

**Form 5-B**  
**DEQ Environmental Review Procedure**  
**for Projects Funded through the**  
**Clean Water State Revolving Fund (CWSRF) Loan Program**

**A. PROGRAM PROTOCOL**

The Idaho Department of Environmental Quality (DEQ) will be guided by 40 CFR Part 6 and will implement a “National Environmental Policy Act (NEPA)-like” process. 40 CFR Part 6 identifies the scope of federal environmental concerns and objectives that must be addressed for equivalency projects, or those that receive federal monies. When no federal monies are used for funding, an alternative process is followed (see Section K of this document).

Federal “Cross-Cutting Requirements” are those provisions in federal law which “apply by their own terms” to projects and activities receiving federal financial assistance.

**ENVIRONMENTAL AUTHORITIES**

- Archeological and Historic Preservation Act of 1974, Pub. L. 86-523, as amended
- Clean Air Act, Pub. L. 84-159, as amended
- Coastal Barrier Resources Act, Pub. L. 97-348, as amended
- Coastal Zone Management Act, Pub. L. 92-583, as amended
- Endangered Species Act, Pub. L. 93-205, as amended
- Environmental Justice, Executive Order 12898
- Floodplain Management, Executive Order 11988 as amended by Executive Order 12148
- Protection of Wetlands, Executive Order 11990
- Farmland Protection Policy Act, Pub. L. 97-98
- Fish and Wildlife Protection Coordination Act, Pub. L. 85-624, as amended
- National Historic Preservation Act of 1966, Pub. L. 89-665, as amended
- Safe Drinking Water Act, Pub. L. 93-523, as amended
- Wild and Scenic Rivers Act, Pub. L. 90-542, as amended

**ECONOMIC AND MISCELLANEOUS AUTHORITIES**

- Demonstration Cities and Metropolitan Development Act of 1966 PL 89-754, as amended
- Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738 Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants and Loans
- Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended
- Debarment and Suspension, Executive Order 12549

Conversely, those projects that are funded with state recapitalization dollars cannot be required by DEQ to be in compliance with these requirements; however, there are Social Policy Authorities that are required of all projects. DEQ recognizes that it is crucial that all projects adhere to Federal, state and local requirements for construction and recommendations are noted in agency determinations.

### **SOCIAL POLICY AUTHORITIES**

- Age Discrimination Act of 1975, Pub. L. 94-135
- Title VI of the Civil Rights Act of 1964, Pub. L. 88-352
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-5200 (Clean Water Act)
- Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)
- Equal Employment Opportunity, Executive Order 11246
- Women's and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432
- Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590

### **B. PROCEDURE**

The following DEQ procedures are for the identification and analysis of the environmental impacts created by construction of wastewater facilities funded wholly or in part by the CWSRF.

### **C. TERMINOLOGY**

Terms used in this section of the handbook will be consistent in large part with those used in the NEPA regulations. Terms are defined as follows:

1. "Affecting" means acting upon.
2. "Applicant" means any community or other eligible entity (as defined by the Rules for Administration of Water Pollution Control Loans, IDAPA 58.01.12; and the Rules for Administration of Wastewater Treatment Facility Grants, IDAPA 58.01.04), who files an application for a CWSRF loan or a state planning grant.
3. "Area of Potential Effects" is the geographic area or areas (that do not have to be contiguous to the project boundaries) within which the project may cause indirect or direct alterations in the character or use of a property. This includes all direct and reasonably foreseeable indirect effects.
4. "Categorical exclusion" is the category of actions which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental information document nor an environmental impact statement is required.
5. "Categorical exclusion support document" is a written environmental assessment for the category of actions that have been excluded and for which the position has been validated by supporting documentation from appropriate consulted agencies.
6. "Cooperating agency" means any agency, other than DEQ, as the identified lead agency, which has jurisdiction by law or expertise with respect to any environmental impact

involved in a major federal action significantly affecting the quality of the human environment. Any such agency, or when the effects are on a reservation, an Indian Tribe, may, by agreement with DEQ, become a cooperating agency.

7. “Cumulative impact” is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.
8. “Effects” are results or outcomes. Two types of effects are discussed in this document:
  - a) *Direct*, which are caused by the action and occur at the same time and place.
  - b) *Indirect*, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air, water and other natural systems, including ecosystems.

Effects and impacts as used in this handbook are synonymous. Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

9. “Environmental assessment” is a concisely written public document that provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact; aids DEQ’s compliance with the State Environmental Review Process (SERP) requirements when no environmental impact statement is necessary and shall include (a) brief discussions of the need for the proposal, (b) summary of alternatives as required by federal and state rules, (c) summary of the environmental impacts of the proposed action and alternatives with a brief discussion of potential mitigation measures, and (d) a listing of agencies and persons consulted. The scope of environmental information developed, and the depth of analysis, will correlate to the severity and probability of a proposed action’s potential environmental effects.
10. “Environmental information document (EID)” means any concisely written environmental assessment prepared by an applicant or consultant briefly describing the environmental impacts of a proposed wastewater construction project. This document will enable the responsible official to assess the environmental impacts of the proposed project and ultimately determine if a FONSI is warranted, or if the project is not feasible. The scope of environmental information developed, and the depth of analysis, will correlate to the severity and probability of a proposed action’s potential environmental effects. Required contents of the EID are fully described in Section H, Step 3 of this form.
11. “Environmental review” means the overall process undertaken by DEQ on each potential grant project and potential CWSRF loan project to determine whether the project may have a significant impact on the environment, requiring implementation of mitigation measures.

12. “Excluded action” includes those conditions or activity that allows a project to qualify for a categorical exclusion.
13. “Extraordinary circumstances” means those circumstances listed in 40 CFR 6.204 that may cause a significant environmental effect such that a proposed action that otherwise meets the requirements of a categorical exclusion may not be categorically excluded. The project SERP reviewer assesses the potential for all extraordinary circumstances to be mitigated to a level below significance either through permitting requirements or as a condition of the SERP decision.
14. “Federal agency” means all executive agencies of the federal government. It does not mean the Congress, the Judiciary, or the President (including the performance of staff functions for the President in his Executive Office).
15. “Finding of no significant impact (FONSI)” means a document, prepared by DEQ, briefly presenting the reasons why an action, not categorically excluded, will not have a significant effect on the human environment and for which an environmental impact statement is not prepared. It shall include the environmental assessment or a summary of it, will generally detail mitigation measures, and shall note any other environmental documents related to it. If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.
16. “Floodplain” is the land that has been or may be covered by floodwaters, or is surrounded by floodwater and inaccessible, during the occurrence of a 100-year flood. The 100-year flood is defined by applicable federal emergency management agency (FEMA) flood insurance maps or, if no map exists, then as defined in 40 CFR 258.11.
17. “Floodway” is the channel of a river or stream and those portions of the floodplain adjoining the channel required to discharge and store the floodwater or flood flows associated with a 100-year flood.
18. “Human environment” shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment (see definitions of “effects”).
19. “Loan” means a financing instrument (note or bond) by written agreement from the CWSRF.
20. “Mitigation” includes:
  - a) Avoiding the impact altogether by not taking a certain action or parts of an action
  - b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation
  - c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment
  - d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action
  - e) Compensating for the impact by replacing or providing substitute resources or environments

21. “One hundred (100) year flood” is also referred to as the base flood or the regulatory flood. This refers to an area where there is a one percent (1%) chance that a flood may occur or be exceeded in any given year. The 100-year flood is based upon a statistical analysis of stream flow records available for the watershed or an analysis of rainfall and runoff characteristics in the watershed.
22. “Planning area” relates to the geographical, jurisdictional or political boundaries of the area identified in the planning document or facility planning study area that is anticipated to be served by the proposed project upon completion and for the life of the project (20 years minimum for wastewater treatment facilities and 40 years minimum for wastewater collection systems). The planning area is tied to the area impacted by the construction of the proposed project. The environmentally affected area and the planning area are not the same since the area environmentally affected by the project is not defined by jurisdictional or political boundaries, or by the same geographical boundaries as the planning area.
23. “Planning document” is a document which describes the condition of a public wastewater system and presents a cost effective and environmentally sound alternative to achieve or maintain regulatory compliance. Engineering reports and facility plans are examples of such planning documents. The planning documents shall be prepared by or under the responsible charge of an Idaho licensed professional engineer and shall bear the imprint of the engineer’s seal. Requirements for planning documents prepared using grant funds are provided in Section 030 of IDAPA 58.01.12 and in the handbook.
24. “Proposal” exists at that stage in the development of an action when an applicant has a goal, and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed so that the final statement is completed in time for inclusion in any recommendation or report on the proposal. A proposal may exist in fact as well as by stated declaration that one exists.
25. “Responsible official” means the Department of Environmental Quality (DEQ) employee who is authorized to fulfill the requirements of these procedures.
26. “Screening-level environmental analysis” consists of assembling general information about potential environmental impacts for the purpose of alternatives comparison.
27. “Significantly” as used in this section requires considerations of context, intensity, and mitigation:
  - a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects at the locale rather than in the world as a whole. Both short-term and long-term effects are relevant.
  - b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:
    - (1) Impacts that may be both beneficial and adverse. A significant effect may exist even if DEQ believes that on balance the effect will be beneficial.

Therefore adverse impacts must not be considered as “offset” by beneficial impacts.

- (2) The degree to which the proposed action affects public health or safety, and acknowledging the highly beneficial nature of public wastewater projects when assessing the potential transient impacts of such projects.
  - (3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, important farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
  - (4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.
  - (5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
  - (6) The degree to which the action may establish a precedent for future actions with significant effects or may represent a decision in principle about a future consideration.
  - (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts. However, the temporary nature of a transient impact should be an important consideration when assessing significance, depending on the particular impact (e.g., fugitive dust).
  - (8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historical resources.
  - (9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
- c) Mitigation. Actions are not significant if they are addressed under existing consultations, rules, regulations, permits, and procedures which mitigate adverse effects.

32. “State” means the State of Idaho.

#### **D. LEGAL FOUNDATION**

1. STATE AUTHORITY TO UNDERTAKE ENVIRONMENTAL REVIEWS. Under Section 39-105(4), Idaho Code, DEQ has the required level of authority to perform reviews. Under that section, the Department Director, when designated by the Governor, is authorized to “receive on behalf of the state, and utilize any federal aid . . . made available through the federal government, including, but not limited to, the federal water pollution

control act, for use in or by the State of Idaho in relation to health and environmental protection.” The Director has been designated by the Governor to receive and utilize Title VI funds, and he or she is authorized to perform environmental reviews of projects funded with federal money, since such authority is required to utilize such money.

Idaho’s Water Pollution Abatement Act designates the Board of the Department of Environmental Quality, through the Director, as the state authority responsible for administration of grants and loans for wastewater treatment projects funded with state and federal money, Idaho Code 39-3626(3). The Board is authorized to adopt rules necessary for the effective administration of the grant and loan program per Idaho Code 39-3627(4). Since authority to conduct environmental reviews of eligible projects is required to utilize federal funds, these provisions authorize the Board to adopt regulations governing environmental reviews of federal funded projects, and authorize the Director to implement such regulations.

2. **LEAD AGENCY.** The Department of Environmental Quality will have primacy in conducting reviews. We will be conducting multidisciplinary reviews with other state and federal agencies.

#### **E. THE ENVIRONMENTAL REVIEW AND THE PLANNING DOCUMENT**

DEQ shall review the planning document associated with a CWSRF loan application or state planning grant project. Screening level environmental information shall be a part of any planning document submitted to DEQ. After an initial review of the screening level information provided and the Checklist for a Categorical Exclusion Request, the regional DEQ office shall advise the applicant if an environmental information document (EID) is required. If required, it should be included as a section or chapter of the planning document, or may be submitted as an appendix. Using references in the EID is acceptable on the condition that the EID is either a section of the planning document or is included as an appendix. The environmental assessment may also be made during the preliminary design.

#### **F. RESPONSIBILITIES AND COMPLIANCE**

1. The loan recipient will have the following responsibilities during the environmental review process.
  - a) **Gathering Environmental Information.** The loan recipient will be responsible for gathering and incorporating screening-level environmental information regarding the project into the facility plan. This information will be used during the loan recipients’ consultation with DEQ to determine whether the project is eligible for a Categorical Exclusion (CatEx) or if an environmental information document (EID) is required.
  - b) **Agency Consultation.** The loan recipient may be responsible for some consultations with federal, state, and/or local agencies regarding the proposed project.
  - c) **Preparation of Environmental Information Documents (EID).** This will be the responsibility of the loan recipient, and will include—as appropriate—consultation with agencies having jurisdiction over environmental conditions and federal cross-

cutter regulations in order to assess potential impacts. The scope of environmental information developed, and the depth of analysis, will correlate to the severity and probability of a proposed action's potential environmental effects.

- d) Public Meetings. All activities pertinent to the public meeting including meeting notices, mailings, and limited English proficiency compliance will be handled and documented by the loan recipient.
- e) Mitigation Measures. The loan recipient will incorporate into its project any mitigation measures embodied in a Finding of No Significant Impact (FONSI), a CatEx, or the loan agreement.

2. The Environmental Review responsibilities of the DEQ include:

- a) During early consultation, assess the possible environmental impacts of the project and discuss with the loan recipient the type of environmental documentation that may be required.
- b) Review and advise on the adequacy of environmental review documentation submitted by the loan recipient.
- c) Determine proposed impacts to specific resources through agency consultation.
- d) Document all environmental determinations and issue public notices.
- e) Review for compliance with rules and Chapter 5 of the handbook, and ensure that the environmental review responsibilities of the loan recipient are carried out.
- f) Adopt the environmental documentation of a state or federal agency, if appropriate, in developing DEQ's environmental determination.
- g) If an environmental determination is more than five years old, re-evaluate the proposed action, environmental conditions, and public views and reaffirm the previous determination or require the loan recipient to update the environmental information.

3. COMPLIANCE FOLLOW-UP. Loan conditions will require compliance with mitigation measures.

4. ADMINISTRATIVE PROCEDURES ACT. Regarding remedies "equivalent to" those in the Federal Administrative Procedures Act (APA), Section 39-107(6) of the Environmental Protection and Health Act, in conjunction with the Idaho Administrative Procedures Act (Idaho Code 67-5201, et seq.), provide public remedies substantially similar to the Federal APA. Both the federal and state statutes provide minimum due process rights to any person aggrieved by DEQ: an impartial decision-maker, an administrative hearing with prior notice and an opportunity to be heard and judicial review on an administrative record of final agency decisions. Compare Idaho Code 39-107(6), 67-520 1 et seq. with 5 USC 554 and 702.

## **G. OVERVIEW OF THE ENVIRONMENTAL REVIEW PROCESS**

The facility planning document is used to identify and assess the reasonable alternatives to a proposed action so that adverse environmental effects can be avoided or minimized. The goal of an environmental review is to establish the appropriate level of mitigative actions. The environmental review process by which this is determined includes the following steps:

1. *Consultation with DEQ (Scoping Meeting)*. The applicant is directed to consult with DEQ early in the facilities planning effort (during preparation of the facility plan and before submission to the regional office for technical approval) to determine the appropriate level and scope of environmental review for the proposed project.
2. *Is a project eligible for a categorical exclusion?* DEQ will determine if a project is eligible for a categorical exclusion, based upon the completed Checklist for a Categorical Exclusion Request (Form 5-D) including specified supplemental documentation. DEQ may determine that issuing a categorical exclusion is appropriate without completing any substantial part of either: the engineering report, categorical exclusion support documentation, or an EID. This is called an undocumented categorical exclusion. When categorical exclusion support documentation is needed to verify that a categorical exclusion is the appropriate environmental determination, a loan recipient may retain recognized professional subject area expertise to assist in documenting the significance (i.e., existence and/or severity, or mitigation) of a potential impact. On occasion it may be necessary to confirm this finding with a potentially affected agency.
3. *Determining when an EID is needed*. If the project is determined to be ineligible for a categorical exclusion, the applicant shall prepare an EID for the project, which may be included in the planning document as a separate chapter or appendix.
4. *Contact potentially affected agencies*. The DEQ will determine if there is the potential for significant impact, and if there is that potential DEQ will inform the loan recipient of the potentially affected agencies. As part of the preparation of an EID, the loan recipient must contact all potentially affected agencies. Note that if a regulatory process will generate review independent of the SERP, the SERP will not engage in that consultation.
  - Agencies are given a 30-day period to respond to a formal request for consultation. A non-response after 30 days will be treated as a “no comment” response. Documentation of the contact shall be maintained in the SRF project file. Initial agency response received after 30 days will not be considered.
  - The loan recipient must address all comments and concerns received from such agencies in its EID. A list of agencies is provided in Part I of this procedure.
5. *Assessing environmental impacts*. DEQ will review the draft EID and may require changes to it before final approval. Upon completion of the EID, DEQ will either:
  - Determine the project is eligible for a FONSI, prepare the draft determination, satisfy publication requirements, address relevant comments and prepare the final determination, or
  - Determine the project will result in significant impacts and assess project feasibility.
6. *Issuance of documents*. DEQ will post to its website and publish FONSI in the newspapers of record.

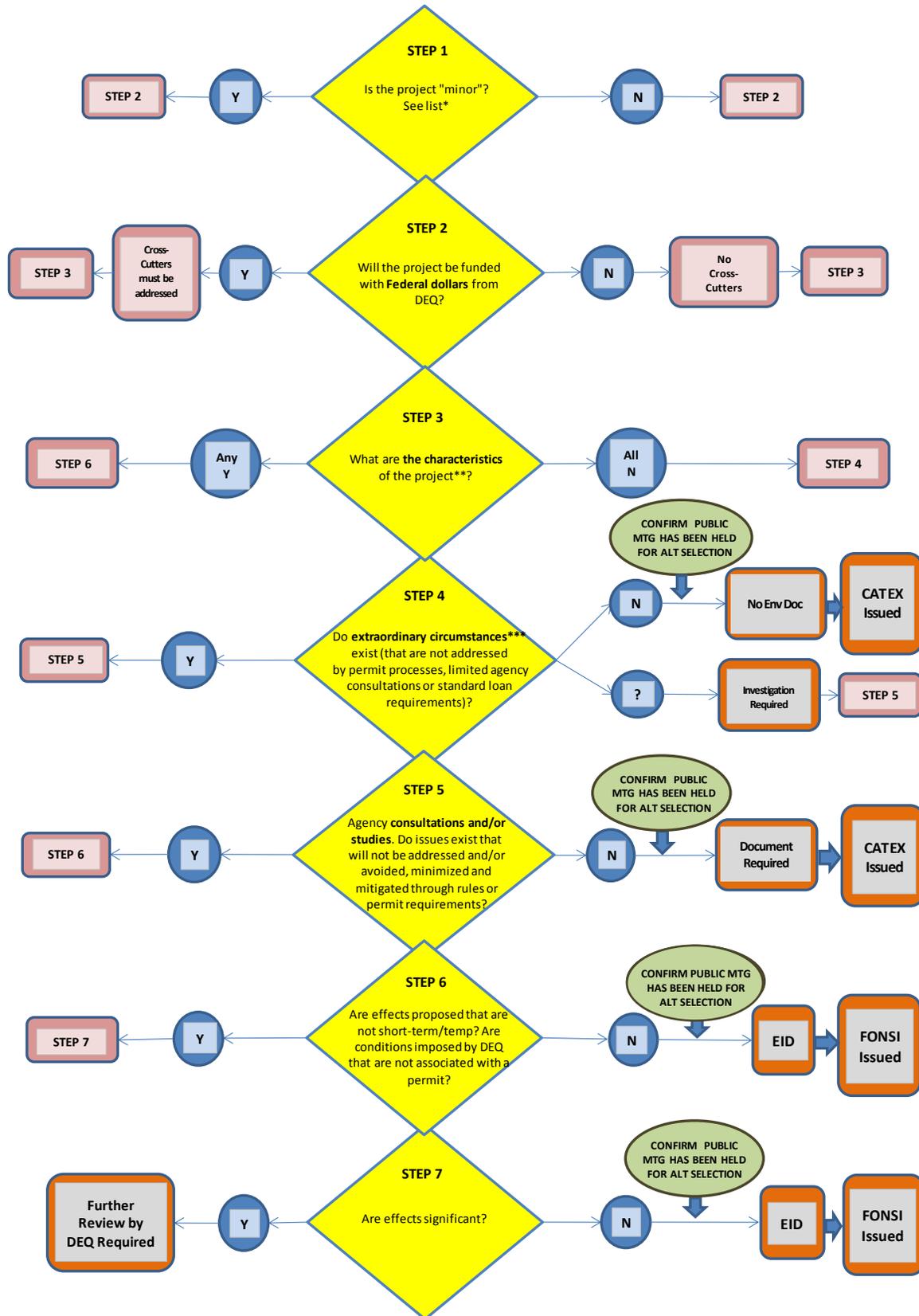


Figure 1. Categorical Exclusion Decision Tree

**\* Actions that are considered "minor" (from Form 5-B/C CWSRF and DWSRF Env Review Procedures; NOTE: This listing is not comprehensive):**

- Existing infrastructure system projects - minor upgrading, minor expansion of system capacity or rehabilitation or construction of new minor ancillary facilities adjacent to or on the same property.

---- *Examples: functional replacement of systems, system components such as the distribution and collection networks, treatment works, storage facilities, pumps, lift stations.*

- Unsewered communities - project involving replacement of existing onsite systems.

- Actions for which consultation is not required because independent regulatory mechanisms inherently reduce impacts to below the level of significance.

---- *Examples: permits such as those required by Federal, state and local agencies for well installation, stream alteration, floodplain development, and waters of the U.S.*

- Installation of point of use units with a discharge of residuals to wastewater system.

- Installation of new wells.

**\*\* Project Characteristics**

- Will the project provide capacity to serve a population projected to grow at a rate > 25% of the 20-yr population growth rate for the state AND is it expected to change the current population by > 500 estimated residential units?

- Is the project known or expected to have a significant effect on the quality of the human environment including a substantial increase in the volume or the mass of pollutant to the receiving water?

- Is there a likelihood of significant public controversy?

**\*\*\* Extraordinary Circumstances (Bold = questions asked regardless of funding source)**

- **Is the proposed action known or expected to have potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time?**

- **Is the proposed action known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities?**

- Is the proposed action known or expected to significantly affect federally listed threatened or endangered species or and significant fish or wildlife habitat?

- Is the proposed action known or expected to significantly affect national natural landmarks or any property with nationally significant historic, architectural, or cultural value, including but not limited to, property listed on the National Register of Historic Places?

- Is the proposed action known or expected to significantly affect the environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, wild and scenic rivers?

- Is the proposed project known or expected to cause significant adverse air quality effects?

- Is the proposed action known or expected to have a significant effect on the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or growth and distribution of population including altering the character of existing residential areas, or may not be consistent with state or local government, or federally-recognized Indian tribe approved land use plans or federal land management plans?

- **Is the proposed action known or expected to cause significant public controversy about a potential environmental impact of the proposed action?**

**Figure 1a. Decision Tree footnotes**

7. *Finalizing the grant or awarding the loan.* With issuance of the final environmental determination, a planning document can be given final approval if technical considerations have been met. Once the planning document has received final approval, the grant can be closed out, or a design and construction loan can be awarded (if, in all other respects, the loan application is complete).

8. *Monitoring.* The construction activities and post-construction operation and maintenance of the facilities are monitored by DEQ to ensure implementation of mitigation measures. In addition, the planning effort may be completed as part of the loan.

**H. AN IN-DEPTH LOOK AT THE STEPS IN THE ENVIRONMENTAL REVIEW PROCESS**

1. Project Scoping Meeting. The applicant shall initiate the environmental review process early in the planning document development process with DEQ to identify important environmental issues, to avoid delays, and to resolve conflicts. Thus, the environmental review process should be an integral part of the facilities planning process.

An important benefit of early consultation with DEQ is the determination that a categorical exclusion is appropriate without additional substantive environmental review or supporting documentation.

- In cases where a categorical exclusion with no supporting documentation is determined to be appropriate early in the planning process, the planning document need only include the minimum environmental information called for in the engineering report outline. (See Form 5-A.)
  - In cases where a categorical exclusion is determined to be the most likely decision, but supporting documentation is needed to verify that stance, the planning document needs to include appropriate documentation as specified by DEQ.
  - In cases when a categorical exclusion is not appropriate, the applicant shall begin scoping the content of an EID early in the planning document development process. This EID will, in final form, be suitable for issuance of a FONSI.
2. Categorical Exclusion (CatEx). Prior to the initial scoping meeting, DEQ shall forward the Checklist for a Categorical Exclusion Request (Form 5-D) to all applicants to complete and bring to the scoping meeting. From the completed checklist and documentation submitted, DEQ shall then determine if the applicant is eligible for a CatEx. If there is any question as to the significance of a potential adverse effect, the applicant is encouraged to provide additional documentation such as an opinion rendered by a recognized subject area expert. If the project qualifies for a CatEx, DEQ will prepare the CatEx documents (Form 5-E) for the signature of the responsible official.
- a) *Categories of actions eligible for exclusion*. For these procedures, actions consistent with the following categories (items 1, 2, 3, or 4) are eligible for a categorical exclusion:
- (1) Actions relating to existing infrastructure systems (such as sewer systems and stormwater systems, including combined sewer overflow systems) that involve minor upgrading, or minor expansion of system capacity or rehabilitation (including functional replacement) of the existing system and system components (such as the sewer collection network and treatment system and stormwater systems, including combined sewer overflow systems) or construction of new minor ancillary facilities adjacent to or on the same property as existing facilities
  - (2) Actions in unsewered communities involving the replacement of existing onsite systems, provided the new onsite systems do not result in substantial increases in the volume of discharge or the loadings of pollutants from existing sources, or relocate existing discharge
  - (3) Actions for which consultation is not required because independent regulatory mechanisms will inherently reduce impacts to below the level of significance (unless the regulatory actions are deemed insufficient by DEQ).
  - (4) Actions in #3 (below) that consultation shows do not require mitigation.
- b) *Criteria for not granting a categorical exclusion*. Any of the actions listed below where consultations show will require mitigation, or that are not addressed through an independent regulatory mechanism:
- (1) New or relocated discharges to surface or ground water;

- (2) Known or expected to have a significant effect on the quality of the human environment either individually, cumulatively over time, or in conjunction with other federal, state, local, or private actions, including a substantial increase in the volume or the mass of pollutant to the receiving water;
  - (3) Known or expected to directly or indirectly affect (1) cultural resource sites; (2) endangered or threatened species or their habitats; (3) flood plains, wetlands, important farmlands, aquifer recharge zones; or,
  - (4) Known or expected to cause significant public controversy.
  - (5) The facilities would provide capacity to serve a population projected to:
    - a. grow at a rate 25% in excess of the 20-year population growth expectations for the state as a whole (according to the Idaho Division of Financial Management projections); and
    - b. exceed the current system's population by greater than 500 estimated residential units (ERUs).
  - (6) The action is not supported by the state or other regional growth plan or strategy
  - (7) The action directly or indirectly involves or relates to upgrading or extending infrastructure primarily for the purposes of future development. If any of the above conditions exist, the responsible official shall ensure that an EID and FONSI are prepared and issued.
- c) *Developing new categories of excluded actions.* The responsible official or other interested parties may request that a new category of excluded action be created or that an existing category be amended or deleted. The request shall be made in writing to the director of DEQ and shall contain adequate supporting information. Proposed new categories shall be evaluated by DEQ. The following shall be considered in evaluating proposals for new categories:
- (1) Actions in the proposed category should seldom result in the effects outlined below.
  - (2) Based upon previous environmental reviews, actions consistent with the proposed category have not required the preparation of an EID or EIS; and
  - (3) Information adequate in determining if a potential action is consistent with the proposed category will normally be available when needed.
- d) *Extraordinary circumstances.* The responsible official will review actions eligible for categorical exclusions to ensure that no extraordinary circumstances are involved. Extraordinary circumstances include the following circumstances when they are not addressed by existing rules, regulations, permits, or other mechanisms which mitigate adverse effects. Note: DEQ action is only required for projects funded with federal dollars and water quality concerns congruent with DEQ's mission.
- (1) The proposed action is known or expected to have potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time.

- (2) The proposed action is known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally recognized Indian tribal communities.
  - (3) The proposed action is known or expected to significantly affect federally listed threatened or endangered species or their critical habitat. (Note: DEQ action only required for projects funded with federal dollars and/or with water quality concerns congruent with DEQ's mission.)
  - (4) The proposed action is known or expected to significantly affect national natural landmarks or any property with nationally significant historic, architectural, prehistoric, archeological, or cultural value, including but not limited to, property listed on or eligible for the National Register of Historic Places. (Note: DEQ action only required for projects funded with federal dollars.)
  - (5) The proposed action is known or expected to significantly affect environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, wild and scenic rivers, and significant fish or wildlife habitat. (Note: DEQ action only required for projects funded with federal dollars and/or with water quality concerns congruent with DEQ's mission.)
  - (6) The proposed action is known or expected to cause significant adverse air quality effects. (Note: DEQ action only required for projects funded with federal dollars.)
  - (7) The proposed action is known or expected to have a significant effect on the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or growth and distribution of population including altering the character of existing residential areas, or may not be consistent with state or local government, or federally recognized Indian tribe approved land use plans or federal land management plans.
  - (8) The proposed action is known or expected to cause significant public controversy about a potential environmental impact of the proposed action.
- e) *Proceeding with the project after the environmental determination has been issued:*
- (1) After a categorical exclusion on a proposed project has been granted and a notice has been published in the local newspaper, the planning document can be given final approval, if technical considerations have already been satisfied. With approval of the planning document, the DEQ grant can be closed out, or CWSRF loan arrangements may proceed without being subject to any further environmental review requirements, unless the responsible official determines that the project or the conditions at the time the categorical determination was made have materially changed.
  - (2) For categorical exclusion determinations five or more years old, the responsible official shall re-evaluate the project, environmental conditions, and public views and, prior to a loan agreement, either:

- a. Reaffirm—Issue a public notice reaffirming DEQ’s decision to proceed with the project without need for any further environmental review in the event that nothing of a material nature has changed; or
  - b. Supplement—Update the information in the decision document on the categorically excluded project and prepare, issue, and distribute a revised public notice in the event that something of a material nature has changed; or
  - c. Reassess—Revoke the categorical exclusion and require a more complete environmental review.
3. Preparing an Environmental Information Document. If the responsible official determines that issuing a categorical exclusion is not appropriate, then the applicant shall prepare an EID. The EID shall concisely address all environmental impacts, including each of the following subjects and requirements so that DEQ personnel may assist the applicant in objectively identifying potentially significant environmental concerns and their potential impacts (see Form 5-E). To avoid repetition, the EID may reference other sections of the facility plan for the specified information.

If agency consultation responses are not received within 30 days of making the request, the non-response will be treated as a “no-comment” response. Documentation of the contact shall be maintained in the SRF project file. Agency response received after 30 days will not be considered.

Note: if at any time during the preparation of the EID and agency consultations it becomes clear that the preferred alternative proposes significant impacts on a resource (see Extraordinary Circumstances) that cannot be avoided, minimized or mitigated, a second Project Scoping Meeting is necessary. Alternatives must be reconsidered for feasibility at this time, as DEQ will likely not fund a project that proposes significant impact to the environment.

- Cover sheet. This should properly identify a project, with the applicant’s name, mailing address, email address, and telephone number, and provide the same information for the project contact and the environmental contact if different from the applicant. The cover sheet should also provide basic cost and funding information and an abstract.
- Purpose and need. This should include a brief summary discussion.
- Description of the existing environment. For the facility planning area, the environmental conditions shall be concisely described.
- Analysis of alternatives. This discussion shall include a brief comparison analysis of feasible alternatives, including the no-action alternative. Each alternative must be briefly evaluated based on beneficial and adverse consequences to the existing environment. Near-term or long-range measures to avoid, minimize or mitigate adverse impacts will be devised when appropriate. However, such mitigation will only be considered for impacts that will not be controlled via a regulatory process that is independent of the SERP (e.g., 404 permits).

- Evaluating environmental consequences of proposed action. The relevant impacts of the proposed action, including measures to mitigate adverse impacts shall be identified.
  - Minimizing adverse effects of the proposed action.
    - (1) Measures taken to mitigate or eliminate adverse effects shall be identified during the environmental review.
    - (2) DEQ shall accept a planning document and approve loan assistance for its implementation if the applicant has made or agreed to make changes in the project in accordance with environmental determinations made in a FONSI for an EID.
4. Decisions Resulting from the Environmental Information Document Review. The responsible official will make one of two possible decisions after evaluating known and suspected environmental impacts presented in an EID. The review and analysis of the EID will determine whether a proposed project either qualifies for a FONSI determination or may not be a feasible project. To determine if a FONSI is the appropriate environmental determination, the responsible official should have the planning document, EID for the project, the commitments for mitigation, and any other documentation deemed necessary. The responsible official will verify that any mitigation measures for impacts have been documented. Additionally, the responsible official will ensure the commitments for mitigation clearly identify: that the mitigation measures identified for implementation are enforceable, the party(s) committing to mitigation measures has the authority and ability to fulfill the commitments, and appropriate monitoring will be conducted during implementation of the mitigation measures
- a) Issuing a Finding of No Significant Impact (FONSI) Determination for an EID
- (1) Criteria for distributing a draft FONSI. If, after assessment of environmental impacts and completion of the environmental review, the responsible official determines that a FONSI is appropriate, a draft FONSI may be issued and distributed to the mailing list included in the EID or published in the newspaper of greatest distribution for the project planning area. The draft FONSI determination will be based on an independent review by DEQ of the EID and any other environmental information deemed necessary by the responsible official, consistent with the requirements of this document. The FONSI shall include any mitigation measures necessary to make the recommended alternative environmentally acceptable.
  - (2) Publication of the draft FONSI. A thirty (30) day public review and comment period follows publication of the draft FONSI determination. The legal notice of the draft FONSI includes the location where interested parties can review the draft FONSI, the complete planning document and EID, and provides the information for where comments are to be sent.
  - (3) Issuance of the final FONSI. After closure of the public comment period, the responsible official shall respond to all substantive comments received, incorporate any necessary revisions into the FONSI, and issue the final FONSI determination.
  - (4) Proceeding with a grant closure or the loan agreement. Once the final FONSI determination is issued for the project and the planning document is approved, the DEQ

grant may be closed out or a loan agreement may be made without preparation of an additional FONSI unless the responsible official later determines that the project or environmental conditions have changed significantly from those that underwent environmental review.

(5) FONSI five or more years old. For a FONSI five or more years old, the responsible official shall reevaluate the project, environmental conditions, and public views, and, prior to approval of a loan agreement, either:

- a. Reaffirm. Issue a public notice reaffirming DEQ's decision to proceed with the project without revising the EID in the event nothing of a material nature has changed, or
- b. Supplement. Require an update of the EID and issue and distribute a revised FONSI in the event something of a material nature has changed, or
- c. Reassess. Withdraw the FONSI and reconsider the feasibility of the project.

#### **I. POTENTIALLY AFFECTED AGENCIES**

The appropriate state and federal agency contacts can be found at: [www.deq.idaho.gov/water-quality/grants-loans/environmental-review.aspx](http://www.deq.idaho.gov/water-quality/grants-loans/environmental-review.aspx).

#### **J. MONITORING FOR COMPLIANCE**

DEQ shall ensure adequate monitoring of mitigation measures and other loan conditions identified in the FONSI.

#### **K. ALTERNATIVE STATE ENVIRONMENTAL REVIEW PROCESS**

The DEQ has authority to conduct environmental reviews of projects that are solely funded with state monies. Therefore DEQ will implement an alternative SERP approach in which adherence to cross-cutting considerations is not required. The implementation of an alternative process will reduce the administrative burden associated with CWSRF and DWSRF loans without substantive loss of environmental protections.

The following summarizes the five criteria that the Alternative SERP meets:

1. The process is supported by a legal foundation which establishes state authority to review projects and activities receiving assistance.
2. The process ensures that the environmental objectives of the State are met (as listed below).
  - a) DEQ Objective #1: Implement surface and ground water quality protection using a watershed approach.
  - b) DEQ Objective #2: Reduce the pollutants in surface water to meet water quality standards and beneficial uses.
  - c) DEQ Objective #3: Protect and improve ground water quality.

- d) DEQ Objective #4: Assist/support public water systems in the delivery of safe/reliable drinking water.
  - e) DEQ Objective #5: Encourage reuse.
  - f) DEQ Objective #6: Prevent and control pollution from wastewater discharges.
3. The process requires comparative evaluation of alternatives and an accounting of beneficial and adverse consequences to the existing and future environment.
  4. The process requires adequate documentation of the information, processes and premises that influence the environmental determination.
  5. The process requires public notice of proposed projects to provide opportunity to comment on alternatives and to examine environmental review documents.

#### L. PUBLIC PARTICIPATION

Public participation steps must be accomplished before completion of the environmental review process. Consistent with public participation requirements in state rules, it is DEQ policy to ensure that certain public participation steps be achieved before DEQ completes the environmental review process. Public participation duties for the applicant and DEQ during the environmental review process are outlined below.

##### 1. *Applicant Duties.*

- a) Required activities. As a minimum, the applicant must conduct the three steps described below.

- (1) Public Information. The applicant provides information to interested and affected parties well in advance of decisions being made. Information may be distributed to the public by newspapers, flyers, newsletters, brochures, posting in local public areas, or whatever combination of means is needed to effectively inform the public about the proposed project and the alternatives under consideration.
- (2) Public Notice. The applicant publishes a legal notice to solicit comments and public involvement. The public comment period shall run for no less than 14 days. **The governing authority should not make a decision until after the close of the public comment period to allow consideration of public input.**

Public notice is defined for the purpose of the environmental review process as publication in a newspaper of community-wide circulation. Public notice will also be made by direct mailing to persons and agencies on the project mailing list.

NOTE: The public meeting notice and the public comment period may or may not run concurrently.

- (3) Public Meeting. The applicant will hold one public meeting after all alternatives have been developed, but before a preferred alternative has been

selected to discuss all of the alternatives, the customer costs based on anticipated funding sources, related environmental impacts and mitigation measures specific to each alternative, and the reasons for possible rejection of certain alternatives. The meeting should be well documented with minutes, an agenda and a list of attendees.

NOTE: One public meeting can satisfy the public participation requirements for both the environmental review and the planning document if properly coordinated.

- b) Voluntary Activities. In addition to the minimum public participation requirements, the applicant may choose to hold additional public meetings to informally solicit public input during the initial environmental planning. Informal gatherings (e.g. open houses or advisory groups) can be more conducive to a free exchange of questions and answers than more formal proceedings.
2. *DEQ Duties.* DEQ has public participation responsibilities during the initial environmental planning stage of a project and also at the completion of the environmental review process that include the following three steps:
- a) Outreach Efforts. DEQ supports the applicant's outreach efforts during project planning and is responsible for providing information about the technical and environmental aspects of the project to the public as needed. This support may include, participating and/or speaking about the project at informal informational meetings or at public hearings, etc.
  - b) Environmental Determination Public Comment Period. DEQ issues an environmental determination and publishes a legal notice (commensurate with the level of environmental determination issued) to inform the public of the agency's environmental decision. For a Categorical Exclusion, this serves as the conclusion of the environmental review process. When an EID is prepared, the draft FONSI determination is issued along with a public notice to invite public comment. Upon completion of the public comment period for the draft FONSI determination, DEQ addresses relevant comments before issuing the final FONSI determination.
  - c) When More Public Participation Is Required. Once the minimum 14-day public participation requirement has been satisfied for the alternatives analysis or the 30-day public comment period for DEQ environmental determination, DEQ may require additional public participation procedures as deemed necessary on a project specific basis.