



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

President Trump Emergency Powers Declaration/Wall Funding: Sierra Club U.S. District Court (Northern District of California) Complaint Filed Alleging National Environmental Policy Act Violation

02/21/2019

The Sierra Club and a number of other organizations filed a Complaint for Declaratory and Injunctive Relief (“Complaint”) on February 15th challenging President Trump’s emergency declaration to secure funds to build a wall along the southern border.

The other organizations joining the Complaint included the Southern Border Communities Coalition.

One of the Complaint’s allegations includes the violation of the federal National Environmental Policy Act (“NEPA”).

NEPA requires federal agencies to include environmental values and issues in their decision-making process. This federal mandate is accomplished by agency consideration of environmental impacts of proposed actions and the reasonable alternatives to those actions. The statute requires federal agencies in certain instances to prepare a detailed Environmental Impact Statement. The requirement to produce this document is triggered in the event of a major federal action that will significantly affect the environment.

NEPA differs from environmental statutory programs such as the Clean Air Act and Clean Water Act which mandates specific actions. It does not impose substantive mandates, instead it is limited to requiring federal agencies to meet procedural requirements such as preparation of an Environmental Assessment or Environmental Impact Statement in certain defined instances. As a result, NEPA does not require a certain alternative or meet a particular standard. Nevertheless, failure to follow the procedural requirements of NEPA can result in a project being enjoined.

Sierra Club’s Complaint includes an argument that the construction of the wall pursuant to the February 15th emergency declaration will have adverse impacts on the environment. The fifth claim for relief argues that the Secretaries of Defense, Homeland Security, and Treasury must ensure that, as part of the wall process, their agencies prepare an Environmental Impact Statement. They contend that the border wall construction is a final agency action, for purposes of NEPA and the agencies will violate the statute by authorizing construction without first conducting an environmental analysis of the impacts.

Because of alleged significant potential environmental impacts the Court is asked to require that the agencies take a “hard look” at the border wall project.

A copy of the Complaint can be found [here](#).