

Sagebrush Ecosystem Program

201 Roop Street, Suite 101
Carson City, Nevada 89701
Telephone (775) 687-2000

www.sagebrusheco.nv.gov

STEVE SISOLAK
Governor



Kelly McGowan, Program Manager
Katie Andrie, Wildlife
Daniel Huser, Forestry/Wildland Fire
Kathleen Petter, State Lands
Ethan Mower, Agriculture

STATE OF NEVADA
Sagebrush Ecosystem Program

These sections are areas to look at in response to the CEQ's Proposal to Modernize its NEPA Implementing Regulations:

Section 2C -Revisions to NEPA and Agency planning

Section 2D.4, 2D.5, 2D.6, 2D.8 – Revisions to EIS Alternatives, Affected Environment and Consequences, Other proposed changes to EIS

Section 2H – Proposed Revisions to Other Requirements of NEPA

Section 2I – Proposed Revisions to Agency Compliance

Section 2J – Proposed revisions to Definitions

Comment on clarification of the meaning of "effects"

Comment on clarification of the meaning of "major federal action"

Comment on clarification of the meaning of "mitigation"

Comment on clarification of the meaning of "reasonable alternatives"

Comment Form

| | |
|----------------------------|---|
| Document Title | CEQ's Proposal to Modernize its NEPA Implementing Regulations |
| Date (mm/dd/yy) | 02/24/2020 |
| Name | Kelly McGowan |
| Agency/Organization | Nevada Sagebrush Ecosystem Program (SEP) |
| Position | Nevada Sagebrush Ecosystem Technical Team (SETT) Program Lead |
| Telephone No. | 775.687.2000 |
| E-Mail Address | kmcgowan@sagebrusheco.nv.gov |

| Section | Page | Topic | Comment |
|----------------|-------------|---|---|
| 2C.1 / 1501.1 | 24 / 67 | NEPA Threshold | Because notification of actions on federal land that have applicability to state regulations are often dependent on notification via NEPA processes, the state of Nevada would like to see the proposed new section to be added to 40 CFR 1501.1 to be prescriptive in nature and not dependent on agency discretion on whether NEPA applies, or to create a different method whereby local governments are informed of actions taking place on federal land. |
| 2C.5 / 1501.5 | 29 / 69 | Environmental Assessments | The State of Nevada would like to see a more rigid public and governmental involvement process as opposed to a more fluid process that is open to interpretation by individual agencies and field offices of agencies |
| 2C.5 / 1501.5 | 29-30 / 69 | Environmental Assessments | The State of Nevada suggests that the appendices consist of supporting data with captions, and not text which attempts to explain the data that may be supported in the table, figure, or mapping product. |
| 2C.6 / 1501.6 | 31 / 70 | Finding of No Significant Impact (FONSIs) | The State of Nevada believes stating explicitly that State law/regulations may require compensatory mitigation and clarify that the mitigation may occur offsite and may be independent to the issuance of a FONSI. For example, compensatory mitigation by purchasing credits in the Nevada Conservation Credit System will not lessen the |

| | | | |
|-------------------|----------|---|--|
| | | | environmental impact onsite. |
| 2D.5/ 1502.14 | 39 / 83 | Alternatives | The 1st line of the last paragraph seems to disregard that impacts over which the agency has no control are often caused by projects, regardless of jurisdiction. This is commonly recognized within the Nevada Conservation Credit System (CCS), the state's compensatory mitigation program for projects impacting GRS habitat directly or indirectly. The 2nd line seems to disregard that agency lands border one another all over the State of Nevada, thus suggests a lack of consideration of what in many are likely legitimate alternatives on lands in close proximity. In the CCS, consideration of all legitimate alternatives can lead to a significant reduction of impacts when a project is implemented. |
| 2D.5 / 1502.14 | 40 / 78 | Alternatives | Limitations for alternatives could be limited to entities that have some level of jurisdiction on the resources being impacted and they should be written in such a way that they can be reasonably adjusted through the NEPA scoping or cooperating agency process. Consideration should be given to comments submitted that propose amending specific alternatives within management decisions. |
| 2D.5/ 1502.14 | 40 / 83 | Alternatives | The number of alternatives should in most cases be correlated with the scale of the project with simple projects having few alternatives and more complex and large-scale projects having more as appropriate. An example would be the siting of a new road or highway. In the CCS, consideration of alternatives can lead to a significant reduction of impacts when a project is implemented. |
| 2D.6/ 1502.16 | 40 / 84 | Affected Environment & Environmental Consequences | Consolidating the environmental consequences to one paragraph sounds reasonable for the simplest of projects, but not a large-scale project. Nevada's Greater Sage-Grouse Conservation Plan, for example, reflects more complexities to various resource issues than can often be encapsulated in a paragraph. "Reasonably foreseeable" would also likely exclude evaluation of specific consequences that may be likely to occur over time with potentially disastrous consequences. |
| 2H / | 46 / 100 | Legislative EIS | Would eliminating the legislative EIS requirement eliminate notice and public comment? Legislators in Washington DC may not understand the effect a legislative proposal may have |

| | | | |
|-----------------|------------------|--|---|
| 1506.8 | | | across the country. |
| 2H.7/ 1506.5 | 45 / 98 | Proposed Revisions to Other Requirements of NEPA | This paragraph states applicants and contractors would be able to assume a greater role in contributing information and material to the preparation of environmental documents, although it places the responsibility on the agency for supervision and ensuring accurate information is contributed. Regardless, it seems the BLM or a 3rd party rather than a project applicant with such a direct stake in the project should be leading efforts to determine environmental consequences. Contributions by the project proponent could be incorporated in the scoping process and during the avoid and minimize processes. Within Nevada's CCS, 3rd party contractors must be used to reduce conflicts of interest and bias in determination of the credits and debits involved in mitigation. |
| 2J / 1508 | 51 / 108- 109 | Effects | Ensure "Effects" allows for predictive models to show future possible detrimental effects of the proposed action. Consider using a substantial factor test in determination of proximate cause. This better supports the inclusion of scientific basis and judgement when determining effects. |
| 2J / 1508 | 51 / 108- 109 | Effects | An effect should always be considered if it is a result of the proposed action, regardless of whether it's remote, either in time or geography. There can be significant negative impacts from an action that may take many years to manifest and may occur within an expansive geographical area, and these should still be considered or analyzed. |
| 2J / 1508 | 51 / 108- 109 | Effects | Change "Effects include reasonably foreseeable effects that occur at the same time and place and <u>may include...</u> " to "...time and place and, <u>where warranted, will include...</u> " |