

Form 5-C
DEQ Environmental Review Procedure
for Projects Funded through the
Drinking Water State Revolving Fund (DWSRF) Loan Program

A. PROGRAM PROTOCOL

The Idaho Department of Environmental Quality (DEQ) will procedurally be guided by 40 CFR § 6 and will implement a “National Environmental Policy Act (NEPA)-like” process as detailed in 40 CFR § 35.3140.

B. POLICY

The following are policies and procedures of DEQ for the identification and analysis of the environmental impacts created by construction of drinking water facilities funded wholly or in part by the DWSRF.

C. TERMINOLOGY

Terms used in this section of the handbook will be consistent in large part with those used in the NEPA regulations, 40 CFR Part 1508. Variation in usage will be noted as appropriate. 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 Drinking Water Loan Program, IDAPA 58.01.20; and the Rules for Administration of Planning Grants for Drinking Water Facilities, IDAPA 58.01.22), who files an application for a DWSRF 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 and 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 prepared by an applicant or consultant 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 NEPA requirements when no environmental impact statement is necessary and facilitates preparation of an environmental impact statement when one is necessary; and shall include (a) brief discussions of the need for the proposal, (b) alternatives as required by federal and state rules, (c) the environmental impacts of the proposed action and alternatives, and (d) a listing of agencies and persons consulted.
10. “Environmental information document (EID)” means any written environmental assessment prepared by an applicant or consultant describing the environmental impacts of a proposed waste water construction project. This document will be of sufficient scope to enable the responsible official to assess the environmental impacts of the proposed project and ultimately determine if an EIS is warranted. The required contents of the EID are fully described in Section G, Step 3 of this form.
11. “Environmental impact statement (EIS)” means a detailed written statement, as listed in Section G of this form.
12. “Environmental review” means the overall process undertaken by DEQ on each potential grant project and potential DWSRF loan project to determine whether the project may have a significant impact on the environment, requiring implementation of mitigation measures and possible preparation of an EIS.
13. “Excluded action” includes those conditions or activity that allows a project to qualify for a categorical exclusion.
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 otherwise 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 one hundred (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 CRF 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"). This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.
19. "Lead agency" means the agency or agencies preparing or having taken primary responsibility for preparing the EIS.
20. "Loan" means a financing instrument (loan or bond) by written agreement from the DWSRF.
21. "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
22. "Notice of intent" means a notice that an EIS will be prepared and considered. The notice shall briefly:
 - a) Describe the proposed action and possible alternatives
 - b) Describe the proposed scoping process including whether, when, and where related meetings will be held

- c) State the name and address of a person within DEQ, who can answer questions about the proposed action and the environmental impact statement
23. “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. On Federal Emergency Management Agency (FEMA) maps, the 100-year floodplain is identified as Zone A or Zone V.
24. “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 drinking water treatment facilities and 40 years minimum for drinking water distribution 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.
25. “Planning document” is a document which describes the condition of a public drinking water 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 58.01.22 and in the handbook.
26. “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.
27. “Record of decision” (ROD) means a document prepared and issued by the responsible official in response to the successful completion of the appropriate environmental review process. RODs are associated with the EIS process.
28. “Responsible official” means the Department of Environmental Quality (DEQ) employee who is authorized to fulfill the requirements of these procedures.
29. “Scope” consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements. To determine the scope of environmental impact statements, DEQ shall consider three types of actions, three types of alternatives, and three types of impacts. They include the following:
- a) Actions (other than unconnected single actions):
- (1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

- (a) Automatically trigger other actions which may require environmental impact statements
 - (b) Cannot or will not proceed unless other actions are taken
 - (c) Are interdependent parts of a larger action and depend on the larger action for their justification
 - (2) Cumulative actions which, when viewed with other proposed actions, have cumulatively significant impacts and should be discussed in the same impact statement.
 - (3) Similar actions which, when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.
 - b) Alternatives, which include the no action alternative, other reasonable courses of action, and mitigation measures (not in the proposed action).
 - c) Impacts, which may be direct, indirect, or cumulative.
30. "Screening-level environmental analysis" consists of assembling general information about potential environmental impacts for the purpose of alternatives comparison.
31. "Significantly" as used in this section requires considerations of both context and intensity:
- 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 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.
 - (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.
- (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.
- (10) Whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment.

32. "State" means the State of Idaho.

D. APPLICABILITY

In response to the U.S. Environmental Protection Agency's (EPA) state environmental review process requirement for DWSRF projects, the State of Idaho has these operating procedures being guided by 40 CFR, Part 6. These procedures apply to all "tier I" and "tier II" projects receiving financial assistance from the Drinking Water Loan Account.

Also included in these operating procedures is a detailed guidance for the loan recipient in evaluating crosscutting environmental issues. These procedures apply to all projects funded wholly or in part by the DWSRF loan program or the state planning grant process if the planning grant includes an environmental component in its scope of work. DEQ will use these procedures and Form 5-B, as applicable, to guide its environmental review process. Decisions resulting from an environmental review will be formally documented and will include information, processes and premises that influenced a determination. Documentation will be maintained to substantiate the lack of, as well as the existence of, potential impacts associated with a proposed project.

E. 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 the, 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 DWSRF 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.

The Board of the Department of Environmental Quality, through the Director, is the state authority responsible for administration of grants and loans for drinking water projects funded with state and federal money (Idaho Code Title 39 Chapter 76). The Board is authorized to adopt rules necessary for the effective administration of the grant and loan program. 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. The State Department of Fish and Game and the Idaho Historic Society are examples of the other state agencies that may be involved at the state level. The U.S. Fish and Wildlife Service and U.S. Army Corps of Engineers are examples of federal agencies that may participate.

F. THE ENVIRONMENTAL REVIEW AND THE PLANNING DOCUMENT

DEQ shall review the planning document associated with a DWSRF loan application or state planning grant project. Particular attention should be given to the environmental section because it is an integral part in the development of alternatives and the selection of a preferred alternative. An acceptable environmental information document (EID) shall be part of or accompany any planning document submitted to DEQ. It can be included as a section or chapter of the planning document, or be submitted as an appendix to the planning document. If submitted as a stand-alone document, information common to the EID and planning document may be summarized and referenced by location in the EID instead of duplicating. Using references in the EID is acceptable on the condition that the EID is an appendix to the planning document.

G. RESPONSIBILITIES AND COMPLIANCE

1. The loan applicant 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, the Proposed Project Planning Area, and the Area of Potential Effects in the planning document. This information will be used during the loan recipients’ consultation with DEQ to determine whether the project is eligible for a categorical exclusion, if it is likely that an EIS will be required, or if an environmental assessment will suffice.
 - b) **Preparation of Environmental Information Documents (EID).** This will be the responsibility of the loan recipient, and will include consultation with a broad range of agencies having jurisdiction over environmental conditions and federal cross-cutter regulations in the Proposed Project Planning Area and Area of Potential

- Effects. The EID will be an integral part of the planning document, and will include consultation with a broad range of agencies having jurisdiction over environmental conditions and federal cross-cutter regulations in the Proposed Project Planning Area and the Area of Potential Effects.
- c) Preparation of the Environmental Impact Statement. This too will be the responsibility of the loan recipient, under DEQ guidance.
 - d) Public Notices and Meetings. These activities will be handled by the loan recipient.
 - e) Mitigative Measures. The loan recipient will implement into its project any mitigative measures embodied in a Record of Decision, a Finding of No Significant Impact (FONSI) 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 notify the loan recipient of the type of environmental documentation that will be required.
 - b) Review and approve or disapprove environmental review documentation submitted by the loan recipient.
 - c) Issue determination on affect/impact to listed species (Endangered Species Act) and Essential Fish Habitat.
 - d) Document determinations in Categorical Exclusions, Findings of No Significant Impact, Records of Decision, Reaffirmation Notices and public notices.
 - e) Review and approve EISs submitted by loan applicants.
 - f) Adopt the environmental documentation of a state or federal agency, if appropriate.
 - g) If an environmental determination is more than five years old, reaffirm the previous determination, require supplemental information from the applicant or require the loan recipient to recommence the environmental review process.
 - h) Ensure the loan recipient abides by any mitigative measures embodied in a Finding of No Significant Impact or Record of Decision by incorporating such measures into the loan agreement. If mitigative measures are not met by the loan recipient, the terms of the loan agreement may have been broken and the Department may nullify the loan.
3. COMPLIANCE FOLLOW-UP. Compliance with mitigative measures will be done through grant and/or loan conditions. Failure to comply may be met with payment withholding, grant/loan suspension or termination. All are remedies available to DEQ through state code.
4. ADMINISTRATIVE PROCEDURES ACT. Regarding remedies “equivalent to” those in the Federal 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), 67-5201 et seq. with 5 USC 554 and 702.

H. OVERVIEW OF THE ENVIRONMENTAL REVIEW PROCESS

An environmental review is the process by which SERP 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 documentation needed commensurate with the severity and extent of the environmental effects for each proposed project to ensure that environmental issues have been appropriately considered and incorporated into the final environmental decision. The environmental review process by which the appropriate level of documentation is determined includes the following steps:

- Step 1. *Consultation with DEQ.* The applicant is directed to consult with DEQ early in the facilities planning effort to determine the appropriate level and scope of environmental review for the proposed project. Determining whether the level of environmental review should be a categorical exclusion, an EID, or an environmental impact statement (EIS) (where it is apparent significant environmental impacts will occur), will establish the basis for the scope of the environmental review process. Typically, the same topics (e.g., wetlands, threatened and endangered species, etc.) or most of the same topics are considered for any type of environmental determination (categorical exclusion, FONSI or record of decision (ROD)), but the depth and specificity of the information increases as potential for impacts increase. (See Figure 1.)

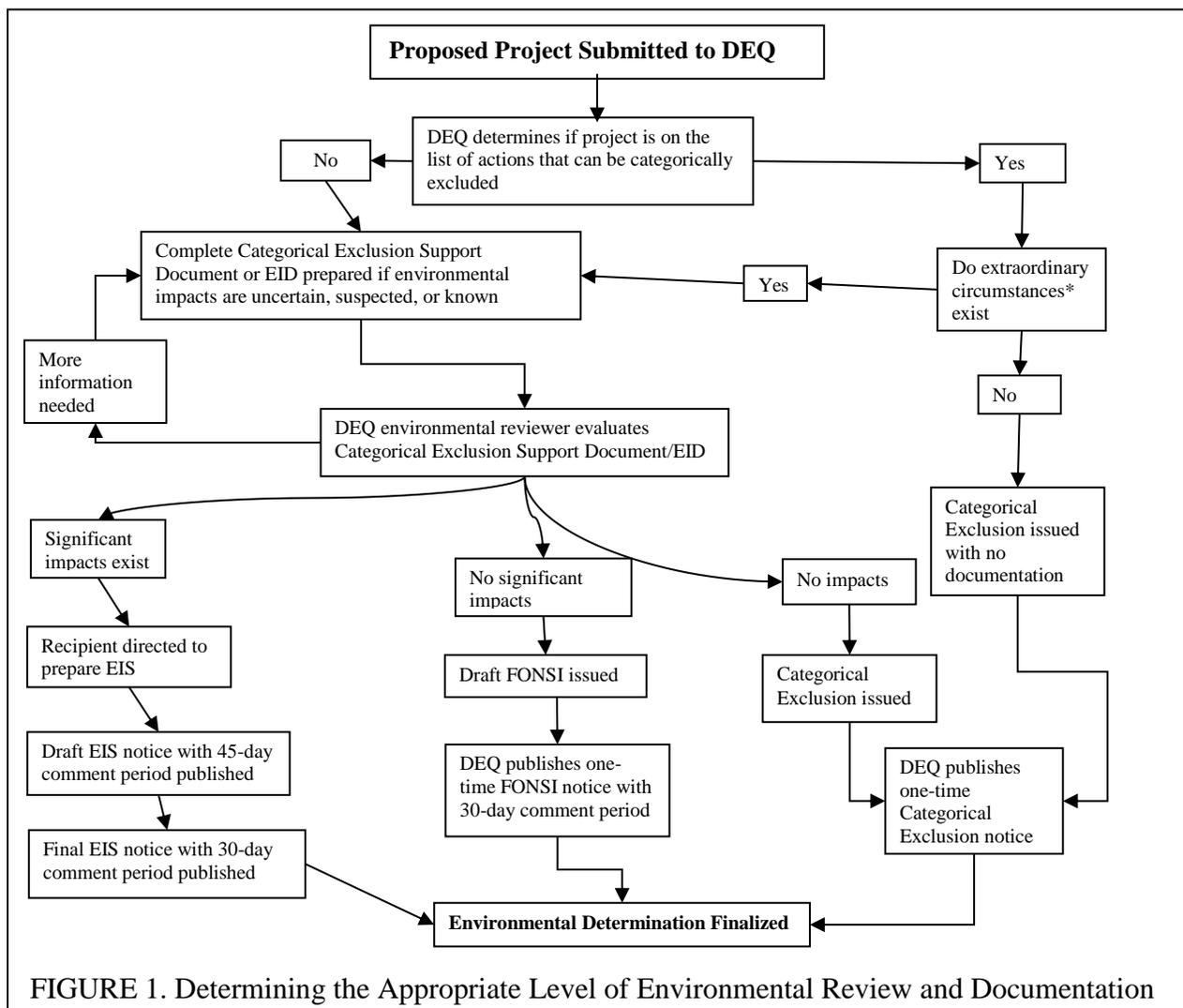


FIGURE 1. Determining the Appropriate Level of Environmental Review and Documentation

*NOTE: Extraordinary circumstances are those circumstances adopted by Idaho from the federal criteria listed in 40 CFR (Code of Federal Regulations) 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. One example of an extraordinary circumstance changing a project from a Categorical Exclusion to a FONSI or EIS is if a proposed project that is environmentally benign in most ways involves new or relocated discharges to surface or ground water. A second example is if the population is projected to exceed the state accepted growth rate for the life of the project. In the second example, the excessive population growth is the extraordinary circumstance.

Step 2. *Is a project eligible for a categorical exclusion?* At the request of an applicant, DEQ will determine if a project is eligible for a categorical exclusion, based upon existing information and documentation and in accordance with Section G, Step 2 of this document. Occasionally, DEQ may determine that issuing a categorical exclusion is appropriate without completion of any substantial part of either: the engineering report, categorical exclusion support documentation, or an EID. This is called an undocumented categorical exclusion. Most categorical exclusions necessitate the submittal of categorical exclusion support documentation which includes agency consultation regarding sensitive environmental issues such as wetlands and threatened and endangered species. When categorical exclusion support documentation is needed to verify that a categorical

exclusion is the appropriate environmental determination, then the project continues on to Step 4 below.

Step 3. *Determining when an EID is needed.* If the project is determined to be ineligible for a categorical exclusion or if no request for a categorical exclusion is made, the applicant shall prepare an EID for the project, which may be included in the planning document as a separate chapter or appendix or presented/prepared as a standalone document.

Step 4. *Contact potentially affected agencies.* As part of the preparation of a Request for Categorical Exclusion or an EID, the loan recipient must contact all potentially affected agencies. The loan recipient must address all comments and concerns received from such agencies in its EID or Request for Categorical Exclusion. A list of agencies is provided in Part J of this procedure.

Step 5. *Assessing environmental impacts.* DEQ will review the draft categorical exclusion support documentation or draft EID and may require changes to it before the issuance of an EID. Evaluation of the categorical exclusion support documentation or EID includes the consideration of agency precedent and policy, legal requirements, public input, compliance with other laws, planning for other than environmental issues, and any other pertinent issues. Upon completion of the EID, DEQ will either:

1. Approve the categorical exclusion support documentation or EID, and
 - a) Satisfy publication requirements specific to an environmental determination;
 - b) Prepare and issue the Categorical Exclusion or FONSI determination; and
 - c) Issue the final environmental determination; or
2. Determine the categorical support documentation or EID are insufficient and
 - a) Issue a Notice of Intent indicating that the applicant will prepare an EIS; and
 - b) Hold an EIS scoping meeting with the community.

Step 6. *Issuance of documents.* DEQ will send copies of Notices of Categorical Exclusions, Findings of no Significant Impact and Records of Decision to affected state and federal agencies.

Step 7. *Finalizing the grant or awarding the loan.* With issuance of the final environmental determination, a planning document (i.e., facility plan or engineering report) 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).

Step 8. *Monitoring.* The construction activities and post-construction operation and maintenance of the facilities are monitored by DEQ to ensure implementation of mitigation measures identified in the final environmental document, whether it is an EID or EIS.

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

STEP 1. Consultation during the Facilities Planning Process

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 may be possible 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 early issuance of a categorical exclusion is not possible, 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 or for determination that an EIS will be needed.

STEP 2. Categorical Exclusions

1. At the request of the applicant, the responsible official shall determine from existing information and documents whether an action is consistent with the categories eligible for exclusion identified in Step 2.2 below and meeting any of the criteria in Step 2.3.
2. *Categories of actions eligible for exclusion.* For these procedures, actions consistent with either of the following categories (items *a* or *b*) are eligible for a categorical exclusion:
 - a) Actions for which the facility's planning is solely directed toward minor rehabilitation of existing facilities, functional replacement of equipment, or the construction of new ancillary facilities adjacent or appurtenant to existing facilities
 - b) Installation of point of use reverse osmosis drinking water treatment units with a discharge of residuals to wastewater system in accordance with Idaho Rules for Public Drinking Water Systems section 450 and point of use guidance.
 - c) Other actions developed in accordance with Step 2.4 of this form
3. *Criteria for not granting a categorical exclusion:*
 - a) A more rigorous environmental review must be followed if undertaking any action not consistent with the categories described in Step 2.2 of this form or meeting any of the criteria listed below:
 - (1) 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; and

- (b) exceed the current system's population by greater than 500 estimated residential units (ERUs).
 - (2) The action is 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;
 - (3) The action is known or expected to directly or indirectly affect (a) cultural resource sites; (b) endangered or threatened species or their habitats; (c) environmentally important natural resource areas such as flood plains, wetlands, important farmlands, aquifer recharge zones; or (d) other resource areas identified in supplemental guidance issued by DEQ; or
 - (4) The action is known or expected to be cost-ineffective or to cause significant public controversy.
 - (5) New or relocated discharges to surface water or to ground water.
- b) Notwithstanding the provisions of Step 2.2 of this form, if any of the above conditions exist, the responsible official shall ensure:
- (1) That a categorical exclusion is not granted, or, if previously granted, that it is revoked and a full environmental review is initiated;
 - (2) That an EID or an EIS is prepared; and
 - (3) That either an EID and FONSI, or an EIS and ROD, are prepared and issued.
4. *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:
- a) Actions in the proposed category should seldom result in the effects identified in Step 2.3.
 - b) Based upon previous environmental reviews, actions consistent with the proposed category have not required the preparation of an EID or EIS; and
 - c) Information adequate in determining if a potential action is consistent with the proposed category will normally be available when needed.
5. *Extraordinary circumstances.* The responsible official will review actions eligible for categorical exclusions to ensure that no extraordinary circumstances are involved:
- a) 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.
 - b) 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.

- c) The proposed action is known or expected to significantly affect federally listed threatened or endangered species or their critical habitat. (Note: Not required for Tier II reviews.)
 - d) 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: Not required for Tier II reviews).
 - e) 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: Only wild and scenic rivers are required to be addressed for Tier II reviews.)
 - f) The proposed action is known or expected to cause significant adverse air quality effects. (Note: Not required for Tier II reviews.)
 - g) 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.
 - h) The proposed action is known or expected to cause significant public controversy about a potential environmental impact of the proposed action.
 - i) The proposed action is known or expected to conflict with federal, state or local government, or federally recognized Indian tribe environmental, resource-protection, or land-use laws or regulations.
6. *Proceeding with the project after the environmental determination has been issued:*
- a) 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 DWSRF 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.
 - b) For categorical exclusion determinations five or more years old, the responsible official shall reevaluate the project, environmental conditions, and public views and, prior to a loan agreement, either:
 - (1) *Reaffirm*. Issue a public notice reaffirming DEQ's decision to proceed with the project without need for any further environmental review; or

- (2) *Supplement*. Update the information in the decision document on the categorically excluded project and prepare, issue, and distribute a revised public notice; or
- (3) *Reassess*. Revoke the categorical exclusion and require a more complete environmental review. The community may work with DEQ to determine the need for an EID or EIS, followed by preparation, issuance, and distribution of an EID and FONSI, or an EIS and ROD.

STEP 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 address all potentially significant environmental impacts, including each of the following subjects and requirements so that DEQ personnel may objectively identify potentially significant environmental concerns and their potential impacts. (See Form 5-B also.)

- a) *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.
- b) *Purpose and need*. This should include a summary discussion and demonstration of the need or absence of need for drinking water facilities in the planning area, with particular emphasis on existing public health or water quality problems and their severity and extent.
- c) *Description of the existing environment*. For the delineated facility planning area, the existing environmental conditions relevant to the analysis of alternatives or to determining the environmental impacts of the proposed action shall be considered.
- d) *Description of the future environment with or without the project*. The relevant impacts of future environmental conditions should be described for the various alternatives.
- e) *Documentation*. Sources of information used to describe the existing environment and to assess future environmental impacts should be clearly referenced. These sources should include regional, state, and federal agencies with responsibility or interest in environmental concerns. The DEQ state office project file shall contain complete documentation of the project's EID process.
- f) *Analysis of alternatives*. This discussion shall include a comparative analysis of feasible alternatives, including the no-action alternative, throughout the project planning area. Coordination with other municipal public works projects shall be considered during the alternatives generation and evaluation stages, including enhancing public recreation and open space opportunities.

Each alternative must be evaluated based on beneficial and adverse consequences to the existing environment and the future environment. Near-term or long-range measures to avoid, minimize or mitigate adverse impacts will be devised when appropriate.

g) *Evaluation of proposed alternatives.* The alternatives shall be evaluated with respect to capital and operating costs; direct, indirect, and cumulative environmental effects; physical, legal, or institutional constraints; and compliance with regulatory requirements. Special attention should be given to short-term effects (during construction of the project) and the environmental consequences of long-term, irreversible, and induced impacts. The reasons for rejecting any alternatives shall be presented in addition to any significant environmental benefits precluded by rejection of an alternative. The analysis should consider, when relevant to the project, the following:

- (1) Direct, indirect, and cumulative impacts of the proposed action and alternatives, including the no-action alternative
- (2) The affected environments, including baseline conditions that may be impacted by the proposed action and alternatives
- (3) Water conservation measures
- (4) Alternative locations, capacities, and construction phasing
- (5) Alternative water treatment techniques
- (6) Land use and other social parameters affected by the entire system(s)
- (7) Decentralized systems or package plants
- (8) Repair, replacement, or enhancement of existing systems
- (9) Risk mitigation (related to emergency situations such as flooding, fire, earthquake, etc.)
- (10) Multiple use of the site

g) *Evaluating environmental consequences of proposed action.* A full range of relevant impacts of the proposed action shall be discussed, including measures to mitigate adverse impacts, any irreversible or irretrievable commitments of resources to the project, and the relationship between local, short-term uses of the environment and the maintenance and enhancement of long-term productivity. Any specific requirements, including loan conditions and area-wide drinking water treatment management plan requirements, should be identified and referenced.

Cumulative impacts will be evaluated within the context of complete drinking water systems, as well as other public works projects and future community growth (residential, commercial, industrial, etc.), within the study area. In addition to these items, the responsible official may require that other analyses and data, which are needed to satisfy environmental review requirements, be included with the planning document. Such requirements should be discussed whenever meetings are held with applicants.

For communities receiving project assistance for the first time the environmental review will be based on impacts resulting from the entire system. An environmental review study area will be delineated in a manner which generally encompasses the complete service area of the final system envisioned to be in place at the planning

horizon and outlying areas that may directly or indirectly be impacted by the completed system (unless the funded project is only addressing a portion of the system).

In situations involving improvements to be built as separate projects at different times, the environmental review associated with the first project will consider the anticipated cumulative impacts from later projects. When later projects are begun, the environmental review will only address changes to the anticipated impacts within the entire study area due to changes in planning document design/engineering changes, or changes in the physical environment that occurred in the interim period.

h) *Minimizing adverse effects of the proposed action.*

- (1) Structural and nonstructural measures, directly or indirectly related to the planning document, taken to mitigate or eliminate adverse effects on the human and natural environments, shall be identified during the environmental review. Among other measures, structural provisions may include changes in facility design, size, and location. Nonstructural provisions may include staging facilities, monitoring, and enforcement of environmental regulations; and local commitments to develop and enforce land use regulations.
- (2) DEQ shall not accept a planning document nor approve loan assistance for its implementation if the applicant has not made or agreed to make changes in the project in accordance with environmental determinations made in a FONSI for an EID or the ROD for an EIS. DEQ may condition a loan or seek other ways to ensure that the applicant will comply with such environmental review determinations.

STEP 4. Decisions Resulting from Assessment of an Environmental Information Document

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 whether DEQ should direct the applicant to prepare an EIS. To determine if a FONSI or ROD 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 direct, indirect, short-term, long term and cumulative 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.

1. Issuing a Finding of No Significant Impact (FONSI) Determination for an EID

- a) *Criteria for distributing a draft FONSI.* If, after assessment of environmental impacts and completion of the environmental review, the responsible official determines that an EIS will not be required, 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 Section I, Step 3 in this document. The FONSI shall include any mitigation measures necessary to make the recommended alternative environmentally acceptable.
- b) *Publication of the draft FONSI.* A thirty (30) day public comment period follows publication of the draft FONSI determination. The legal notice of the draft FONSI includes the location where interested parties can see the complete planning document and EID and provides the information for where comments are to be sent.
 - c) *Issuance of the final FONSI.* After closure of the public comment period, the responsible official incorporates substantive comments into the FONSI and issues the final FONSI determination.
 - d) *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.
 - e) *FONSIs 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:
 - (1) *Reaffirm.* Issue a public notice reaffirming DEQ's decision to proceed with the project without revising the EID, or
 - (2) *Supplement.* Require an update of the EID and issue and distribute a revised FONSI, or
 - (3) *Reassess.* Withdraw the FONSI and publish a notice of need to produce an EIS, followed by the preparation, issuance, and distribution of the EIS and ROD.

2. Issuing a Record of Decision for an EIS

a) Triggers that Initiate an EIS

When determining whether to require an EIS, certain conditions must be considered, if not already done so as part of the planning document and EID. Certain conditions require that an EIS be prepared because of the potential magnitude and consequences of the action on the environment. When one or more of those conditions are present, it is the responsibility of DEQ to require the applicant to prepare an EIS. An EIS must be prepared and issued when it is determined that:

- (1) The project may significantly affect the pattern and type of land use (industrial, commercial, agricultural, recreational, and residential) or growth and distribution of population;
- (2) The effects resulting from any structure or facility constructed or operated may conflict with local, regional, or state land use plans or policies;
- (3) The project may have significant adverse effects on wetlands, including indirect and cumulative impacts, or any major part of the project may be located in wetlands;

- (4) The project may significantly affect a species or its habitat identified on the U.S. Department of the Interior Fish and Wildlife Service's or the state's threatened and endangered species lists, or may be located in its habitat;
- (5) Implementation of the project may directly cause or induce changes that significantly:
 - (a) Displace population;
 - (b) Alter the character of existing residential areas;
 - (c) Adversely affect a floodplain; or
 - (d) Adversely affect significant amounts of important farmlands or agricultural operations on this land.
- (6) The project may directly, indirectly, or cumulatively have a significant adverse effect on parklands, preserves, other public lands, or areas of recognized scenic, recreational, archaeological, or historic value;
- (7) The project may directly or through induced development have a significant adverse effect upon local ambient air quality, local ambient noise levels, surface water or groundwater quality or quantity, water supply, fish, shellfish, wildlife and their natural habitats.

The responsible official shall also consider requiring an EIS if the project is highly controversial; if the project, in conjunction with related federal, state, local, or tribal resource projects, produces significant cumulative impacts; or if it is determined that the project may violate federal, state, local, or tribal laws or requirements imposed for the protection of the environment.

Normally the applicant will prepare the EIS or will contract with a consultant to have the EIS prepared. DEQ will provide guidance in this process.

b) Preparing an EIS

- (1) *Steps in preparing an EIS.* In addition to the other requirements specified in this procedure, the following activities should be conducted:
 - (a) *Notice of Intent (NOI).* If a determination is made by DEQ that an EIS will be required, DEQ should start the public phase of the EIS process by preparing and distributing an NOI stating that the applicant has been directed to prepare an EIS. The NOI should include a tentative preparation time schedule.
 - (b) *Scoping.* As soon as possible after the publication of the NOI, the applicant shall convene a meeting of affected federal agencies, DEQ, other affected state agencies and local agencies, affected Indian tribes, and other interested parties to determine the scope of the EIS. As part of the scoping meeting, the applicant should, at a minimum, do the following:
 - i) Determine the significance of various issues to be analyzed in depth in the EIS;
 - ii) Identify the preliminary range of alternatives to be considered;

- iii) Identify potential cooperating agencies and determine the information or analyses that may be needed from cooperating agencies or other parties;
- iv) Discuss the method for EIS preparation and the public participation strategy;
- v) Identify consultation requirements of other environmental laws; and
- vi) Determine the relationship between the EIS and the completion of the planning document and facilitate the coordination of the two efforts.

(c) *Identifying and evaluating alternatives.* Immediately following the scoping process, the applicant in consultation with DEQ shall identify and evaluate all potentially viable alternatives to adequately address the range of issues identified in the scoping process. Additional issues may be addressed or others eliminated during this process, and the reasons should be documented in the EIS.

Each alternative must be evaluated based on beneficial and adverse consequences to the existing environment, the future environment and on individual sensitive environmental issues that have been identified in advance through scoping. Near-term or long-range measures to avoid, minimize or mitigate adverse impacts will be devised when appropriate.

(2) *Methods for preparing an EIS.* After DEQ determines there is a need for an EIS, the applicant and cooperating agencies shall prepare the EIS using the following method:

- (a) Prepare a draft EIS and submit to all affected agencies and persons identified in the scoping process for review and comment. A minimum period of 45 days should be provided for review and comment of the draft EIS. Notices of Availability of the draft EIS should be published in major newspapers statewide. The applicant may contract directly with a qualified consulting firm to prepare the EIS, with DEQ overview of this process. The contractor shall execute a disclosure statement signifying they have no financial or other conflicting interest in the outcome of the project;
- (b) Conduct a public hearing which may be in conjunction with a planning document hearing; and
- (c) Prepare a final EIS incorporating public input received at the public hearing or from written comments. Publish a Notice of Availability of the final EIS in major newspapers statewide with a minimum 30-day public comment period.
- (d) DEQ will retain oversight of the interagency review process of a final Environmental Impact Statement, until the loan recipient has addressed all comments and concerns.

c) ROD for the EIS and Identification of Mitigation Measures

(1) *ROD.* After a final EIS has been issued, DEQ shall prepare and issue a ROD prior to, or in conjunction with, the approval of the planning document. A minimum of ninety (90) days should be allowed between the Notice of Availability for a draft

EIS and the ROD issuance to ensure sufficient time for reviewing and incorporating comments into the final EIS. The ROD shall include:

- (a) A brief description of the proposed action and alternatives considered in the EIS, environmental factors considered and project impacts,
 - (b) Identification of mitigation measures derived from the EIS process and any commitments to mitigation,
 - (c) An explanation if the environmentally preferred alternative was not selected,
 - (d) Responses to any substantive comments on the final EIS,
 - (e) The date of issuance of the ROD,
 - (f) The signature of the DEQ Responsible Official.
- (2) *Specific mitigation measures.* Prior to the approval of a planning document, the responsible official must ensure that effective mitigation measures identified in the ROD will be implemented by the applicant. This should be done by revising the planning document, initiating other steps to mitigate adverse effects, or include special loan conditions in loans requiring actions to minimize effects. Care should be exercised if a condition is to be imposed in a loan document to assure that the applicant possesses the authority and ability to fulfill the mitigation commitments.
- (3) *Proceeding with loan agreements.*
- (a) Once the ROD has been prepared on the selected or preferred alternative(s) for the planning document described within the EIS and has been distributed to agencies and persons who were on the EIS mailing list, the loan agreements may proceed without preparation of a supplemental EIS, unless the responsible official determines that the project or the environmental conditions described within the current EIS have changed significantly since the previous environmental review.
 - (b) For RODs five or more years old, the responsible official shall reevaluate the project, environmental conditions, and public views; and compare them to the information contained within the EIS and, prior to loan agreement, make a determination to either:
 - i) *Reaffirm.* Prepare, issue, and distribute an EIS/ROD Reaffirmation Notice affirming DEQ's decision to proceed with the project and documenting that no additional significant impacts were identified during the reevaluation which would require supplementing the EIS; or
 - ii) *Supplement.* Conduct additional studies; prepare, issue, and distribute a supplemental EIS; and document the original or any revised decision in an addendum to the ROD.

d) Formatting the Environmental Impact Statement

The format used for the EIS should encourage good analysis and clear presentation of alternatives, including the proposed action, and their environmental, economic, and

social impacts. The following standard format for the EIS should be used unless the responsible official determines that there is a compelling reason to do otherwise:

- (1) Cover sheet
- (2) Executive summary
- (3) Table of contents
- (4) Purpose of and need for action
- (5) Alternatives, including proposed action
- (6) Affected environment
- (7) Environmental consequences of the alternatives
- (8) Coordination (includes list of agencies, organizations, and persons to whom copies of the EIS are sent)
- (9) Incorporation by reference
- (10) List of preparers
- (11) Index (commensurate with complexity of EIS)
- (12) Appendices

Items 1 through 12 are further described in the following paragraphs:

- (1) *Cover Sheet*. The cover sheet should be no more than one to two pages and include the following key points:
 - (a) List of responsible agencies, including the lead agency, and any cooperating agencies
 - (b) The title of the proposed project that is the subject of the EIS (and if appropriate, the titles of related cooperating agency actions), together with the state(s) and county or counties and other jurisdictions as applicable where the project is located
 - (c) Name, address, and telephone number of the lead agency contact person
 - (d) A designation as to whether the EIS is a draft or final
 - (e) A one-paragraph abstract of the EIS
 - (f) Date by which comments must be received
- (2) *Executive Summary*. The EIS executive summary should adequately and accurately describe in sufficient detail the critical facets of the EIS so that the reader becomes familiar with the proposed project or action and its net positive and adverse effects. The executive summary should highlight the following issues:
 - (a) A description of the existing problem(s) and what adverse impacts created the need to produce an EIS
 - (b) The issues to be resolved and how resolution will be achieved including a brief description of each alternative evaluated (including the preferred and no

action alternatives) along with a listing of the environmental impacts and possible mitigation measures relating to each alternative

- (c) Any areas of controversy (including issues raised by federal agencies and the public)
- (d) Any major conclusions

A comprehensive summary may be prepared in instances when the EIS is unusually long in nature. The comprehensive summary may be circulated in lieu of the EIS; however, both documents shall be distributed to any federal, state, and local agencies that have EIS review responsibilities, and also shall be made available to other interested parties upon request.

(3) *Table of contents.*

(4) *Purpose and need.* The EIS should clearly specify the underlying purpose and need to which DEQ is responding.

(5) *Alternatives, including proposed actions.* This section is the heart of the EIS. It should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public. This section should include the following:

- (a) A balanced description of each reasonable alternative considered by the applicant, including the proposed action, so that reviewers may evaluate their comparative merits. These discussions should include size and location of facilities, land requirements, operation and maintenance requirements, and auxiliary structures such as pipelines and construction schedules. The “no action” alternative should be discussed and the applicant's preferred alternative(s) should be identified. For alternatives which were eliminated from detailed study, a brief discussion of the reasons for elimination should also be included. This may also include reasonable alternatives that are not within the jurisdiction of DEQ (lead agency);
- (b) Appropriate mitigation measures not already included in the proposed action or alternative;
- (c) The choices available to DEQ. Following review and evaluation of the alternatives presented by the applicant in the **draft** EIS, DEQ has options to consider, which include the following:
 - i) Taking an action proposed by the applicant;
 - ii) Taking an action on a modified or alternative project, including an action not considered by the applicant; or
 - iii) Denying the action as proposed by the applicant; and
- (d) Identification of preferred alternatives. In the **final** EIS, the applicant shall signify the preferred alternative.

- (6) *Affected environment.* The affected environment on which the evaluation of each alternative should be based includes, for example, hydrology, geology, air quality, water quality, noise, biology, socio-economics, energy, land use, archaeology, and historic subjects. The discussion should be structured so that the total impacts of each alternative are described for easy comparison. The effects of a no action alternative should be included to facilitate reader comparison of the beneficial and adverse impacts of other alternatives to the option of doing nothing. A description of the environmental setting should be included in the no action alternative for the purpose of providing needed background information. The amount of details in describing the affected environment shall be commensurate with the complexity of the situation and the importance of the anticipated impacts.
- (7) *Environmental consequences of the alternatives.* The discussion of the environmental consequences of the alternatives forms the scientific and analytic basis needed to make the comparisons between the alternatives. The discussion should include the following:
- (a) Direct and indirect effects and the significance of both;
 - (b) Possible conflicts between the proposed actives and the objectives of federal, regional, state, local, and tribal land use plans, policies, and controls for the area concerned;
 - (c) The environmental effects of the alternatives, including the proposed action;
 - (d) Energy requirements, reuse, and conservation potential of the alternatives, and mitigation measures;
 - (e) Means to mitigate adverse environmental impacts to protect the environment.
- (8) *Coordination.* The **final** EIS should include the following:
- (a) The objections and suggestions made by local, state, and federal agencies before and during the EIS review process, along with the issues of public concern expressed by individual citizens, interested environmental groups, and other interested parties. The EIS must include discussions of any such comments, and the author of each comment should be identified. If a comment has resulted in a change in the project or the EIS, the impact statement should explain the reason.
 - (b) Public participation through public hearings or scoping meetings. If a public hearing has been held prior to the publication of the draft EIS, a summary of the transcript should be included in this section. For the public hearing, which is held after the publication of the draft EIS, the date, time, place, and purpose shall be included in this section.
 - (c) A summary of the coordination process and DEQ responses to comments on the draft EIS should be included in the final EIS.
- (9) *Incorporation by Reference.* Agencies shall incorporate material into an EIS by reference when appropriate without impeding agency and public review of the action. In the statement, the incorporated material shall be cited and its content briefly described. No material may be incorporated by reference unless it is

reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

Material incorporated into an EIS by reference shall be organized to the extent possible into a supplemental information document and be made available for review upon request. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the period allowed for comment.

- (10) *List of Preparers.* The EIS shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the EIS or significant background papers, including basic components of the EIS. Where possible, the person(s) responsible for a particular analysis, including analysis in background papers, should be identified.

When the EIS is prepared by contract, either under direct contract to DEQ or through an applicant's contractor, the responsible official must independently evaluate the EIS prior to its approval and take responsibility for its scope and contents. DEQ officials who undertake this evaluation shall also be described under the list of preparers.

J. POTENTIALLY AFFECTED AGENCIES

40 CFR, Part 6, identifies the scope of federal environmental concerns and objectives that must be addressed in any Tier I environmental review process. State and federal expertise in each of these areas is outlined below. The DEQ may delegate these items to the loan recipient if allowed.

1. Landmarks, Historical, Cultural and Archeological Sites. The Idaho Historical Society, Historic Preservation Office is responsible for Idaho's participation in the National Register of Historic Places Program established by the National Historic Preservation Act of 1966. The Coeur d'Alene Tribe, the Nez Perce Tribe, and the Confederated Salish and Kootenai Tribes each have a designated Tribal Historic Preservation Officer (THPO) that serves as the lead as it relates to landmarks, historical, cultural and archeological sites within Tribal land and areas of Tribal cultural and religious concern. The THPOs must be contacted when work is proposed within their respective areas of concern. The Deputy State Historic Preservation Officer (SHPO) has been responsible in the past for evaluating proposed drinking water construction sites as to historic and archeological importance in accordance with 36 CFR 800. The deputy SHPO will continue to do so.
2. Endangered Species and Essential Fish Habitat. DEQ will carry out any informal consultation required under the Endangered Species Act (ESA) as the EPA's designated non-Federal Representative. This includes U.S. Fish and Wildlife and NOAA's National Marine Fisheries Service (NMFS). Should a biological assessment be required, the DEQ or the SRF assistance recipient will prepare the required biological assessment under EPA's direction. As required by both the ESA and the applicable Fish and Wildlife

Service Regulations, the EPA acknowledges that it retains ultimate responsibility for compliance with §7 of the Endangered Species Act.

3. Fish and Wildlife Protection and Enhancement. The protection and management of fish and wildlife species, including those that are threatened and endangered, is primarily the responsibility of the Idaho Fish and Game Department. The activities of the Idaho Fish and Game Department and the U.S. Fish and Wildlife Service overlap to some extent on questions of fish and wildlife. Both agencies will be consulted for each pertinent loan project.
4. Wild and Scenic Rivers. Classification, management and protection of wild and scenic rivers is a responsibility shared by numerous agencies in Idaho. The Bureau of Land Management (BLM) and the U.S. Forest Service have direct management and protection responsibilities on sections of several Idaho rivers where they flow through areas under the jurisdiction of either agency.
5. Flood Plains. Most Idaho counties and cities participate in the National Flood Insurance Program. The Idaho Department of Water Resources (IDWR) is the agency responsible for assisting with local regulations necessary for the flood insurance provided by the National Flood Insurance Act of 1968 under Idaho Code, Title 67, Section 1911 through 1917.
6. Farmland Protection. The DEQ will consult the U.S. Department of Agriculture (USDA) to ensure the requirements of the Farmland Protection Act are met. Properties proposed for drinking water construction will be evaluated as needed by field office agronomists at the various USDA Natural Resources Conservation Service offices around the state. This process will be initiated early in the facility planning stage of the project.
7. Wetlands. The U.S. Army Corps of Engineers (Corps) is the lead agency for the evaluation of proposed projects where encroachment on wetlands is likely. Upon notification by DEQ field staff, the Corps evaluates the impact of possible alterations to wetland areas as a result of drinking water construction. Typically, the U.S. Fish and Wildlife Service and the Idaho Fish and Game Department are consulted in this evaluation. Their expertise regarding threatened and endangered species and/or possible habitat destruction is an important part of wetland evaluation, but does not replace the need to contact these agencies separately regarding non-wetland matters. One or more site visits usually occur. Mitigation measures to protect wetlands will be incorporated into projects in accordance with the requirements in any Clean Water Act §404 dredge and fill permits issued by the Corps.
8. Ground Water Protection. The EPA Office of Ground Water Unit (Region 10) conducts reviews of drinking water projects that will be situated over designated sole source aquifers and their source areas. The designated aquifers are the Eastern Snake River Plain Aquifer, Lewiston Basin Aquifer, and the Spokane Valley Rathdrum Prairie Aquifer. This is required under Section 1424(e) of the Safe Drinking Water Act. DEQ

will initially screen projects and may contact EPA directly or instruct the recipient to contact EPA.

9. Air Quality. The Idaho Department of Environmental Quality, Air Quality Division, administers an air quality monitoring and control program. The Division evaluates proposed drinking water construction projects to determine compliance with an established state air quality implementation plan (SIP). This plan has been promulgated under Section 51.18 of 40 CFR, Part 51, and is being implemented on EPA projects in accordance with regulations in 40 CFR, Part 6, Subpart C.

K. MONITORING FOR COMPLIANCE

1. *General*. DEQ shall ensure adequate monitoring of mitigation measures and other loan conditions identified in the FONSI or ROD.
2. *Enforcement*. If the applicant fails to comply with the conditions of a grant or loan conditions, DEQ may apply sanctions.

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.

Step 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.

Step 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.

Step 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:

Step 1. 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.

Step 2. Environmental Determination Public Comment Period. DEQ issues an environmental determination at the conclusion of the environmental review process. DEQ publishes a legal notice commensurate with the level of environmental determination issued to inform the public of the agency's environmental decision and to invite public comment. Upon completion of the public comment period, DEQ addresses relevant comments before issuing a final determination.

Step 3. 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.

Introduction to a Tier II Environmental Assessment Process

Drinking Water and Clean Water State Revolving Fund regulations allow states to adopt an alternative environmental review process when loans are made with repayment funds (as compared to loans made with initial capitalization grant funds). The less rigorous process gives states the discretion to not require many of the “Cross Cutting” requirements.

Cross cutting requirements are required of construction projects funded with Federal funds. However, when SRF loans are made with repayments, the funds are no longer considered to be Federal funds; therefore, Federal cross-cutting requirements may not necessarily apply. However, the regular environmental review process applies, at a minimum, to loans in an amount equal to the federal capitalization grant. In other words, the actual federal funds are not required to flow specifically to the projects used to meet this requirement.

Cross cutters include:

- National Historic Preservation Act,
- Archeological and Historic Preservation Act,
- Protection of Wetlands,
- Flood Plain Management,
- Farmland Protection Policy Act,
- Coastal Zone Management Act,
- Coastal Barriers Resources Act,
- Wild and Scenic Rivers Act,
- Endangered Species Act,
- Essential Fish Habitat,
- Clean Air Act, and
- Safe Drinking Water Act.

Other than the fact that such discretion is allowed, there are other, substantive reasons for taking full advantage of the Tier II option.

- ❖ Taking advantage of this discretion will allow DEQ’s SRF programs to reduce the administrative burden on loan recipients and on DEQ staff.
- ❖ Many of the cross cutter requirements were put in place to protect environmental concerns resulting from significant impacts. On the Council of Environmental Quality’s website the basic rationale for the environmental assessment process is predicated on “... Congress recognized that the Federal Government’s actions may cause significant environmental effects.”[<http://www.nepa.gov/nepa/Citizens_Guide_Dec07.pdf>, page 4, 2nd paragraph] However, DEQ’s SRF projects have been found to consistently **not** have significant impacts.

PROCEDURE FOR IMPLEMENTING AN ALTERNATIVE STATE ENVIRONMENTAL REVIEW POLICY APPROACH FOR THE DRINKING WATER STATE REVOLVING LOAN FUNDS

Statement of Purpose

This procedure document outlines the requirements of an alternative, state environmental review process also called *Tier II*. The Code of Federal Regulations (40 CFR Part 35) allows this type of alternative process when the State has met the Tier I requirements for an amount equal to the capitalization grant.

Since the complete SERP process, also known as *Tier I*, is required when Federal funds are used, DEQ

will endeavor to apply its Tier I, SERP, environmental review including all applicable Federal cross-cutters to those loans that are made in conjunction with the U.S. Department of Agriculture's Rural Development (RD) program, U.S. Army Corps of Engineers, Special Congressional Appropriations (Special) or with Idaho Department of Commerce (Commerce) funding. When RD, Corps, Special or Commerce funding is applied to a project, the complete suite of Tier I NEPA requirements is present due to the Federal nature of funds from these agencies. In these cases, DEQ's application of the *Tier I* process does not place an additional burden on the loan recipient.

In addition to joint funded projects DEQ will also require a Tier I approach if there is any knowledge (when the Intended Use Plan is being drafted) that the project will: be highly controversial; impact a designated sole source aquifer or stream flow source area; or, be sited along a Wild and Scenic River. To the extent, in any given year, the Tier I dollar goal is not met (i.e. loans compliant with Tier I that equate to the current capitalization grant amount) DEQ will use credits accumulated as per 40 CFR 35.3580(d) and the Cross-Cutting Authority Handbook.

Statement of Policy

The National Environmental Policy Act (NEPA) process was put in place to govern the activities of all federally funded projects, ranging from a major interstate highway construction project to a small drinking water facility upgrade. The State has adopted the NEPA requirements into its State Environmental Review Process (SERP). At one end of the federally funded project scale (interstate highways) all of the SERP requirements may be pertinent. At the other end of the federally funded project scale (minor upgrades to existing drinking water facilities), many of the SERP requirements may not be pertinent.

Projects rank high on the Idaho Department of Environmental Quality's (DEQ) Priority List if the applicant's system poses a hazard to the environment (e.g. negative impact on water quality) or to public health. The vast majority of DWSRF projects funded in Idaho will have a profile of:

1. improvements occurring within the existing footprint or established urban or utility corridors; and,
2. a positive impact on the environment or public health.

Given this framework, it is reasonable to conclude that DEQ's Drinking Water State Revolving Fund (DWSRF) projects should not bear the administrative burden of conducting environmental reviews on the entire suite of SERP requirements. Additionally, DEQ's DWSRF does not fund projects which primarily serve growth needs (in accordance with the Intended Use Plan and Priority List process as detailed in the Idaho Administrative Rules (IDAPA) 58.01.22.020). Many DWSRF projects involve improvements to existing systems, do not serve as the primary driver for growth and as such have modest cumulative or indirect environmental effects.

Therefore, DEQ will implement an alternative SERP approach (also known as a *Tier II* approach) as allowed in 40 CFR §35.3580(d). It is anticipated that the implementation of a *Tier II* process will reduce the administrative burden associated with DWSRF loans without substantive loss of environmental protections. Idaho's DEQ has authority to conduct environmental reviews of projects.

Procedure

Under 40 CFR §35.3580(d), there are five criteria that a *Tier II* environmental review must meet. Three of these five criteria require responses from the DWSRF loan applicants. Applicants should provide complete answers to all applicable questions and provide supporting documentation.

Criterion 1 – DEQ Action Only

- ❖ 40 CFR §35.3580 (d) (1) – Is supported by a legal foundation which establishes the State’s authority to review projects and activities. This legal foundation has already been established for Idaho’s DEQ under Idaho Code Title 39, Chapter 36 and under IDAPA 58.01.20.

Criterion 2 – DWSRF Loan Applicant Response Required

- ❖ 40 CFR §35.3580 (d) (2) – Responds to other environmental objectives of the State.
 - Title 39, Chapter 36 of Idaho Code requires a wide range of water quality protection, mitigation and remediation actions of DEQ. The list of objectives, derived from Idaho Code <<http://legislature.idaho.gov/idstat/Title39/T39CH36SECT39-3624.htm>>, was confined to public health and water quality, since DWSRF projects very rarely have a significant air quality or hazardous waste impact. The objectives will be followed by questions that will be addressed by loan applicants.
 - **OBJECTIVE #1: IMPLEMENT SURFACE AND GROUND WATER QUALITY PROTECTION USING A WATERSHED APPROACH.**
 - Will there be any sediment or nutrient loading occurring to any surface water? If the answer is “Yes,” please explain your mitigation plans.
 - Is the most recent planning document based on a watershed approach? Please describe or provide documentation that explains how the project is consistent with the local total maximum daily load (TMDL) plan or a local ground water management plan. Please include information pertaining to a change in volume or concentration of nutrients to a stream with impaired waters, incorporating the TMDL into the explanation.
 - Will a Clean Water Act Section 404 “fill and dredge” permit be required from the U.S. Army Corps of Engineers (Corps)?
 - **OBJECTIVE #2: REDUCE THE POLLUTANTS IN SURFACE WATER TO MEET WATER QUALITY STANDARDS AND BENEFICIAL USES.**
 - Will this project represent a change in a point source discharge into a surface water? If the answer is “Yes,” have you attempted to change your NPDES permit with the EPA? Please provide copies of correspondence with the EPA.
 - If the project will result in additional discharge into a surface water, what mitigation efforts are required?
 - **OBJECTIVE #3: ASSIST/SUPPORT PUBLIC WATER SYSTEMS IN THE DELIVERY OF SAFE/RELIABLE DRINKING WATER.**
 - Have appropriate set-backs been identified and implemented around public drinking water system source wellheads?
 - If there is to be any subsurface disposal, with impacts on ground water sources of drinking water supplies, have mitigation efforts been prepared? Please discuss in the SERP submission.
 - **OBJECTIVE #4: PREVENT AND CONTROL POLLUTION FROM DRINKING WATER DISCHARGES.**
 - Has the system prepared an emergency response plan/procedure?
 - Have properly licensed operators been hired or are under contract? Please provide copies of the contracts, as applicable.

Criterion 3 – DWSRF Loan Applicant Response Required

- ❖ 40 CFR §35.3580 (d) (3) – Provides for comparative evaluations among alternatives and account for beneficial and adverse consequences to the existing and future environment.
 - Will the project adversely affect human health or have environmental effects that disproportionately impact minority and/or low income members of the community? (Presidential Executive Order 12898)
 - Did the planning document include alternatives for consideration, including a no-action alternative?
 - Were public meetings held to inform the affected community about the alternatives and was the affected community afforded the opportunity to select their preferred alternative?

Criterion 4a – DWSRF Loan Applicant Response Required

- ❖ 40 CFR §35.3580 (d) (4) – Adequately documents the information, processes and premises that influence the environmental determination.
 - All consultations shall be documented with both inquiries and agency responses (e.g. Corps, U.S. Fish and Wildlife Service, EPA, etc).
 - A map of the project footprint will be required. Additional maps will be of a large scale that clearly displays the project planning area and hydrologic, typographic, political boundary and other pertinent details.
 - Planning documents will be provided.
 - Transcripts or minutes of all public meetings will be provided. Copies of published public notices will be provided. Results of revenue bond elections, judicial confirmations or local improvement district creation will be submitted.

Criterion 4b – DEQ Action Only

- ❖ 40 CFR §35.3580 (d) (4) – Adequately documents the information, processes and premises that influence the environmental determination.
 - All Chapter 5, Form 5-B, Tier II checklist items will be completed.

Criterion 5 – DEQ Action Only

- ❖ 40 CFR §35.3580 (d) (5) – Provides for notice to the public of proposed projects and for the opportunity to comment on alternatives and to examine environmental review documents. For projects determined by the State to be controversial, a public meeting or hearing must be held.
 - The DEQ will follow established public notice procedures (the same as for *Tier I* projects).

Summary

DWSRF funded projects generally address a hazard to the environment and to public health and, upon completion, improve the environmental conditions in the area of impact.

When possible, DEQ will apply the *Tier II* environmental review process to reduce the burden on the public while ensuring protection and enhancement of the environment and public health.