

July 21, 2025

U.S. Department of the Interior
Office of the Solicitor
1849 C Street NW
Washington, D.C. 20240

Submitted electronically via: <https://www.regulations.gov>

RE: U.S. Department of the Interior: Regulatory Reform—Docket No. DOI-2025-0005

Dear Acting Solicitor Zerzan:

The Association of California Water Agencies (ACWA) respectfully submits comments regarding the U.S. Department of the Interior's (DOI) request for information (RFI) to identify existing regulations that can be modified or repealed, consistent with applicable law.¹ ACWA supports DOI efforts that reduce regulatory burdens and ensure the responsible stewardship of natural resources.

ACWA is the largest statewide coalition of public water agencies in the country. ACWA's more than 470 member agencies are responsible for delivering about 90 percent of the water to communities, farms, and businesses in California. ACWA represents water management entities in every sector of water supply including municipal and agricultural water, water recycling, water reuse, wastewater management, and stormwater management. For more than a century, ACWA and its members have been working to provide high quality, reliable water supplies in an environmentally sustainable and fiscally responsible manner.

I. Introduction

ACWA member agencies are directly impacted by DOI regulations. For example, ACWA member agencies comply with DOI regulations to help manage water resources, address drought challenges, and restore ecosystems. These initiatives are implemented through projects concerning water storage and conveyance, conservation and efficiency, management and infrastructure improvements, watershed restoration, and dam safety. These projects pertain especially to DOI

¹ *Regulatory Reform*, 90 Fed. Reg. 21504 (May 20, 2025). <https://www.federalregister.gov/documents/2025/05/20/2025-08931/regulatory-reform>.

programs with the U.S. Bureau of Reclamation, the Bureau of Land Management, and the U.S. Fish and Wildlife Service.

ACWA therefore supports DOI efforts to modernize, streamline, and improve the regulatory process. ACWA suggests DOI reforms its regulations in a manner that promotes clarity, efficiency, and effectiveness for sound water management practices. Specifically, ACWA recommends DOI considers the need for durable regulatory reform, expedited environmental reviews, interagency and government-wide coordination, and the flexibility to address regional water management challenges.

II. Recognition of Western Water Law and State Allocated Water Rights

A foundation of any federal regulatory structure that affects water in the Western United States must be a recognition of the role western states play in water management and respect for state allocated water rights. Over the last decade there have been instances of DOI attempting to inappropriately encroach on state allocated water rights as a condition of a use agreement such as a permit renewal or lease. As DOI considers improvements to federal regulatory processes it should adopt a position that prohibits DOI from mandating water users transfer water rights to the United States, or purchase water rights in the name of the United States as a condition of any permit, lease, or other use agreement.

III. Response to Select Questions

Are there any regulations commenters can identify that fall within the seven categories outlined in E.O. 14219? If so, how does any particular regulation fall within one or more of those categories? Would repeal or modification (and if so, please describe what modification) advance the policies of the order, consistent with law?

Yes, a number of the regulations implementing the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA) fall within one or more of the categories outlined in E.O. 14219. As discussed in further detail below, provisions in both NEPA and ESA could be modified and improved to be consistent with current law. There are aspects of NEPA and ESA that are not based on the best reading of the statute; implicate matters of economic significance without clear statutory authority; impose significant costs upon private parties that are not outweighed by public benefits; and significantly and unjustifiably impede infrastructure development, disaster response, economic development, energy production, and land use. Both NEPA and ESA could be modified in a manner that better serves both the regulated community and the environment.

Are there regulations that have become outdated and, if so, how can they be modernized to better accomplish their objectives?

Yes, both NEPA and ESA could be improved and modernized.

Section 7 of the ESA is outdated and insufficient to meet the challenges of today's regulatory landscape. In part, ESA Section 7 consultation suffers from the same issues that affect the NEPA process—there has been growing emphasis on developing increasingly long and complex analyses that consider remote impacts that are not directly caused by the action under consideration. Further, under the guise of “best available science,” the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively, the Services)² often rely on speculative assumptions and worst-case scenarios to provide the benefit of the doubt to listed species. The regulations should be revised to focus the analyses on the information necessary for the Services to comply with their substantive obligations of Section 7 within the timeframes mandated by the statute.

Are there regulations that are still necessary, but have not operated as well as expected such that a modified, or slightly different approach at lower cost is justified?

Yes, in addition to the Section 7 regulations, components of the Section 4 and Section 10 regulations have not operated as well as expected. With respect to Section 4, due to numerous petitions to list species under the ESA, the Services cannot meet statutory deadlines for listing decisions, resulting in litigation and significant attorney fee payments by the Federal government.

Regulations regarding petitions at 50 C.F.R. § 424.14 could be modified to require the submittal to the Services of more robust and detailed information to support the listing of a species. In addition, the Services have not been diligent in reviewing and delisting or downlisting species when warranted. The regulations at 50 C.F.R. § 424.11(e) should be modified to ensure that a species' status is revised expeditiously when warranted by a five-year review, petition for action, or the Services' own determinations. By reducing the backlog of species proposed for listing and delisting or downlisting species when warranted, the Services will reduce costs both for themselves and the regulated community.

Similarly, the Section 10 regulations for permits based on habitat conservation plans and conservation benefit agreements have created overly burdensome and inefficient processes. In most cases, it takes multiple years to prepare the requisite documents and receive approval from

² FWS is an agency within DOI, whereas NMFS is an agency within the U.S. Department of Commerce. The Services share responsibility for administering the ESA and often promulgate regulations together. For the purposes of this response to DOI's request for information, ACWA focuses on making recommendations to FWS, but these recommendations could equally apply to the Services collectively.

the Services. By streamlining these regulations to promote efficient and expeditious treatment, the Services will reduce costs both for themselves and the regulated community.

NEPA has not operated as well as expected such that modifications are necessary in DOI's regulatory reforms. ACWA members support the underlying goals of NEPA, however it has presented unnecessary hurdles that have created delays and increased costs for ACWA member agencies as they work to develop, operate, and maintain water infrastructure. ACWA urges DOI to modernize its regulations regarding NEPA implementation to promote an efficient, consistent, and streamlined process to better address today's challenges in the context of water management. NEPA should not be a barrier to projects that enhance water supply and quality, ecosystem health, and weather resilience.

ACWA suggests that DOI implement NEPA regulations in a manner that is better aligned with recent case law established by the U.S. Supreme Court's unanimous ruling in *Seven County Infrastructure Coalition v. Eagle County*; federal agencies are no longer required to consider every possible environmental consequence of a proposed federal action, and agencies only need to analyze environmental impacts for which their decision would impact.³

Additionally, DOI should take all efforts to minimize duplicative federal and state environmental reviews to support government-wide efficiency. As outlined in 2020 NEPA regulations, CEQ made changes to ensure regulations "facilitate the use of existing studies, analyses, and environmental documents prepared by States, Tribes, and local government." Yet, as discussed above, the NEPA process can be extremely time-consuming.

DOI should continue emphasizing concurrent NEPA reviews rather than sequential ones to improve efficiency and effectiveness, enhanced collaboration, and reduce duplicative efforts in the NEPA process. Also, for projects requiring multiple federal agency approvals, DOI should ensure use of the "One Federal Decision" approach for NEPA reviews in accordance with Executive Order 13807 and later enacted under Public Law No. 117-58. Specifically, this requires timely NEPA decisions with the goal of completing all Federal environmental reviews and authorization decisions for major infrastructure projects within 2 years. DOI should lead or participate in integrated NEPA review processes with other relevant agencies such as the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, and NMFS. A single coordinated NEPA document and Record of Decision (ROD) can eliminate sequential reviews and in turn expedite permitting for critical infrastructure.

The use of Categorical Exclusions (CEs) has been and will continue to be a critical tool that ACWA member agencies and water managers throughout the west rely on. ACWA therefore encourages

³ *Seven County Infrastructure Coalition v. Eagle County*, 23 U.S. 975 (2025). https://www.supremecourt.gov/opinions/24pdf/23-975_m648.pdf.

DOI to utilize the continued expansion of CEs to expedite projects without significant environmental impacts. Notably, ACWA appreciates the recent adoption of CEs under NEPA for numerous DOI projects at the Bureau of Reclamation, Bureau of Land Management, U.S. Fish and Wildlife Service, and U.S. Geological Survey.⁴ DOI should continue its expanded use of CEs for routine operation and maintenance of water and hydropower infrastructure, habitat restoration measures, natural resource and land management plans, and installation of research and monitoring devices. DOI should expand its use of CEs specifically for disaster mitigation and response efforts.

Are there regulations that unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, or delivery of energy infrastructure projects?

Yes, the Section 4 regulations for the designation and exclusion of areas from critical habitat at 50 C.F.R. § 424.12 and 424.19 can impede and/or impose additional significant costs on infrastructure projects. As noted above, the Services should revise the regulations to ensure that only the specific areas containing features that are essential to the species are designated and that there are appropriate procedures for the consideration of economic and other impacts so that areas are excluded from designation when the benefits of exclusion outweigh the benefits of inclusion.

In addition, as the Services are already aware, the Section 7 consultation regulations can obstruct, delay, and impose costs on a variety of projects. DOI has attempted to address these problems by issuing guidance on “Alternative Procedures for Informal, Expedited Consultation under Section 7 of the [ESA] for Energy Projects amid the National Energy Emergency.” The relevant regulations at 50 C.F.R. Part 402 should be reviewed and revised to further incorporate these objectives for energy and other projects.

Are there regulations that are unnecessarily complicated or could be streamlined to achieve statutory obligations in more efficient ways? If so, what changes should be made?

Yes, as noted above, both the ESA Section 7 and Section 10(a) implementing regulations are unnecessarily complicated, and they can be streamlined to reduce regulatory burdens on applicants and the Services in a manner that will make the processes more efficient while achieving statutory obligations.

⁴ Notice of Adoption of Categorical Exclusions Under Section 109 of the National Environmental Policy Act, 90 Fed. Reg. 24644 (June 11, 2025). https://www.federalregister.gov/documents/2025/06/11/2025-10629/notice-of-adoption-of-categorical-exclusions-under-section-109-of-the-national-environmental-policy?utm_campaign=subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov.

Are there regulations that have been overtaken by technological developments? Can new technologies be leveraged to modify, streamline, or rescind existing regulations?

DOI should utilize new, relevant technologies to improve the regulatory process. Currently, some existing DOI regulations may inadvertently discourage or delay the adoption of new technologies because they have not been updated or are designed for antiquated processes. As the nation's water challenges grow more complex, DOI has opportunities to align its regulations with the rapid evolution of technology to more efficiently and effectively manage water and water-related resources.

ACWA believes that DOI's incorporation of innovative technology can support cost-effective methods that advance innovative water treatment techniques for potable reuse and desalination, encourage systems that provide real-time water monitoring and public communications, streamlined environmental reviews, and data tracking, as well as support cloud-based information sharing, reporting tools, and compliance information.

ACWA encourages DOI to embrace technology innovation in collaboration with states and local water agencies. As an example, DOI should expand its efforts related to improving atmospheric river forecasting and Forecast Informed Reservoir Operations (FIRO). This technology has proven benefits to the operation of western water reservoirs and creates opportunities to safely store more water. DOI should consider evaluating all of their Western water reservoirs to see if their operating procedures would benefit by updating historical records to more modern FIRO evaluation.

Are there any DOI regulations that are inconsistent with E.O.s 14151, 14154, 14168, 14213, or other E.O.s or directives issued by the President, including those described earlier in this RFI? If so, what modifications would ensure consistency with the orders and applicable law?

Yes, as noted previously, a number of the ESA implementing regulations can be viewed as inconsistent with E.O. 14154, "Unleashing American Energy," because they impose undue burdens on the identification, development, and use of hydropower, and other sources of energy resources.

IV. Regulatory Efficiency and Bureau of Reclamation Direct Hire Authority

ACWA recognizes the importance of efficient federal operations. However, ACWA is concerned that the reduction of Bureau of Reclamation (Reclamation) personnel could create challenges for water and hydropower providers and others in the regulated community. The loss of experienced Reclamation staff will diminish technical expertise, knowledge of ongoing projects, local conditions, and historical permitting precedents that will lead to inefficiencies for both applicants and remaining agency staff. Public water agencies like ACWA's members must still comply with

water supply and quality, drought preparedness, and habitat restoration requirements, many of which depend on timely federal authorization. Additionally, ACWA member agencies are already susceptible to permitting delays that could worsen with Reclamation staffing cuts. A decrease in Reclamation personnel can result in longer review times and uncertainty in project planning that undermine efforts aimed at regulatory efficiency. ACWA strongly encourages DOI to prioritize workforce retention at Reclamation and to request direct hire authority for Reclamation positions that are related to water supply and hydropower.

V. Conclusion

ACWA appreciates DOI's efforts to promote efficient regulatory reform and looks forward to continued partnership with DOI. Please let us know if there are further opportunities for ACWA to collaborate on DOI initiatives or if we can provide additional information and resources. If you have any questions or would like to follow up on this matter, please contact ACWA Director of Federal Relations, Ian Lyle, at ianl@acwa.com or (202) 434-4765.

Respectfully,

A handwritten signature in black ink, appearing to read "Ian Lyle", is written in a cursive, flowing style.

Ian Lyle
Director of Federal Relations
Association of California Water Agencies