

PERSPECTIVES FROM THE FIELD

Opinion: The NEPA and Major Water Resource Planning for the Future. What's the problem? Analysis Paralysis

Michael Francis

Federal water resources development planning and the associated environmental assessment processes have been very complex and expensive. Federal water resource agencies are reassessing approaches to planning, with the support of our leadership and legislators, which encourages National Environmental Policy Act (NEPA) practitioners to apply the Council on Environmental Quality guidance to improve NEPA and to work with regulating agencies to streamline efforts and provide reasonable levels of information adequate for risk informed decision making.

Environmental Practice 18: 69–71 (2016)

I assume it is common knowledge that environmental-impact assessment processes are pointed to as drivers of high cost and extended schedule effects related to major water-resources planning efforts (flood risk management, water supply, navigation, hydropower, etc.) under the 1983 Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (P&Gs). However, the base planning effort itself under the P&Gs has been a cumbersome process that has historically been very risk-averse and, as a result, very expensive (up to hundreds of millions of dollars in sunk costs) and of very long duration (up to several decades). It is my opinion that the environmental processes (and documentation) expanded to fill the time and developed complexity and an extreme level of detail that matched the extremely detailed engineering and hydrologic evaluations in the planning process in a parallel risk-averse perspective.

Entire generations of National Environmental Policy Act (NEPA) planners cut their teeth on these massive

documents and hyperdetailed analyses. The process allowed a great deal of knowledge and understanding of the human environment to develop, which is a wonderful positive outcome, but in many cases, the volume of information has come to be expected, even with Council on Environmental Quality (CEQ) guidance on streamlining and efficiencies over the years—and when the level of information does not effectively inform a decision to implement the proposed action or alternative. I feel that the water resource planning process was actually a significant contributor to preventing these NEPA planners from implementing the CEQ guidance. We have a clear need to be able to get to the point and focus analyses of effects on those resources of true importance.

“It is absolutely essential that the U.S. Army Corps of Engineers transform its study processes if it is to remain at the forefront of federal agencies the Nation turns to when seeking answers for water resources challenges. The current study processes too often leave our stakeholders and the Nation waiting for critical answers.” (Jo-Ellen Darcy, Assistant Secretary of the Army for Civil Works)

In essence, the planning efforts of the past had become so complete and comprehensive (and the standard had morphed so that most federal water planning reflected a similar level of effort) as to virtually paralyze our ability to respond effectively to the nation's needs. In examining the issues, it is not truly a planning problem, but a decision-making problem. We had become so risk-averse, possibly in part as a result of environmental process litigation, that we just keep studying the problems and potential solutions, despite having more than enough information to decide. We were too afraid to decide and kept studying until someone was ready to make a decision—and often they never did. We should recall that one of the principle purposes of the NEPA is

Affiliation of author: Michael Francis, U.S. Army Corps of Engineers, Walla Walla, Washington.

Address correspondence to: Michael Francis, U.S. Army Corps of Engineers, 201 North Third Avenue, Walla Walla, WA 99362; (phone) 509-527-7288; (e-mail) Michael.Francis@usace.army.mil.

© National Association of Environmental Professionals 2016. This is a work of the U.S. Government and is not subject to copyright protection in the United States.

“Ultimately, of course, it is not better documents but better decisions that count. NEPA’s purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment...” (40 CFR 1500.1 (c)).

Fixing It

Congress and the Corps of Engineers leadership acknowledged the problem of cumbersome water-resources planning with associated environmental documentation and developed internal policy (3x3x3 rule), guidance (SMART planning: Specific, Measurable, Achievable, Realistic, Time-based), and law [Water Resources Development Act of 2007 requiring an update to the P&Gs and Water Resources Reform and Development Act (WRRDA) of 2014] codifying SMART planning for the Corps. Further new legislation has been proposed to expand the applicability of SMART planning principles to the Bureau of Reclamation. Here’s a synopsis for you:

- The 1983 P&Gs were developed pursuant to the Water Resources Planning Act of 1965 to guide the formulation evaluation studies of the major federal water-resources-development agencies upon repeal of the previous Principles, Standards, and Procedures.
- In the WRDA 2007, Congress directed the secretary of the army to update the 1983 P&G for the Corps. In 2009, the Obama Administration initiated a process to update the P&Gs for all federal agencies’ water-resource planning efforts as a measure to ensure consistency.
- In early 2010, CEQ proposed several steps to modernize and reinvigorate the NEPA, intended to assist federal agencies in meeting the goals of the NEPA, enhancing public involvement, increasing transparency, and easing implementation.
- In 2012, Major General Walsh established the “3x3x3 rule” policy for the Corps, emphasizing risk-based decision making in water-resources planning through early alignment of higher levels of management, three years timing limitation and a three million dollar cost limit for planning studies (to include the environmental impact analysis). This rule also contained strong guidance to dramatically reduce the cumbersome size of documents.
- The final Principles, Guidelines & Requirements (PG&Rs) were released in 2013, providing broad principles and interagency guidelines for future water-development investments with accelerated project approvals, reduced

costs, and supporting water-infrastructure projects with the greatest economic and community benefits.

- WRRDA 2014 codified the principles of SMART planning and the 3x3x3 rule, establishing a required streamlined water-resource planning process and accompanying environmental-impact analysis.
- In April of 2015, five Congressional representatives [Newhouse (R-Washington), McClintock (R-California), LaMalfa (R-California), Gosar, (R-Arizona), and Lummis (R-Wyoming)] introduced H.R. 2097, the Bureau of Reclamation Surface Water Storage Streamlining Act of 2015 to streamline the Bureau of Reclamation’s planning process for new surface-water-storage projects in the same way WRRDA has for the Corps to facilitate the construction of new dams and reservoirs for water supply.

What Does This Mean?

The intent of these efforts is better decision making by introducing and requiring risk-informed decision making. We may no longer be able to define the exact details of an effect but may sometimes have to rely on qualitative data and professional judgment to fill in the gaps rather than studying a topic in exhaustive detail, particularly if the issue is not likely to be a major driver of a decision, such as which alternative to carry forward or whether or not an action should be taken at all.

Here are summaries of some of the key specific sections of WRRDA to consider, from Title I—PROGRAM REFORMS AND STREAMLINING:

Section 1001. Vertical Integration and Acceleration of Studies

“This section limits the Corps of Engineers water-resource-feasibility studies/environmental-impact statements (EISs) to three years and \$3 million in federal costs per feasibility study. It also requires District, Division, and Headquarters personnel to concurrently conduct reviews of a feasibility study.” Special conditions can allow for up to a one-year extension.

- This means we have to get to the point, identify the truly reasonable alternatives and the potentially significant effects and provide enough information for a decision to construct in one-third the time or less of many traditional studies. I worked on one project that had a lifespan dating back to the 1940s that was not constructed until the early 2000s. Three years is a VERY short timespan. Many major EISs alone can take three years of concentrated effort by a

team. Integrate that with the engineering, hydrology, and other analytical requirements, and folks vested in the previous methods will be extremely challenged.

Section 1002. Consolidation of Studies

“This section repeals requirements that the Corps of Engineers conduct a reconnaissance study prior to initiating a feasibility study. It creates an accelerated process that allows nonfederal project sponsors and the Corps of Engineers to proceed directly to the feasibility study.”

- This means that much of the historic process of several years of scoping and preliminary analysis and other environmental-impact assessments, such as under the Fish and Wildlife Coordination Act, that have extensive “prework” during the reconnaissance phase all has to be rolled up and part of the accelerated 3x3x3 rule. And it still has to be done well.

Section 1005. Project Acceleration

This section accelerates the Corps of Engineers studies and reviews by requiring early coordination between the secretary of the army, as the lead agency, and other agencies that must approve a project; creates opportunities for nonfederal sponsors to assume greater responsibilities in protecting public health, safety, and the environment; and establishes deadlines for action by all agencies providing materials and comments for studies and reviews.

- The last statement in this summary, “... establishes deadlines for action by all agencies providing materials and comments for studies ...” is of greatest concern to me. Not only must the Corps reevaluate and greatly improve its processes, but agencies such as the Fish and Wildlife Service must renew their project execution outlook to be able to effectively support these schedules and funding constraints. The WRRDA contains fiscal penalties for failing to meet the schedule requirements.

We will have to learn how best to engage our nonfederal sponsors to better leverage their capabilities to support their projects.

Good, Bad, or Ugly?

I come out on the side of good. I am deeply engaged at the moment on an integrated feasibility study and environmental impact statement, and I find the process of applying the mental discipline refreshing. The professional knowledge of the team is excellent, and we can make reasonable judgment calls and effective risk-informed decision making.

Do I perceive a litigation risk? Not really. SMART planning is in no way intended to foreshorten any environmental assessment or review process. The NEPA does not require us to be exhaustive and virtually pleads with its practitioners to be efficient and effective and not to bury our decision makers in a mountain of paper. I am proud to be part of an agency making the tough call and becoming significantly more efficient and effective at planning and evaluating the effects of water projects.

I know there are a thousand “how” questions. I had them all as I started down this road.

- How can we possibly finish an EIS with this small budget?
- How can we ensure a reasonable range of alternatives are truly considered?
- How can we get our regulating agencies to effectively support us with these constraints?

This list goes on. This is an era to challenge our NEPA practitioners to find even more and better ways to be effective and efficient without hurting their ethical foundations.

Submitted September 28, 2015; revised October 1, 2015; accepted October 1, 2015