply the CEs in a range of appropriate contexts.

Regarding the terms “minor” and “localized,” Reclamation has over 40 years of successful and appropriate implementation of its existing CEs, several of which include these same terms. Reclamation’s record of applying its existing CEs (including those using the terms “minor” or “localized”) for previously implemented actions is well documented in Reclamation’s CE Checklists. In addition, Reclamation reviewed 71 EAs with FONSIIs and summarized them in the CE substantiation report that was included in supporting documentation for the Federal Register notice announcing the proposed CE revision in June 2024. These 71 EAs with FONSIIs analyze actions that the proposed CE revisions are designed to cover once finalized. Furthermore, the evaluation of the extraordinary circumstances in the Department’s NEPA regulations at 43 CFR 46.215 helps to identify cases in which an action may have a significant effect and, therefore, application of the CE would not be appropriate.

Moreover, terms such as “minor” and “localized” allow Reclamation to appropriately consider the impacts of the proposed action in the context of the specific action and action location. For example, under D4, minor and localized considerations would include potential effects on the aquatic system, project operations, fish and wildlife resources, and the magnitude of the action in relation to hydrologic conditions. Under D8, minor and localized considerations would include things such as physical size, surrounding land use, and extent of potential ground disturbance on previously undisturbed land. Lastly, under E1, minor and localized considerations would include physical size and surrounding land use.

Replacing the term “minor” with “does not allow for or lead to a major public or private action” in CEs D4 or E1 would not lead to an improvement in the application of the CEs. Rather, the term minor and the impact-based constraints included in the D4 and E1 CEs are more appropriate to evaluate the types of actions covered by these CEs and

the potential environmental impacts.

Regarding the additional terms highlighted by the commenters, the terms “temporary” and “interim” used in CE D4 are defined in the Reclamation Manual Policy, Water-Related Contracts and Charges—General Principles and Requirements (PEC P05). Under that policy, temporary contracts are limited to one year or less and interim contracts are limited to 10 years or less. Similarly, the term “related” only appears in CE D4 as part of the term “water-related contract(s),” which is also defined in Reclamation policy PEC P05 as any repayment or water service contract and any other legally binding agreement executed pursuant to Reclamation law or to the Water Conservation and Utilization Act of 1939 that: (1) makes water available from or through the facilities of a Federal project that Reclamation manages, operates, or funds; or (2) establishes Operation and Maintenance or Operation, Maintenance, and Replacements responsibilities for such facilities and/or other responsibilities related to ensuring that such facilities continue to serve their intended purposes; or (3) makes water available to the United States. Consistent with that policy, Reclamation adds the phrase “limited to 1 year or less” after the term temporary and the phrase “limited to 10 years or less” after the term interim in parentheses to the text of the final D4 CE.

*Comment 6— Concerns with scope of actions that might qualify for the CEs:* A commenter expressed concern with the scope of activities that might qualify for the CEs and lack of definitions and quantifications of terminology including “minor construction,” “minor amounts of water,” and “localized.”

*Response 6—* As described in response 5, Reclamation considers it appropriate to retain the terms “minor” and “localized” in the CEs because Reclamation has over 40 years of successful and appropriate implementation of its existing CEs, several of which include these terms. Further, Reclamation also considered whether the absolute water-related contract water amounts, for instance, limiting application by acre-feet of water,

should constrain the application of the D4 CE. Ultimately, Reclamation declines to specify water amounts because the effects to a water system resulting from a water-related contract's specified changes in water quantity are relative; effects depend on the size and unique characteristics of the water system. For example, an amount of contract water that would be minor to the Columbia River might be significant to the Middle Rio Grande River. Reclamation will assess each CE application on a case-by-case basis using impact-based constraints in the CE and the list of extraordinary circumstances at 43 CFR 46.215 and will document the evaluation in a CE Checklist.

*Comment 7—Adequate definition of flexibility and clear standards:* A commenter suggested the need for an “adequate definition of” the flexibility Reclamation intends to provide in the revised CEs to ensure everyone is aware of “clear standards and when they apply.”

*Response 7—* Reclamation considers the language within the CEs, including the impact-based constraints, coupled with a review of extraordinary circumstance at 43 CFR 46.215, to sufficiently define the standards of when Reclamation can rely on the CEs for proposed actions. Reclamation will continue to document this review in a CE Checklist. In addition, Reclamation has over 40 years of successful and appropriate implementation of its existing CEs that will enable Reclamation to successfully and appropriately apply the revised CEs.

*Comment 8—Adding grazing back to D8:* A commenter recommended adding the word “grazing” back into the revised CE language of D8.

*Response 8—* The language of the D8 CE is consistent with 43 CFR part 429 and contemporary Reclamation Manual policies. Grazing is included in the list of types of uses covered by 43 CFR 429.3, so it does not need to be specifically mentioned in the CE text. Therefore, Reclamation does not incorporate this suggestion into the CE text.

*Comment 9—Removing “work is minor” from D8:* Commenters recommended

removing the phrase “work is minor” from D8 since the CE includes reference to the project not leading to a major action and that limiting factor is sufficient.

*Response 9*— Reclamation accepted this recommendation by removing the phrase “work is minor and” then adding the phrase “of the action” after “impacts.” Reclamation retains the word “minor” but moves it to the end of the sentence as described in the section below, “Additional Clarifying Changes.”

*Comment 10*—*Adding specific action or list of actions to E1*: A commenter suggested including reference to specific types of projects as examples of actions to be covered by the CE within the CE itself, including canal lining/relining/piping, gate replacement, Supervisor Control and Data Acquisition (SCADA) installation, etc.

*Response 10*— Reclamation does not consider it necessary to add a list of specific types of projects as examples of actions the E1 CE will cover in order for Reclamation staff to properly apply the CE. In addition, Reclamation believes that including a predefined list of example project types could lead to inadvertently limiting the scope of eligible projects and lead to potential misunderstandings or missed opportunities for potential actions that fall outside the specified examples. Reclamation will assess each CE application on a case-by-case basis using impact-based constraints in the CE and the list of extraordinary circumstances at 43 CFR 46.215. Therefore, Reclamation declines to adopt this suggestion.

*Comment 11*—*Adding “removed, introduced, or conveyed” to D4*: A commenter recommended adding “removed, introduced, or conveyed” to the description of allowable uses of water within water-related contracts covered by the D4 CE as these terms were used to describe how water would be used for projects evaluated within the EAs summarized in the substantiation report for the CE revisions.

*Response 11*— Reclamation agrees with the commenter’s rationale and suggested language for D4 and adds the language to the final CE to further clarify the range of

actions the CE is intended to describe.

*Comment 12—Concerns with notification process for proposed CE revisions:* One commenter expressed concerns with the notification process for the proposed CE revisions and requested additional coordination.

*Response 12—* Reclamation issued a news release on June 5, 2024, requesting public review and comment on the proposed CE revisions. On June 7, 2024, the Department published a notice in the Federal Register (89 FR 48674) seeking public review and comment on Reclamation's proposed CE revisions. *See* 40 CFR 1507.3(c)(8)(ii). Reclamation coordinated with the commenter to discuss the proposed CE revisions and their concerns.

*Comment 13—Comments outside the scope of the proposed CE revisions:* Commenters recommended that Reclamation consider revising additional existing CEs, adoption of CEs from other agencies, development of additional CEs, training for Reclamation staff and non-federal partners, and other ideas related to Reclamation's implementation of NEPA.

*Response 13—* Reclamation appreciates the suggestions and recommendations that were submitted; however, Reclamation notes that these comments are outside the scope of the proposed CE revisions. Reclamation will take the suggestions and recommendations under advisement in the future.

### **Additional Clarifying Changes.**

While considering the comments and recommendations Reclamation received during the public comment period on the proposed CE revisions, Reclamation incorporated several changes as described above. In addition, Reclamation has made a few additional changes from the CE text proposed in June 2024. These additional changes and the rationale for them are described below.

For the D4 CE, Reclamation reinstates the qualifying statement that the “action does not lead to long-term changes” in the CE language related to its application for water-related contracts involving minor amounts of long-term water use. This qualifying language was originally included as a condition for all actions under the CE. The text of proposed CE revision could have been interpreted as omitting this essential condition for long-term water-related contracts. To clarify that this condition remains applicable to all actions covered by the CE, Reclamation is reintroducing this qualifying language for long-term water-related contracting actions, consistent with the original CE text. Reclamation also adds “minor and” before both instances of the word “localized” in the CE language. Reclamation makes this change to emphasize the use of impact-based constraints to guide the application of the CE. For the D8 CE, Reclamation changes “provide right of use of Reclamation land” to “authorize use of Reclamation land” to align the terminology in the CE with the terminology in 43 CFR part 429 on the use of Reclamation land, facilities, and waterbodies. Reclamation changes the beginning of (a) from “work is minor and impacts are expected to be localized” to “impacts of the action are expected to be minor and localized.” Reclamation makes this change to emphasize the use of impact-based constraints to guide the application of the CE in combination with the addition of language clarifying the terms “minor” and “localized” for the CE in response to public comments.

For the E1 CE, Reclamation moves “(a)” to before the phrase “the underlying action being funded” and revised “actions” to “action” in the same phrase to improve readability. Reclamation revises the introduction to (b) from “where the work to be done is confined” to “the action is confined” to improve consistency within the CE language. Reclamation removes the phrase “work is considered minor” and the word “where” after “and” from (b). Then Reclamation adds “minor and” before the word “localized” in the CE language. Reclamation makes these changes to emphasize the use of impact-based

constraints to guide the application of the CE.

### **Categorical Exclusions.**

The Department and Reclamation find that the category of actions described in the CEs (below), do not normally have a significant effect on the human environment, individually or in aggregate. This finding is based on analysis of the Department's proposal to revise these Reclamation CEs, including analysis in Reclamation's Substantiation Report. The Substantiation Report summarizes 71 EAs that resulted in findings of no significant impact (FONSI) to demonstrate the finding that actions under the revised CEs would not normally result in significant effects to the human environment. The Substantiation Report and EAs and FONSI for these projects are available at [www.usbr.gov/nepa](http://www.usbr.gov/nepa).

The Department and Reclamation consulted with CEQ on the proposed and final revisions to the CEs. CEQ issued a letter stating that it has reviewed the revised CEs and found them to be in conformity with NEPA and the CEQ NEPA regulations. Therefore, the Department adds the final revised CEs to the Department Manual at 516 DM 14.5. Reclamation recognizes that certain proposed actions, when reviewed on a case-by-case basis, could result in one or more of the extraordinary circumstances for which it is not appropriate to utilize the CEs (43 CFR 46.215). In such cases, the proposed action could have a significant environmental effect and would require additional NEPA analysis. Thus, prior to applying the CEs, Reclamation will continue to review all extraordinary circumstances listed in the Department's NEPA regulations. If any extraordinary circumstance exists, Reclamation will conduct additional NEPA analysis.

### **Amended Text for the Departmental Manual.**

Reclamation's NEPA procedures in 516 DM 14 are modified as follows:

**Part 516:** National Environmental Policy Act of 1969

**Chapter 14:** Managing the NEPA Process—Bureau of Reclamation

## **14.5 Categorical Exclusions.**

### **D. Operation and Maintenance Activities.**

(4) Approval, execution, administration, and implementation of water-related contracts and contract renewals, amendments, supplements, and assignments, and water transfers, exchanges, and replacements, for which one or more of the following apply: (a) for minor amounts of long-term water use, where the action does not lead to long-term changes and impacts are expected to be minor and localized; (b) for temporary (limited to 1 year or less) or interim (limited to 10 years or less) water use where the action does not lead to long-term changes and where the impacts are expected to be minor and localized; or (c) where the only result will be to implement an administrative or financial practice or change. A “water-related” contract is any legally binding agreement to which Reclamation becomes a party, pursuant to its authority under Federal law that (1) makes water available from or to the United States; (2) allows water to be stored, removed, introduced, conveyed, carried, or delivered in facilities Reclamation owns, manages, operates, or funds; or (3) establishes operation, maintenance, and replacement responsibilities for such facilities.

(8) Issuance or renewal of use authorizations (as defined in 43 CFR 429.2, including crossing agreements which provide rights-of-way) that authorize use of Reclamation land, facilities, or waterbodies where one or more of the following apply: (a) impacts of the action are expected to be minor and localized; (b) the action does not lead to a major public or private action; (c) the only result of the authorization will be to implement an administrative or financial practice or change; or (d) the level of use or impacts to resources is not increased.

(10) Reserved.

(14) Reserved.

### **E. Financial Assistance, Loans, and Funding.**

(1) Financial assistance, cooperative agreements, grants, loans, contracts, or other funding, where (a) the underlying action being funded would be covered by another Reclamation CE if Reclamation were implementing the action itself, or (b) the action is confined to areas already impacted by farming or development activities and the impacts are expected to be minor and localized.

(2) Reserved.

(3) Reserved.

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