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NEPA in the Fiscal Responsibility Act

**Chuck Nicholson, Ph.D.
NAEP Board Member,
Chair NEPA Working Group
Senior Environmental Planner/Scientist HDR**



- NAEP member for about 13 years
- 43 years of professional experience in the environmental and natural resources fields
- 23 years as a NEPA compliance specialist
- Tennessee Valley Authority
- Extensive experience in the preparation of EIS, EA, and CE documentation for wide range of actions
 - PhD, Ecology & Evolutionary Biology, University of Tennessee, Knoxville
 - MS, Wildlife Management, University of Maine
 - BS, Wildlife and Fisheries, University of Tennessee, Knoxville



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David Brewster, CEP NAEP Member, Senior Environmental Scientist/Manager UES



- Over 20 years of professional experience in the environmental investigation, remediation and compliance fields.
- 13 years preparing NEPA documentation as author and technical reviewer.
- Extensive work with Department of Defense and private company clients with NEPA compliance and permitting across the U.S.
- Board Certified Environmental Professional.
 - BS, Environmental Science and Chemistry, Morehead State University, Kentucky



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Fred Wagner **NAEP Elected At-Large Board Member** **Partner, Venable LLP**



- Chairs Transportation Research Board Legal Resources Section
- Primary focus is major infrastructure and project development, NEPA reviews, and federal resources permitting
- Served as Chief Counsel at Federal Highway Administration
- Drafted NEPA reform measures in MAP-21 and the FAST Act
- Served as a trial attorney at US Department of Justice, Environmental Division
- JD UVA Law School

Michelle Rau, PMP
NAEP Board Secretary
National Environmental Policy Act Practice
Leader, Jacobs Engineering



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- NAEP member since 2010
- 20+ years of experience in environmental planning and project management.
- Currently serves as the Jacobs NEPA practice manager and leads a group of over 200 environmental practitioners.
- Extensive experience on Federal environmental compliance projects, including large scale and controversial EISs, involving more than a billion dollars of infrastructure.
- M.B.A University of Colorado
- B.S. Ecology and Evolutionary Biology, University of Pittsburgh



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Edward (Ted) Boling
NAEP Member
Partner, Perkins Coie



- Served as the country's top NEPA attorney as an associate director at CEQ
- Served at U.S. Department of the Interior and U.S. Department of Justice
- Deep involvement in the first comprehensive revision of CEQ's NEPA regulations in over 40 years
- Advises leaders on transportation and energy development projects, development of the National Ocean Policy, and CEQ's climate change guidance
- Drafted NEPA guidance on mitigation and monitoring, cumulative impacts analysis, and the development of categorical exclusions from detailed NEPA documentation



Introduction

The Fiscal Responsibility Act of 2023

- First substantive amendments to NEPA addressing the environmental review process
- Section 102(c) amended
- Six new sections, 106 – 111, added

Chuck Nicholson

How Did We Get Here?

- EO 13807
- 2020 revisions to CEQ regulations
- Recission of EO 13807 by EO 13990
- One Federal Decision in Bipartisan Infrastructure Law
- Phase 1 revisions to CEQ Regulations
- 2021 and 2023 Builder Acts and other legislative attempts
- The Fiscal Responsibility Act of 2023

Ted Boling

Section 111 - Definitions

- Revised definition of Major Federal Action

Fred Wagner



Section 102(c) Changes

- On alternatives, including impacts of no action alternative
- On irreversible and irretrievable commitment of resources

Ted Boling

Section 106 – Procedure for Determination of Level of Review



- Threshold Determinations
- Levels of Review

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Section 107 – Timely and Unified Federal Reviews



- Lead Agency
- Cooperating Agency
- One Document
- Sponsor Preparation

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Section 107 – Timely and Unified Federal Reviews (cont.)



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- Page Limits
 - EIS
 - EA

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Section 107 – Timely and Unified Federal Reviews (cont.)



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- Deadlines
- Petition to Court

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Section 108 – Programmatic Environmental Document



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- 5-year Threshold

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Section 109 – Adoption of Categorical Exclusions



- Codified...

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Section 110 – E-NEPA

- Permitting Portal Study

Michelle Rau



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Q & A