

Costs, Benefits and Future Cost Drivers – Group Discussion



Panel Members & Perspectives

- Enrique Ochoa, PacifiCorp
 - Dam Safety & Construction
- Dustin Till, Troutman Pepper
 - Regulatory
- Todd Olson, PacifiCorp
 - Environmental

The world is changing....some
examples with review of
potential impact, value and
cost

Dam Safety & Construction Regulations

- New FERC 18 CFR Part 12 - Subpart D Regulation
 - Comprehensive Assessments (CA)
 - Periodic Inspections (PI)
- Benefits
 - Deep dive on alternating sequence;
 - PI's have lower regulatory review requirements..."less" effort.
 - CA's have:
 - Enhanced risk identification; uncover hidden vulnerabilities
 - Supports Risk-Informed Decision Making
 - Prioritization of investments
 - Improved public safety

Dam Safety & Construction Regulations

- Comprehensive Assessments Challenges
 - Requires more time and expertise; strict qualification hurdles for Independent Consultants and Subject Matter Experts
 - Extended assessments compete with actual project design time from Subject Matter Experts; resulting in resource bottlenecks
 - The time and personnel demands of CA's significantly raise overall compliance expenses for utilities.
- Periodic Inspection Challenges
 - Similar time and expertise challenges
 - Similar expense challenges

Dam Safety & Construction Regulations

- Realized Cost Impacts

- PIs cost are on par or have been up to 25% decrease compared to previous Part 12D Inspection process.
- CAs cost increase of up to 6X compared to previous Part 12D Inspection process
- We have only completed a few PI's and one CA to date so our cost data set is limited.

Federal Regulatory Update

- **Current Administration's Energy Dominance Agenda**

- EO 14154 – Directs federal agencies to rollback regulations that impose “undue burdens” on domestic energy production, including hydropower

- **Budget Reconciliation – OB3**

- Treats hydropower as baseload energy
- Phaseout of ITC (48E) and PTC (45Y)
 - Beginning Construction before Dec. 31, 2033: 100%
 - Beginning Construction in 2034: 75%
 - Beginning Construction in 2035: 50%
 - Beginning Construction in 2036 and beyond: 0%
- Foreign Entities of Concern
 - Taxpayers must certify no “material assistance” from FEOCs for projects beginning construction in 2026
 - Foreign-Influenced Entities (i.e., entities that are “effectively controlled” by Specified Foreign Entities) are ineligible for tax credits

- **National Environmental Policy Act Regulations**


- Judicial Developments
 - CEQ regulations are *ultra vires* – *Marin Audubon v. FAA*, No. 23-1067 (D.C. Cir. 2024)
 - CEQ acted beyond its authority in issuing regulations; CEQ cannot bind agencies – *Iowa v. CEQ*, 1:24-cv-089 (D.N.D. 2025)
- February 2025: DEQ Interim Final Rule Rescinding NEPA Regulations
- July 2025: FERC Rule Removing References to CEQ's NEPA Rules, 90 Fed. Reg. 29,423 (Effective Aug. 18, 2025)
- Dept. of Interior, Energy, and Agriculture: Interim Final Rules replaced CEQ regulations with non-binding guidance

Federal Update – Opportunities & Things to Watch

- **Seven County Infrastructure Coalition v. Eagle County**, 605 U.S. ___, 145 S.Ct. 1497 (May 2025)
 - NEPA reviews are not required to evaluate “other future or geographically separate projects that may be built (or extended) as a result of or in the wake of the immediate project under consideration”
- **FERC Categorical Exclusions – 192 FERC 61,019 (Effective Aug. 4, 2025)**
 - D.1: Maintenance, rehabilitation, and replacement of existing facilities which may involve a minor change in size, location, and/or operation
 - D.17: Minor safety of dam construction activities where the work is confined to the dam, abutment areas, or appurtenant features, and where no major change in reservoir or downstream operation is anticipated as a result of the construction activities
- **OB3 – NEPA “Pay to Play”**
 - NEPA amended to add accelerated review process through Project-Sponsor Opt-In Fees
 - Fees of 125% of anticipated cost to prepare EA/EIS
 - EAs within 180 days; EISs within one year
- **Endangered Species Act –NMFS and FWS Definition of “Harm” – 90 Fed. Reg. 16,102 (Apr. 17, 2025)**
 - NMFS and FWS have proposed rescinding definition of “harm”
 - “Harm” requires affirmative, intentional act that kills or injures a listed species
 - Impacts resulting from habitat modification = beyond plain language of ESA
 - Comment period closed May 17, 2025; awaiting final rule
- **ESA God Squad Reconvened**
 - Potential exemption from ESA if: (1) no reasonable and prudent alternatives; (2) benefits of action “clearly outweigh” benefits of alternatives; and (3) action is of national or regional importance
- **Clean Water Act 401 – Activity v. Discharge**
 - EPA Memorandum *Clarification Regarding Application of Clean Water Act Section 401 Certification* (May 21, 2025)
 - “CWA 401 is limited to addressing only water quality-related impacts ... It would be inconsistent with CWA Section 401 to deny or condition a certification based on potential impacts not connected to water quality (e.g., based solely on potential impacts to air quality, traffic, noise, project preference, or economic impacts that have no direct connection to water quality)”
 - EPA Docket – Implementation Challenges Associated with CWA 401 – 90 Fed. Reg. 29,828 (July 1, 2025)
 - EPA invited written comments to determine whether guidance of rulemaking are necessary to address regulatory uncertainty or implementation challenges; comment period closed on August 6, 2025

Environmental

- Federal representative turnover
 - Where is everyone and who's my contact?
- Closure of federal regional offices
 - Reduction of in-person meetings and project visits
- ESA matters moving to US Fish and Wildlife Service?
 - How is this going to work out?
 - Role of National Marine Fisheries Service?



Audience Participation

- Other current or emerging items?



Audience Participation

- How do you get informed?

Audience Participation

- How do you implement in a cost-effective manner?

Thank
you!

