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October 20, 2006

NEPA Modernization (CE)
Attention: Associate Director for NEPA Oversight
Council on Environmental Quality
722 Jackson Place NW
Washington, D.C. 20503

Dear Council on Environmental Quality,

Enclosed are the comments of the Houston Regional Group of the Sierra Club (HSC) regarding the September 19, 2006 Council on Environmental Quality C(EQ) proposal for Guidance on Categorical Exclusions (CE) under the National Environmental Policy Act (NEPA).

The HSC appreciates that CEQ has prepared this guidance. Our experience regarding the issuance of CEs for projects is that agencies consistently use CEs to avoid conducting the proper environmental analysis, evaluation, and assessment in an environmental assessment (ES) or environmental impact statement (EIS).

For instance, the U.S. Forest Service, National Forests and Grasslands in Texas, uses categorical exclusions for the prescribed burning of 1,000's of acres; for the drilling of oil/gas wells; and for the thin logging of Red-cockaded Woodpecker clusters and replacement and recruitment stands. The HSC believes that agencies are massively violating NEPA and CEQ's NEPA implementing regulations.

Some guidance to ensure that these illegal actions do not occur is timely and will be helpful. The HSC prefers regulations rather than guidance because regulations are enforceable and guidance is optional. The HSC urges the CEQ to turn the guidance into regulations. Here are our recommendations:

- 1) It is extremely important that the CEQ require, not just recommend or suggest, that each agency document why a CE is appropriate for a specific project and make this easily available to the public during a comment period for the CE project. The CEQ must ensure that each agency "Must provide, and not hide" the administrative record of why a project is a CE or a type of project deserves a CE.

"When we try to pick out anything by itself, we find it hitched to everything else in the universe." *John Muir*

- 2) It is important for the CEQ to require that each agency have a 30 day public comment process for CEs. The U.S. Forest Service has a 30 day comment period for each CE it proposes. This allows the public to know about the proposal and provide input about whether a CE, EA, or EIS is required.
- 3) It is important for the CEQ to require each agency prepare a decision notice for each CE. The decision notice should include specific documentation and justification for the CE versus an EA or EIS.
- 4) It is important for the CEQ to require that a CE list be created by each agency for the public that wants to be notified about CE availability. Many people do not know about or are not able to monitor the Federal Register every day.
- 5) It is important for the CEQ to require that the word "controversial" is defined clearly for all agencies so that they, the public, and decision-makers will know what this word means.
- 6) It is important for the CEQ to require that each agency's CE documentation include appropriate analysis for cumulative impacts from all past, present, and future foreseeable actions, including the project proposed for the CE.
- 7) It is important for the CEQ to require for all agencies what is the appropriate level of analysis needed to buttress the sufficiency of professional staff opinions, outside expert opinions, and scientific information used to justify a CE.
- 8) It is important for the CEQ to require the documentation and definition of extraordinary circumstances by each agency.
- 9) It is important that the CEQ require each agency adopt the steps to establish a CE that it has outlined. CEQ must require, in the steps to establish a CE as part of the agency NEPA procedures, that step 6, consultation with CEQ on the CE, occur as step 4, so that the public has the benefit of CEQ's recommendations to the agency during the public comment period.

The Sierra Club appreciates this opportunity to comment. Thank you.

Sincerely,



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