



April 29, 2022

The Honorable Tanya Trujillo
Assistant Secretary for Water and Science
Department of the Interior
1849 C Street NW
Washington, D.C. 20240

Mr. David Palumbo
Acting Commissioner
Bureau of Reclamation
1849 C Street NW
Washington, D.C. 20240

Re: Suggested Categorical Exclusion Actions for the Bureau of Reclamation

Dear Assistant Secretary Trujillo and Acting Commissioner Palumbo:

The historic enactment of the *Infrastructure Investment and Jobs Act* (IIJA) provides a “once-in-a-generation” funding opportunity to support the modernization of our Western water infrastructure and restoration of our forested watersheds. The IIJA targets \$8.3 billion for Bureau of Reclamation (“Reclamation”) projects that will enhance water supply reliability across the West, including repairing aging dams and canals, building new surface and groundwater storage and conveyance facilities, funding water conservation and recycling projects, and improving watershed health and ecosystem management.

The unprecedented drought that grips the West has reduced water supplies, devastated farmers and ranchers, and helped fuel natural disasters across the region. Long-overdue projects that repair and enhance our aging water infrastructure, establish reliable new sources of water supply and restore watershed health demand immediate action from your administration. We would like to engage with Reclamation through the development of an informal, collaborative working group to look at all ways to achieve environmental compliance under the National Environmental Policy Act (NEPA). This could be accomplished through the development and creative, flexible, and predictable use of new and existing Categorical Exclusions (CEs) on appropriate water and conservation projects.

We also believe that immediate actions could be taken by Reclamation through the adoption of CEs that are already included in the Department of the Interior's NEPA Manual of [Existing Categorical Exclusions and utilized by other bureaus and offices](#). Clarifying existing Reclamation CEs and adopting other proposed CEs would all be part of a workable project implementation strategy under NEPA.

For example, Part 516, Chapter 8 of the DOI NEPA Manual allows the U.S. Fish and Wildlife Service to use CE 8.5B(3) for small stream restoration work, found at page 5, for the construction of “new, or the addition of, small structures or improvements, including structures and improvements for the restoration of wetland, riparian, instream, or native habitats, which result in no or only minor changes in the use of the affected local area.” The following are examples that may be included:

- (a) The installation of fences
- (b) The construction of small water control structures.
- (c) The planting of seeds or seedlings and other minor revegetation actions.
- (d) The construction of small berms or dikes.
- (e) The development of limited access for routine maintenance and management purposes.

We urge Reclamation to adopt this existing Department of the Interior CE to facilitate IJJA-funded watershed health projects.

As you know, Reclamation also has its own CEs as detailed in the Department of the Interior's NEPA Manual of [Existing Categorical Exclusions](#), Part 516, Chapter 14.5 (A)-(F), at pages 35-38. Clarification on the scope of some of Reclamation's existing CEs would be very helpful to IJJA implementation. In particular, CE Chapter 14.5(C)(3), under *Project Implementation* covers “Minor construction activities associated with authorized projects which correct unsatisfactory environmental conditions or which merely augment or supplement, or are enclosed within existing facilities,” at page 35. In the Columbia Basin Project and elsewhere, for ditch lining/infrastructure replacement projects, it appears that Reclamation at times has determined that CE Chapter 14.5(C)(3) (or, perhaps, a different Chapter 14.5 CE) applies if the ground is not disturbed below the invert (bottom) of the

ditch. This is a broad and simplistic assumption regarding the extent of ground disturbance that took place during original construction. We urge Reclamation to clarify CE Chapter 14.5(C)(3) so this CE could be applied to piping and lining projects within some range of the existing ditch prism, which could extend below and to the sides of the current invert of the ditch. This would be consistent with the CE's language that the "minor construction" would "merely augment or supplement existing facilities." This would greatly streamline and simplify water conservation efforts while also recognizing the uncertainty involved with the extent of construction ground disturbance.

In addition, under CE Chapter 14.5(D)(1) at page 36, under *Operation and Maintenance Activities*, (D)(1) provides a CE for: "Maintenance, rehabilitation, and replacement of existing facilities which may involve a minor change in size, location, and/or operation." We understand that whether this or another CE listed in Chapter 14.5 could be applied to extraordinary O&M ("XM") funded by IJJA would very much depend on the particulars of the XM work to be done.

Reclamation encourages irrigation districts across the West to conserve water, and supports those actions by providing WaterSMART grants to projects that pipe and line ditches. Unfortunately, fulfilling requirements for NEPA and National Historic Preservation Act (NHPA) compliance can slow these projects down. Simplifying the NHPA Section 106 process would be helpful, particularly if projects are tied to post-disaster work like wildfires, floods, or storms, or are in locations that have been negatively impacted by severe drought conditions over multiple years. NEPA and NHPA exemptions should be granted for such post-disaster work conducted by Reclamation, or a transferred works operating entity, for the following activities: 1) Repairing, replacing, or maintaining existing facilities, structures, or appurtenances damaged or impacted by a natural disaster and drought to pre-disaster conditions; 2) Removing or relocating debris and sediment following a natural disaster (including a wildfire, flood, or storm) to restore a facility (including a dam, reservoir, or canal) to pre-disaster conditions; and 3) Repairing, replacing, or maintaining existing fish ladders, screens, or spawning areas to pre-disaster conditions.

The coming months will be crucial to ensure that implementation of the IJJA is set up for success, delivering efficient and timely construction of water infrastructure, watershed health, and water conservation projects. We request that:

- (1) Reclamation act on our two specific recommendations above regarding CEs Chapter 8.5B(3) and Chapter 14.5(C)(3);
- (2) Reclamation establishes an informal collaborative working group to clarify existing CEs; and,
- (3) Within the collaborative working group, identify CEs that can be helpful in advancing projects swiftly, while ensuring safe, reliable, and affordable water for our Western irrigators, their rural communities, and the healthy watersheds on which they depend.

We respectfully submit these recommendations and invite you to an ongoing discussion to further expand on these ideas. Thank you for your time and consideration.

Signed,

California Agricultural Irrigation Association, California Farm Bureau Federation, Environmental Defense Fund, Family Farm Alliance, Farmers Conservation Alliance, Montana Stockgrowers Association, Oregon Water Resources Congress, Public Lands Council, The Freshwater Trust, The Nature Conservancy, Trout Unlimited, Western Growers Association, Wyoming Stock Growers Association