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# ROLE OF NEPA/ STATE ENVIRONMENTAL REVIEW PROCESS

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# EPA's Role in the National Environmental Policy Act & State Environmental Reviews

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*January 27<sup>th</sup> 2016*

*Regional Tribal Operations Committee*



# EPA's Role in NEPA and State Environmental Reviews

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- History and Overview of NEPA
- EPA's Role in NEPA
- EPA's Role in State Environmental Documents

# National Environmental Policy Act of 1969

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“The Congress.....declares that it is the continuing policy of the Federal Government, ... to use all practicable means and measures, including financial and technical assistance, in a manner calculated to:

- foster and promote the general welfare,
- to create and maintain conditions under which man and nature can exist in productive harmony, and
- fulfill the social, economic, and other requirements of present and future generations of Americans.”

# What is NEPA... really?

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- ❑ NEPA is procedural law
- ❑ Applies only to major Federal actions
- ❑ Created the Council on Environmental Quality (CEQ)
- ❑ Lead Federal Agency
- ❑ Requires public involvement
- ❑ Goal is informed decision-making

# Who does NEPA apply to and when is it necessary?

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- Any Federal action (project, program, etc.)
  - Funding, partial funding, or assistance
  - Use of Federal resources
  - Rules, regulations, plans, policies, or procedures
- Treaties and international agreements
- Approval, permitting, or assistance for projects

# Who provides NEPA oversight?

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- Congress created the Council on Environmental Quality (CEQ) to administer NEPA
  - Prepares annual environmental report
  - Conducts research/develop national policy
  - Reviews federal agency compliance
  - Issue regulations and guidance, training, advice to Federal agencies
  - Resolve lead agency disputes

# Who implements NEPA?

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- Every federal agency has existing authorities, which NEPA supplements
  - Each federal agency prepares NEPA implementation procedures
  - Council on Environmental Quality identified criteria that must be met by these procedures
  - There is variation between federal agencies

# Public Involvement

- Requires that environmental information be available to public officials and the community before decisions are made and before actions are taken.



- Requires public officials to make decisions based on understanding of environmental consequences and to make evaluations and decisions that anticipate adverse effects on environmental resources.

# Key Issues and Impacts

## □ Hydrology and Water Use

- Waters of the U.S – Section 404 permits
- Ephemeral streams, washes, springs and seeps
- Scarce supply; groundwater depletion

## □ Air Quality

- PM10/PM2.5 emissions during construction

## □ Wildlife and Habitat

- Endangered species, habitat connectivity,
- Invasive species

## □ Cultural and Tribal Resources

- Meaningful Consultations; Sacred Sites

## □ Cumulative Impacts

## □ Traditional Ecological Knowledge



# Other Issues and Impacts

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- ❑ Noise - Impacts to humans and wildlife
- ❑ Visual- Viewscape, loss of remoteness and wildness
- ❑ Environmental Justice – Underserved communities
- ❑ Public Health
- ❑ Hazardous Materials
- ❑ Recreation
- ❑ Transportation and Traffic
- ❑ Induced Growth





# Summary Review of EIS Process

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## **EIS Process Steps**

- Notice of Intent
- Scoping
- Draft EIS
- Formal Review and Comment Period
- Final EIS
- ROD and Mitigation Plan

# What is EPA's Role?

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- Filing EISs – EPA Headquarters Office
- Unique reviewing authority
- Provides guidance for areas of expertise
- NEPA role if Lead Agency

# EPA's Role - Reviewing

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- EPA reviews every Environmental Impact Statement prepared by a federal agency and comments in writing on the environmental impacts. (Authority from Section 309 of the Clean Air Act)
- EPA is authorized to refer the matter to CEQ for resolution if it determines that the proposed action is unsatisfactory from the standpoint of public health, welfare, or environmental quality.

# EIS Factors Important for EPA's Review

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- ❑ Well-defined purpose and need statement
- ❑ Adequate alternatives analysis
- ❑ Sufficient public involvement and scoping
- ❑ Consultation with Tribes and affected communities
- ❑ Cumulative Impacts (to air, water, human health, habitat and wildlife corridors, environmental justice, soil and geology, plant and animal species, economy, cultural resources)
- ❑ Compliance with associated environmental laws

# EPA' s Role - Guidance

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- Provide scoping comments and “early” assistance
- Provide NEPA assistance through cooperating agency status, other agreements
- Review some Environmental Assessments
- Lead Agency when EPA awards a permit, funding, etc.

# Tribal concerns

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- Inform tribes of federal projects that may impact tribal interests
  - Focused on emerging sectors (Renewable energy projects in 2011-2012)
  - Coordinate directly with Tribes on specific issues, as needed.
  
- Environmental review and early involvement on Tribal projects (BIA NEPA documents)

# NEPA – What it isn't....

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- ❑ Only the lead agency has the authority to decide whether an action will commence and which alternative to follow
- ❑ Federal officials are not required to adopt the most environmentally preferred alternative; therefore NEPA imposes procedural, not substantive, decision making requirements
- ❑ NEPA has no penalty or enforcement provision

# EPA's Role in State Environmental Reviews

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- Other State “NEPAs” and California Environmental Quality Act
- NEPA Assignment to Caltrans
- NEPA Reciprocity

# Additional Resources

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- CEQ: <http://www.whitehouse.gov/ceq>
- CEQ's NEPA website: <http://ceq.doe.gov/>
- EPA's NEPA website: <http://www.epa.gov/nepa>

Thank you!

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