

Environmental Laws Changing with Climate Change

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KAPLAN KIRSCH ROCKWELL

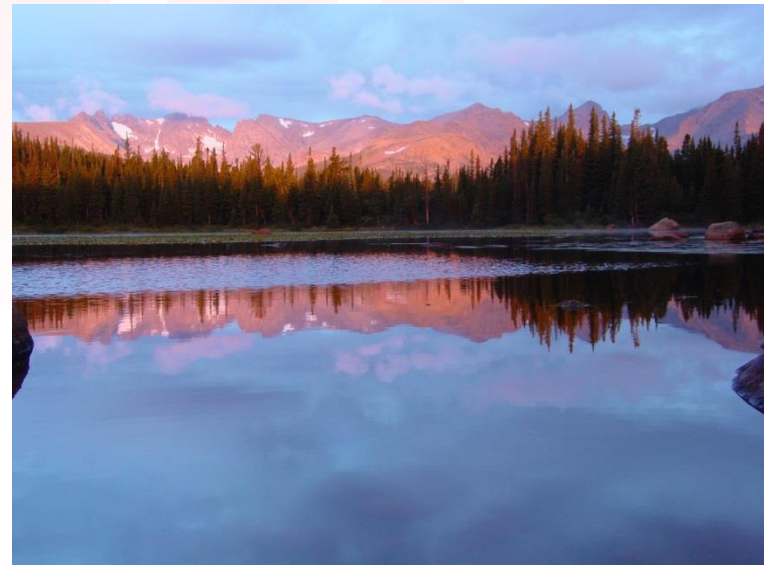
Federal Statutes Affected by Climate Issues; Examples

- 1. The National Environmental Policy Act (NEPA)
- 2. The Endangered Species Act (ESA)
- 3. Federal lands statutes
- Clean Water Act



NEPA

- Consideration of:
 - Direct and indirect impacts
 - Cumulative impact
- Provisions for incomplete information (40 C.F.R. § 1502.22)
- Alternatives
- Mitigation



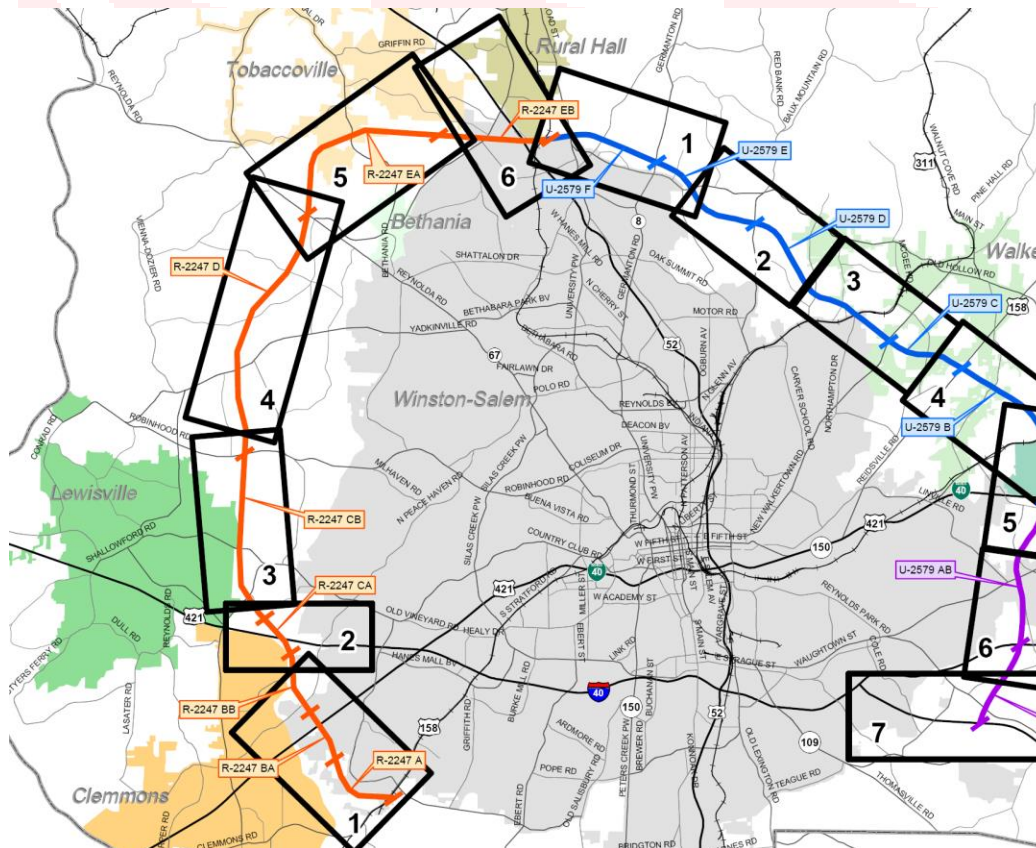
NEPA

Center for Biological Diversity v. National Highway Traffic Safety Administration, 538 F.3d 1172, 1216 (9th Cir. 2008)



NEPA

- North Carolina Alliance for Transportation Reform, Inc. v. U.S. Dep't. of Transportation, 713 F.Supp.2d 491 (M.D.N.C. 2010)



NEPA

- High County Conservation Advocates v. U.S. Forest Serv., 52 F.Supp.3d 1174 (D. Colo. 2014)



CEQ Draft Guidance (Dec. 2014)

- Reiterates that climate change must be considered
- Use changes to GHGs and sequestration as proxies for change
- Small projects may not require major analysis
- 25,000 ton per year recommendation
- Consider effects of climate change on project impacts
- Programmatic review
- Incorporation by reference



Endangered Species Act



Endangered San Joaquin kit fox family

Image courtesy of the U.S. Environmental Protection Agency

- Section 3: Definition of “Critical habitat” (16 U.S.C. § 1532(5)).
- Section 4: Determination of endangered species and threatened species (16 U.S.C. § 1533)
- Section 7 Interagency cooperation (16 U.S.C. § 1536)

ESA Cases



- Safari Club Int'l v. Salazar (In re Polar Bear Endangered Species Act Listing & Section 4(d) Rule Litig. - MDL No. 1993), 709 F.3d 1 (D.C. Cir. 2013)

FWS Rufa Red Knot Designation

- 79 Fed.Reg. 73,705(12/11/14)
- Climate a major factor
- 40 States
- Shoreline development
- Shoreline hardening



Federal Land Management

- Federal Lands Management Protection Act (FLPMA).
- Wilderness Act.
- NPS Organic Statute

Questions?

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