



August 20, 2018

Mr. Edward A. Boling
Associate Director for the National Environmental Policy Act
Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503

Re: Advanced Notice of Proposed Rulemaking: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act; RIN: 0331-AA03; Docket No. CEQ-2018-0001

Dear Mr. Boling:

The National Hydropower Association (NHA)¹ appreciates this opportunity to comment on the Council on Environmental Quality's (CEQ) Advanced Notice of Proposed Rulemaking (ANOPR) on updates to the implementing regulations of the National Environmental Policy Act (NEPA). NHA is fully supportive of a robust and comprehensive environmental review process. However, we believe that significant changes are needed to modernize CEQ's NEPA regulations in a manner that will inform "major Federal actions significantly affecting the quality of the human environment" through "a detailed statement" that evaluates environmental impacts, environmental effects, and alternatives,² but will do so in a manner that is more cost-effective, reduces redundancy, and is time-sensitive. NHA believes strongly that the requirement for agencies to "take a 'hard look' at environmental consequences"³ can be maintained while reducing costs and time associated with their environmental reviews.

NHA offers the following perspective from the U.S. hydropower industry.

Background

¹ NHA is a non-profit national association dedicated to securing hydropower's place as a clean, renewable and reliable energy source that serves our Nation's environmental and energy policy objectives. Its membership consists of more than 240 organizations, including public and investor-owned utilities, independent power producers, equipment manufacturers, and professional organizations that provide legal, environmental and engineering services to the hydropower industry.

² 42 U.S.C. § 4332(C).

³ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (quoting *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n. 21 (1976); see also *Nat. Res. Defense Council v. Morton*, 458 F. 2d 827, 838 (D.C. Cir. 1972).

Hydropower is a clean, renewable, domestic source of electricity that provides flexibility and reliability to our grid system, has the potential to substantially expand the nation's renewable energy supply, and can provide all attributes necessary for a reliable and resilient grid. It provides baseload and peaking power, is one of the most flexible resources and provides a host of ancillary grid services, making it critical to our "all of the above" energy strategy. Although capital intensive to develop, hydropower projects have long, useful lives stretching decades and their fuel is renewable and free. As our nation's single largest source of renewable electricity, with over 100 GWs of capacity (including pumped storage), hydropower will play a critical role in providing grid stability and energy security as our electricity supply relies more and more on variable generation sources and we work toward a 21st Century grid system. Moreover, pumped storage is the premier utility-scale energy storage technology in use today, providing approximately 95 percent of all energy storage in the United States.

Despite all these critical attributes, preserving the existing hydropower system and promoting new projects has proven challenging over the last several decades due, in large part, to the complicated, fragmented, and lengthy federal regulatory processes that ultimately result in tremendous uncertainty for project proponents. This uncertainty makes it nearly impossible to obtain long-term, low-cost financing and negatively impacts reinvestment strategies.

As a full quarter our nation's existing non-federal hydropower fleet enters into relicensing, and with nearly 50 GWs of new hydropower potential on the line,⁴ there has never been a more urgent time to address the challenges of outdated federal regulatory procedures that place hydropower at risk, create costly delays and postpone reinvestment in both the environment and our energy infrastructure.

Inaction may have negative consequences to our economy, climate, and environment. Our hydropower fleet faces tremendous economic challenges with market rules that undervalue hydropower's operational flexibility; renewable portfolio standards that fail to recognize much of our hydropower resources; and federal environmental and approval processes that cause delay, increase project costs, reduce renewable generation, and add tremendous uncertainty.⁵ Although unheard of less than a decade ago, project owners today face a tough reality that an existing hydropower facility may be a stranded asset, and therefore may well elect to decommission these renewable resources rather than face a broken relicensing process that adds costs and uncertainty and reduces economic value.

And the potential for new development is stunted by the inability to attract investment. When a combined cycle gas project can be built in downtown Manhattan in less than one fourth the time and the cost it takes to relicense an existing hydropower plant in rural New York, the

⁴ See [U.S. Department of Energy, *Hydropower Vision: A New Chapter for America's 1st Renewable Electricity Source* \(2016\)](#).

⁵ See [Testimony of Steve Wright, General Manager, Chelan County Public Utility No. 1, on behalf of NHA, before the House Energy and Commerce Committee Subcommittee on Energy \(2017\)](#).

challenges for hydropower become glaring.⁶ When a developer must spend millions of dollars in process costs before even putting a shovel to the ground, we create a business environment where alternatives to hydropower are more favorable.⁷ These conditions put our energy diversity at risk.

These licensing and regulatory challenges, including and especially those that stem from the implementation and coordination of NEPA review, must be addressed if we are to preserve and grow our hydropower fleet, reinvest in aging infrastructure, and create thousands of new, good-paying, hydropower sector jobs across America.

The Challenges with Hydropower Licensing

Hydropower has the longest, most complex development timeline of any of the renewable energy technologies, with some projects taking **10 years or longer** from the start of the licensing process through construction to being placed-in-service.⁸ This is true for both project relicensing and new project approvals, and it requires a considerable up-front financial commitment from the developer or asset owner to undertake the engineering and environmental studies and other process requirements needed for the various federal and state approvals associated with hydropower licensing.

Hydropower projects operate in accordance with a suite of energy and environmental laws and regulations, including the Federal Power Act (FPA), NEPA, the Endangered Species Act (ESA), the Rivers and Harbors Act of 1899 (RHA), and the Clean Water Act (CWA), among many others. Project owners and operators work closely with federal agencies in the licensing process to achieve final agreements and license terms and conditions that protect, mitigate and enhance the environmental resources potentially affected by hydropower operations. Federal agencies conduct NEPA analyses on many activities associated with hydropower projects as do many states that have adopted corollary state review processes.⁹

NEPA review is a central feature of the federal licensing process for hydropower projects. The Federal Energy Regulatory Commission (FERC) prepares a NEPA document when issuing original licenses for proposed new hydropower projects or new licenses when relicensing existing hydropower projects. Licenses issued by FERC contain, among other requirements, protection, mitigation, and enhancement measures, and FERC's NEPA document informs its decisions in establishing these measures.

⁶ See [Testimony of John Suloway on Behalf of NHA, before the House Energy and Commerce Committee Power and Energy Subcommittee \(2015\)](#).

⁷ See [Testimony of Ramya Swaminathan, CEO, Rye Development, before the House Energy and Commerce Committee Subcommittee on Energy \(2017\)](#).

⁸ See https://www.hydro.org/wp-content/uploads/2018/08/15-0197_NHA_Infographic-3_PP06.pdf.

⁹ In particular, state water quality certification processes under CWA Section 401 contribute to some of the longest delays in relicensing.

The relationships established among stakeholders—including project owners, federal and state agencies, non-governmental organizations, tribes, local citizens and governments—through the NEPA process often result in collaborative licensing agreements with meaningful environmental benefits, particularly in terms of habitat restoration, species protection, and land management activities. These efforts occur at the same time our members continue their long-standing commitment to generating clean, reliable, affordable hydropower.

However, as discussed above, getting to the final issuance of a FERC hydropower license is a complex and lengthy process, as the action triggers authorities held by other federal and state resource agencies.

These agencies' statutory responsibilities are important for the project review process and for resource protection. However, there is currently no mechanism to coordinate all agencies' programs to reduce duplication of effort, encourage concurrent review and collaboration, and ensure timely action—including the individual additional NEPA reviews under which they are conducted. Rather, each of these individual authorizations under federal law largely occurs in a disjointed, separate, and often sequential manner. The current regulatory landscape causes significant delays, increases costs, leads to inconsistent agency directives, and stifles new project development.

The Need for Concurrent Congressional Action on Hydropower Licensing Reform

NHA applauds CEQ for embarking on this review of the NEPA process and its impacts on the permitting of needed infrastructure projects, including hydropower projects. NHA believes NEPA process improvements that increase timeliness, transparency, and accountability are possible, while also preserving the authorities and responsibilities of the agencies with a role in the hydropower licensing process.

NHA also notes, however, that while administrative improvements to the implementation of NEPA are important, and needed, the issues that create delays and add costs to the hydropower licensing process are broader than those addressed in this ANOPR. NHA believes action by Congress on statutory changes to the licensing process is critical to resolve the underlying issues. As such, NHA continues to support, and calls for the immediate passage, of comprehensive licensing reform as outlined in bipartisan bills in both the House of Representatives and the Senate—H.R. 3043 and S. 1460.

We look forward to working further with CEQ on this initiative and on the congressional legislative proposals. Below are NHA's responses to specific questions outlined in the ANOPR. Please feel free to contact NHA if there are additional questions.

NEPA Process

Question 1. Should CEQ's NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is

concurrent, synchronized, timely, and efficient, and if so, how?

Yes. Too often, the review and decision-making process associated with hydropower licensing is duplicative and poorly coordinated. There is a need for better coordination with and integration of NEPA, FPA Sections 4(e) and 18, CWA Section 401 certification, CWA Section 404, ESA Section 7 consultation, National Historic Preservation Act (NHPA) Section 106, the Coastal Zone Management Act (CZMA), RHA Section 408, and other requirements. NHA and others have noted that under current regulations the applicant is often left to address any process inefficiencies or resolve any federal/state coordination conflicts on its own.

An important step to rectify this would be to authorize a single lead agency (for example, FERC in the hydropower licensing context) for the purposes of coordinating a single NEPA review that satisfies NEPA requirements for all federal actions needed for a particular project. The lead agency also would establish a schedule for all federal authorizations, with enforceable deadlines. This would help eliminate inefficiencies, particularly on projects for which separate NEPA analyses performed by different agencies result in conflicting requirements.

Another critical measure to promote cooperation and synchronization among agencies would be to eliminate FERC's current prohibition on interventions by agencies that cooperate in the NEPA review. NHA recognizes that the integrity of the agency approval process must be preserved, but this can be accomplished easily—by requiring cooperating agencies to designate staff that cooperate in the NEPA process and are not involved in the agency's decisional process. With this elegant, simple modification, agencies can be required to cooperate through a single NEPA document while still allowing agencies to intervene in the FERC proceeding.

Question 2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions, and if so, how?

Yes. The cost of licensing hydropower projects is driven largely by regulations requiring the applicant to develop new, extensive information on the proposed project, the existing environment, and potential impacts. Protecting the environment and natural resources is important, and is a commitment the hydropower industry takes seriously, but the amount of information that agencies request during environmental scoping can be excessive and not directly related to the project or its potential impacts.

NHA members have reported that extensive information requests are sometimes used as a negotiating tactic, which can significantly increase costs and prolong negotiations. Particularly for proposed new development, where the license applicant does not have the benefit of the proposed project's income stream, study requests can be an effective means of increasing project costs to a point where the project is no longer cost-competitive.

NHA believes that NEPA requirements can be largely met through reliance on existing information, and strongly favors revised regulations that would require agencies to mandate new studies only if information gaps can be demonstrated, and only where the required new study is scoped in a cost-effective manner.

Moreover, agencies' study needs should be determined early in the process, with agencies and stakeholders involved from the outset. This early involvement, along with an effective dispute resolution process, will improve efficiency in determining the appropriate studies and study methodologies. Initial and continued engagement in the development of study needs and requests is critical and late-filed study requests should be discouraged and rejected.

Question 3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?

Yes. In addition to the suggestions mentioned above in response to question 1, NHA notes that there are frequent redundancies when more than one agency is required to carry out a NEPA review for the same project. For example, the duplicative application of NEPA by FERC at the project licensing phase and the subsequent NEPA review by the U.S. Army Corps of Engineers under its authority to issue a Section 404 permit under the CWA leads to two environmental documents that are often substantially similar and require a significant amount of time and agency resources to prepare. As explained above, NHA supports the development of a single, coordinating agency for all NEPA requirements required for a particular project.

Scope of NEPA Review

Question 4. Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?

Yes. Too often, NEPA documents are exceedingly lengthy—over 1000 pages in some cases—which makes them impenetrable for practical application and too specialized for subsequent application. While some types of projects may be highly complex, warranting a longer length and detailed analysis, too many times the NEPA document is repetitive and rote.

This is particularly true in hydropower relicensing. Even where the proposed action consists primarily of continuing the status quo, with little or no ground disturbance or new construction, NEPA documents can be hundreds of pages in length.

As a result, NHA advocates for a reevaluation of the required scope and contents of NEPA documents to reduce unnecessary complexities and eliminate redundancy.

Question 5. Should CEQ's NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decisionmakers and the public, and if so, how?

Yes. Greater clarity is especially needed to ensure the proper scope of environmental review for existing infrastructure that requires reauthorization through federal action. In the hydropower context, relicensing stakeholders often struggle with delineating between effects that occurred decades ago when the project was originally constructed, and new effects associated with the proposed action of relicensing the facility. These can be complex issues, but NHA strongly endorses FERC's long-standing policy that establishes current environmental conditions as the proper environmental baseline for purposes of NEPA review. Under the policy enunciated in Order Nos. 513 and 513-A, the Commission does not require a project applicant "to collect information about, and study the condition of, resources as they existed in the project area prior to construction of the existing project."¹⁰ As confirmed further in the Interagency Task Force (ITF) Report on "NEPA Procedures in FERC Hydroelectric Licensing" at p.4 (issued May 22, 2000),¹¹ the Commission does not require relicensing applicants to gather information or conduct studies regarding the condition of resources in the project area that existed prior to the initial licensing and construction of the project. The existing project and its current surroundings, consistent with longstanding Commission policy, must be the baseline for the process.

Reaffirming that current conditions should establish the proper environmental baseline for NEPA review is particularly critical in light of the D.C. Circuit Court of Appeals' July 2018 decision in *American Rivers v. FERC*, which concerns FERC's relicensing of an existing hydropower project in the Southeast.¹² In *American Rivers*, the court imposed an obligation for FERC's cumulative impacts review to include an assessment of past impacts—a conclusion that not only seems to have no probative value in assessing current effects, but also fails to account for long-standing precedent in both the 9th and D.C. Circuits sustaining FERC's conclusion that current conditions should constitute the proper environmental baseline.¹³ To cure the confusion that has arisen since *American Rivers*, CEQ in its revised NEPA regulations should clarify that current conditions is the proper environmental baseline—and that an assessment of past effects, which can be highly subjective and unreliable, is not a required element of NEPA review.

Question 6. Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?

Yes. NHA recognizes that public involvement is a critical aspect of the NEPA process. To that end, CEQ's regulations should encourage agencies to solicit and respond to public comments on proposed federal actions. One potential improvement to encourage public participation while simultaneously reducing delays would be to increase the degree to which studies used in preparation of the NEPA document are readily available on the relevant agency's website. This

¹⁰ *Hydroelectric Relicensing Regulations Under the Federal Power Act*, Order No. 513 (1989), 54 Fed. Reg. 23756 (June 2, 1989); *Order on Rehearing*, Order No. 513-A, 55 Fed. Reg. at 4 (Jan. 2, 1990).

¹¹ See [Interagency Task Force Report on NEPA Procedures in FERC Hydroelectric Licensing](#).

¹² *American Rivers v. FERC*, No. 16-1195 (D.C. Cir. July 6, 2018).

¹³ See *American Rivers v. FERC*, 201 F.3d 1186, 1195-96 (9th Cir. 2000); *Conservation Law Foundation v. FERC*, 216 F.3d 41, 46-47 (D.C. Cir. 2000).

would assist members of the public in expeditiously reviewing environmental documents without spending unnecessary time searching for studies or documents relied on by the preparing agency.

Another improvement would be for CEQ to clarify which agencies should be invited (or, as NHA advocates, required) to cooperate with the lead action agency in developing the NEPA document. While all resource agencies, Indian tribes, and other stakeholders should be invited to participate in the NEPA process, only those agencies with a NEPA obligation (or state equivalent) should be a cooperating agency. Allowing other participants to be a cooperating agency would extend an unfair advantage to a party that has no corresponding NEPA obligation.

Question 7. Should definitions of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised, and if so, how?

a. Major Federal Action

Yes. Section 1508.18(a) should be modified to clarify that “continuing activities” are only “major federal actions” for purposes of NEPA when they involve significant changes to the current environment. This would allow existing infrastructure to be reauthorized in an efficient, cost-effective manner when the federal action involves no new ground-disturbing activities or changes to existing operations, and otherwise maintains the existing status quo.

b. Effects

Yes. As explained above, the definition of “effects” can be clarified to ensure that effects (both direct and indirect) occur only in relation to the current, existing environmental baseline.

c. Cumulative Impact

Yes. NHA fully supports cumulative impacts analyses under NEPA. However, as currently written, the definition of “cumulative impact” results in a broad mandate to engage in speculative assessment of past and future actions—regardless of the agency or individual responsible for that action. While NHA understands that a NEPA review should include a “high level” review of other activities, the current definition of “cumulative impact” imposes an unreasonable burden that yields little benefit in contextualizing the undertaking at hand.

Question 8. Should any new definitions of key NEPA terms, such as those noted below, be added, and if so, which terms?

a. Alternatives

Yes. NHA believes that the term “alternatives” should be defined to ensure that alternatives considered under NEPA are reasonable, and consistent with the purpose and needs of a proposed project. Frequently, in hydropower licensing, project opponents advance a range of ideas that are well beyond the scope of the proposed action and the supporting science—for example,

advocating for significant changes in operations that would economically ruin a project, or requesting recreational enhancements where there is no demonstrated need. Requiring agencies to comment on alternatives that are unreasonable is an unnecessarily wasteful commitment of time and resources that CEQ should endeavor to eliminate.

c. Reasonably Foreseeable

Yes. NHA encourages CEQ to define “reasonably foreseeable” in a more specific way that will avoid forcing federal agencies to speculate far into the future about hypothetical actions. One suggestion is to define it the way the D.C. Circuit has, which is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.”¹⁴ By more clearly defining “reasonably foreseeable,” CEQ should encourage those filing comments on proposed actions to keep the NEPA analysis more narrowly focused. As FERC has explained, NEPA “does not require a detailed analysis of the possibility that speculative, unknown and unplanned... operations might be needed to address a risk that is not significant.”¹⁵

12. Should the provisions in CEQ’s NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?

NHA believes that revisions to the existing regulations addressing programmatic NEPA documents and tiering are not necessarily needed. Efforts should be aimed at encouraging agencies to take greater advantage of these opportunities under existing regulations and to increase use of these approaches to reduce the time and expense associated with subsequent environmental review requirements.

13. Should the provisions in CEQ’s NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?

Yes. The EA or EIS should be a cooperative document, to the extent possible, sponsored by all affected agencies, and produced by the lead agency (FERC, in the context of hydropower licensing). As described above, the goal should be to have one environmental document cover all related aspects of authorizations required under federal law for the project. Such efficiencies are also a benefit to the non-agency stakeholders because they could focus their time and attention on one environmental document, rather than multiple documents. To facilitate that process, the EA should be an analytical document—not a decisional document. To the extent that preferred alternatives are discussed in the EA, such discussions can be segregated from the environmental analysis so that other cooperating agencies can clearly identify the portions of the EA they adopt and can clearly provide their separate record of decision.

¹⁴ See, e.g., *EarthReports, Inc. v. FERC*, 828 F.3d 949, 955 (D.C. Cir. 2016).

¹⁵ See, e.g., *Public Utility Dist. No. 1 of Snohomish Cty*, 149 FERC ¶61,206, at P 46 (2014).

As discussed above, NHA believes that alternatives considered under NEPA should be reasonable and consistent with the purpose and needs of a proposed project and that the project proponent's stated purpose and need should be used as the basis for evaluating alternatives. In addition, NHA encourages CEQ to provide guidance on when an agency is capable of "rejecting an alternative" as unreasonable.

General

Question 15. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient?

NHA suggests eliminating the requirement of section 1502.19 that an agency circulate the environmental document. Rather, CEQ should require agencies to post the environmental document to the agency's website—many agencies do this already—to cut down on paper, time, and staff resources.

Additionally, NHA would encourage CEQ to eliminate the "notice by mail" requirements of 1506.6(b)(1) and (2), and (b)(3)(viii) and make more efficient use of agency websites and online tools for providing notice to interested parties.

Question 16. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents, and if so, how?

Yes. CEQ should clarify the role of cooperating agencies participating in development of the record before FERC and in issuing any jurisdictional permits. CEQ could facilitate coordinating agency action by encouraging agencies to engage in one record of review before FERC and by better defining the "independent review" that agencies must conduct in adopting a final NEPA document.¹⁶

Currently, the cooperating agency's role is to participate in the deliberative process and the agency "may adopt *without recirculating* the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied."¹⁷ Agencies are also empowered to partially adopt a NEPA document and conduct its own environmental review of the impacts related to the agency's jurisdiction.¹⁸

The regulations are presently silent on how cooperating agencies conduct this "independent review" and lack guidance on the requisite level of involvement by an agency to establish that "comments and suggestions have been satisfied."

¹⁶ 40 C.F.R. §§ 1501.5, 1506.3.

¹⁷ 40 C.F.R. § 1506.3(c). *Sierra Club v. United States Dep't of Energy*, 867 F.3d 189, 193 (D.C. Cir. 2017) (citing *Sierra Club v. Fed. Energy Regulatory Comm'n*, 827 F.3d 36, 41–42 (D.C. Cir. 2016)).

¹⁸ *Id.*

In the context of hydropower licensing, there are many potential cooperating agencies with jurisdictional authority to study aspects of the environmental impacts, and CEQ should encourage agencies to vigorously participate in developing one fulsome record with FERC to avoid multiple and often duplicative NEPA documents. To do so, agencies should file comments according to the set FERC timeline to establish their involvement and independent analysis of the issues within their jurisdiction. CEQ should also affirm that cooperating agencies may conduct their “independent review” during the FERC-led NEPA process through evidence in the record, and that study of discrete issues after-the-fact is not CEQ’s desired policy.

This coordinated effort would front-load requirements, mitigate delays at later points in the project, alleviate the timing uncertainties inherent with multiple reviews for applicants, and protect the cooperating agency’s NEPA analysis from the risks of an infirm record upon judicial review.

Question 17. Are there additional ways CEQ’s NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?

Yes. As discussed above in response to question 2, the FERC licensing process is currently a comprehensive, study-driven process that can lead to significant delays and costs. Although substantial existing information related to a project or watershed is often readily available, the FERC licensing process almost universally requires the preparation of new studies that duplicate existing information.

All of these factors make it exceedingly difficult for a single agency to effectively carry out environmental decision-making processes on its own. The efficiency of the NEPA process could be dramatically improved by requiring interagency collaboration that supports the exchange of information and studies. Establishing and maintaining good interagency relationships is critical to environmental decision-making efficiency.

Additionally, to reduce study and data needs, NEPA reviews should focus on resources or resource issues that have changed since the last NEPA review of the project.

Question 20. Are there additional ways CEQ’s NEPA regulations related to mitigation should be revised, and if so, how?

The hydropower industry takes seriously its responsibility to be good stewards of the environment. Each year, we invest hundreds of millions of dollars in fish mitigation technologies and practices, as well as fish and wildlife protection and management measures, at projects across the U.S. Through these efforts, species are protected, populations are revived, and recreational opportunities are expanded.

Currently, section 1505.2 requires that EIS records of decision state “whether all practical means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not.” Additionally, agencies are required to “condition funding of actions on mitigation.”

NHA believes that CEQ should allow for flexibility in mitigation measures and establish criteria for cooperatively making decisions. The criteria should be designed to demonstrate the positive, rather than the negative, and should promote resolution and avoidance of disputes.

Conclusion

NHA once again commends CEQ for initiating this rulemaking proceeding on much-needed updates to the NEPA process and appreciates this opportunity to offer input. NHA firmly believes that these updates are critical to improving the timeliness, transparency, and efficiency of hydropower licensing and other infrastructure improvements, and that it is possible for agencies to “take a ‘hard look’” at a project’s environmental impacts in a timely and cost-efficient manner.

We look forward to working further with CEQ on this initiative. Please do not hesitate to contact us with comments or questions.

Sincerely,

A handwritten signature in cursive script that reads "Linda Church Ciocci".

Linda Church Ciocci
Executive Director