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May 12, 2010

NEPA Modernization

Attn: Associate Director for NEPA Oversight

722 Jackson Place NW

Washington, DC 20503

Re: Draft Guidance on the Consideration of Greenhouse Gases, Clarifying Appropriateness of "Findings of No Significant Impact" and Specifying When There is a Need to Monitor Environmental Mitigation Commitments and Clarifying Use of Categorical Exclusions

The Arizona Game and Fish Department (Department) has reviewed the three Draft Guidance documents prepared by the Council on Environmental Quality (CEQ) published in the Federal Register and on the CEQ website, dated February 18, 2010. We offer the following general comments for your consideration with specific comments on the draft guidance listed on the attachment. The Department attended the Listening Session held in Tucson, April 15, 2010, and recognizes the intent of the guidance is to provide federal agencies with a synthesis of the current state of the law and what kinds of issues they should be considering to meet the requirements and responsibilities under the National Environmental Policy Act (NEPA). The Department supports the continued efforts for improving the clarity, quality and modernization of NEPA implementation, in addition to understanding CEQ's responsibility to draft guidance under the Executive Order 13514.

It is our understanding that the proposed draft guidance explains how federal agencies should analyze the environmental impacts of greenhouse gas emissions and climate change when describing the environmental impacts of an proposed action under NEPA; clarifies environmental impacts of proposed actions may be mitigated for a Finding of No Significant Impact (FONSI) determination with monitoring and reporting of mitigation commitments under the Record of Decision (ROD); clarifies the rules for categorical exclusions; and ensures concise public record when agencies apply these exclusions.

This draft guidance would more clearly define assessment and adaptations, consideration of monitoring and mitigation through a transparent effective process, and reviewing, establishing and applying categorical exclusions. The Department appreciates the recommended consideration of state agencies expertise and coordination role early in the

process; however, we recommend CEQ remain consistent within all of the draft guidance and provide this language in a stronger fashion to further assist in providing for statewide cooperation, coordination and collaboration of these efforts. Many federal agencies have agreements in place requiring coordination with state agencies recognizing them as cooperators within the NEPA process with recognition of their respective authorities and in furtherance of working in harmony for common purposes across the landscape. In addition, further clarification should be provided for the various terms, concepts, examples and science used in the draft documents.

The Department appreciates the opportunity to provide comments regarding the proposed guidance recommendations. If you have any questions regarding this letter, please contact Josh Avey, our Habitat Branch Chief at 623-236-7605.

Sincerely,



Bob Broscheid
Deputy Director

cc: Josh Avey, Habitat Branch Chief
Eric Gardner, Nongame Branch Chief

Attachment

Arizona Game and Fish Department Comments on Draft Guidance for NEPA Implementation

May 12, 2010

Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions

General:

A large part of climate change is the need for the scientific information to guide the decisions and implications from data and research to potential legislation and in order to accomplish this requires a commitment to the resourcing component within the state agencies, academia and others responsible for the research and data.

I. Introduction:

When considering opportunities to adapt actions to climate change impacts through the process and addressing of issues in procedures, CEQ should provide some baseline guidance (ie. associated timelines, when in the process this would not be considered) and clarity on criteria and methods for the analysis agencies should utilize or consider in the analysis of impacts. Many states and regions currently have strategies, initiatives, etc. in place as a result of various assessments and preliminary findings set forth at regional and local scales that should be reviewed or incorporated if appropriate in order to provide further guidance.

1. GHG emissions

Federal land and resource management actions should be included in this guidance to consider GHG emissions in their management actions and decisions. Even though it is later referred to as contribution to global climate change and few sources would dominate total GHG emissions, the smaller, incremental contributions over time could potentially have a larger impact as combined with other additional sources.

2. Climate change relationship to proposed actions

CEQ should provide clarity as to what is meant by setting of reasonable spatial and temporal boundaries for this assessment. Guidance for the scientific limits to for the accurate predictability of effects should outline the criteria for using models and the analysis of those models for consistency (ie. most models have accuracy for up to 25 years). Use of probable scenarios of future conditions should be considered and compared to proposed actions and impacts. By stating land management agencies can tailor the amount of documentation prepared for the analysis may be limiting to the transparency of the process and agencies should be urged to consider the scoping comments and other coordination efforts with other agencies, stakeholders, regional/statewide efforts (i.e. the Southwestern Climate Initiative, where preliminary findings have been assessed).

II. *Consideration of the effects on GHG emissions:*

Consider clarifying or defining the atmosphere quantities an agency may find meaningful and how to assess the appropriateness for quantifying and disclosing documentation to provide some consistency across the agencies. In addition, to provide for consistency across land management agencies, a federal protocol or set of protocols should be set in place.

III. *Considerations of current or projected effects of climate change:*

In addition to scoping indicating impacts of climate change on the proposal, the other factors determining the degree of consideration to the predictions should be coordinated with other agencies and stakeholders involved in the process (i.e. cooperating agency, state fish and wildlife agencies) for expertise and assistance with the warranting of these determinations. Climate change effects are large scale and should involve a diversity of cooperation, coordination and collaboration with a number of agencies and stakeholders for crossing over boundaries and provide for a more ecologically meaningful scale of assessment.

CEQ should be commended for providing recommended guidance for the best scientific information that is currently available for reasonably foreseeable climate change impacts. A large part of climate change is the need for the scientific information to guide the decisions and implications from data and potential legislation needs to come into play to provide this resourcing component or connections with agencies like state fish and wildlife agencies will be lost. Regional or local impact studies that would be more useful in the identifying of potential effects and predictability seem potentially problematic and further clarity may be necessary as to the criteria and methods used in determining the model or its use in the assessment. Focus should be given to those actions and or measures likely to be beneficial regardless of the future conditions (ie. managing for ecological function, diversity of species). The state fish and wildlife agencies need a voice at the table with national and regional levels to help inform the ecological connections identify what are the exacerbating stressors, recognition of state authorities, multi-sector statewide adaptation planning, state mandates, case studies and integration opportunities with other ongoing efforts.

Establishing and Applying Categorical Exclusions under NEPA:

General:

When discussing collaborative monitoring and evaluating implemented actions, we recommend these activities include the meaningful involvement of the state fish and wildlife agencies.

In addition, monitoring is essential and the results of these monitoring efforts across agencies should be required and not just encouraged. This would assist in consistency within the agencies and across other agencies creating minimal redundancy.

There seems to be a consistent theme of not recognizing the state agencies role in the process (expertise, research, etc) as a necessary step and assumes them as general public.

III. Substantiating a new Categorical Exclusion:

In the process of gathering, evaluating and making findings, we recommend the consultation with the state agencies as well as other Federal agencies, due to the different jurisdictional authorities, in addition to special expertise.

A.1

Evaluation of implemented actions: It would seem essential to have a collaborative process in substantiating a new Categorical Exclusion not only for the additional information, but also for identification of any gaps in the implementation and operating procedures for a more effective process.

A.2

Impact demonstration projects: If the federal agency lacks the experience and expertise, it should be strongly recommended to coordinate such projects with those agencies or other organizations that have the expertise for input and development of these projects.

A.3

Coordination with other agencies and organizations as outside experts should be recommended for assistance in identifying potential effects and the extent of those effects as often the expertise and research supporting the information is found outside of the Federal agencies.

In addition, the scientific analysis should be coordinated with state agencies and other organizations (i.e. academia). If the agency is to use preference on where, who, or certain methods by which the data was developed as this could lend to bias and a broader review of the available literature and analysis should be recommended to minimize potential oversight.

C. Refining proposed Categorical Exclusion:

When limiting or removing actions, placing additional constraints on Categorical Exclusion applicability or refining the applicable extraordinary circumstances, the federal agency should be recommended to use caution in the potentially limiting larger cumulative impacts making allowances for Categorical Exclusion to move forward without the EA/EIS analysis where it was necessary.

In addition, when refining is being considered it should be recommended that coordination with stakeholders and other agencies take place to assist in this process.

IV. Procedures for establishing a new Categorical Exclusion:

The current language reflects CEQ's encouragement of publishing explanatory guidance for the regulations and procedures and should be more reflected as a requirement if the regulation and procedures lend clarity to the Categorical Exclusion and minimize outside interpretation.

Public Review:

In the supporting information and findings, the agency should be strongly encouraged to provide the criteria and methods by which the information and findings were analyzed. This would ensure the information to be the best available and would provide the public a clear understanding as to how the findings were accomplished and provide a transparent process. In addition, if there are options for submitting questions, there should be a clear process and timeline identified.

V. Public involvement in establishing a Categorical Exclusion

The Department continues to support the encouragement in addressing the opportunity for public involvement beyond the Federal Register. Further, if the federal agency is to use discretion in the determination of the type and length of public involvement to the proposed category of actions and perceived environmental effects, it should be strongly recommended that collaborative efforts be extended to state agencies and other stakeholders be involved to further inform the or provide clarity as to the perception/interpretation of those effects before going to the general public.

VI. Applying an established Categorical Exclusion:

B. Public engagement and disclosure:

CEQ encourages agencies in appropriate circumstances to engage the public when they use a Categorical Exclusion, but does not give guidance on what constitutes an appropriate circumstance. This should be a consistent process in order to provide the necessary insight into potential previously unidentified impacts and increase the awareness of land management actions and statewide cumulative impacts.

Further, providing access of the status of compliance would assist state agencies in tracking the actions occurring across the landscape and should be encouraged for more than just those where high public interest is perceived to provide consistency.

VII. Periodic review of established Categorical Exclusion:

We recommend inclusion of coordinating these reviews with state agencies to provide additional insight and identification for expanding or limiting the category of actions.

In addition, CEQ does not provide any further information as to the process and associated timelines for the proposed regular review of Categorical Exclusion. These

procedures used to identify and revise categorical exclusions by the Federal agencies along with the information leading to the determination should be made available to state agencies and the public for clarity, transparency and consistency.

Guidelines for NEPA mitigation and monitoring:

General:

Future impacts and conditions in the environment includes other actions on the landscape not limited to the Federal agency coming up with the mitigation and monitoring; planning and coordination with other stakeholders and state agencies would provide additional options for mitigation and large scale coordination efforts could lend to watershed, landscape and ecosystem scale benefits.

II. *Decision and Guidance*

A. Mitigation in NEPA analysis and decisions:

When an agency includes mitigation to support a FONSI, the agency should not just ensure the mitigation is adopted and implemented, but should include measurable performance standards and monitoring for the effectiveness of the mitigation. Otherwise, the mitigation may not be occurring or might not be adhering to its purpose of minimizing for impacts. The example given uses best management practices, however, these are not necessarily measurable performance practices reducing, avoiding and/or minimizing impacts and may not provide for the ability to be monitored to provide for adaption to changed circumstances.

4. If mitigation failure is occurring as the mitigation is not minimizing an effect, the agency responsible should be strongly recommended to coordinate with other agencies or stakeholders used in the development or responsible for the mitigation implementation/monitoring to consider supplementary action or need to address the effects of the mitigation failure.

B. Monitoring:

If agencies are given the discretion to select the form and method for the monitoring, identifying the monitoring area and establishing the appropriate monitoring system, they should be highly recommended to coordinate with the agency responsible for implementation of the monitoring. Monitoring for mitigation should be recommended for more than just those considered important cases as the criteria is not identified for what makes up an important case. Further, monitoring allows for the determination of if the mitigation is effective or not and should be considered in all cases to ensure compliance with NEPA.

3. Effectiveness monitoring:

Although CEQ recommends state agencies, etc. should be considered in assisting in identifying and monitoring measures, it should be strongly recommended, if not required especially for those measures state agencies or other are responsible for the implementation of the mitigation and/or monitoring requirements for the Federal agencies mitigation requirements.

b. Role of the public in mitigation monitoring:

Cooperating agencies in the process should be given priority to review the monitoring results before the general public, especially in those cases where those agencies may be the responsible party for the implementation of the monitoring for the Federal agencies mitigation/monitoring requirements. In the determination of the methods and techniques used to provide the mitigation and monitoring information being commensurate to the importance of the action and resource issue should be a coordinated process with the stakeholders, state agencies, etc. to provide for a consist and more effective process.