Message

From: Pelloso, Elizabeth [Pelloso.Elizabeth@epa.gov]
Sent: 4/10/2019 6:24:29 PM
To: Westlake, Kenneth [westlake.kenneth@epa.gov]
Subject: NRCS compliance with NEPA - Lower Grand River Watershed Habitat Restoration RCPP and Watershed Plan

Hi Betsy,

Thanks for your time this morning on the phone to discuss the status of NEPA compliance for the Lower Grand River Watershed Habitat Restoration - Farmland Conservation Project (RCPP) and Watershed Plan under PL-566. The project's local lead partner is the Grand Valley Metro Council.

As I noted during our call, I was in Grand Rapids this past Monday to attend the USACE's public scoping meeting/open house for the proposed Grand River Habitat Restoration and Invasive Species Control Project. The USACE Detroit District will be preparing an Environmental Impact Statement (EIS) under NEPA, on behalf of the Great Lakes Fishery Commission. USACE's Federal Register Notice of Intent (NOI) was published March 15, 2019. The NOI states, "*the Draft EIS will consider*
the direct, indirect, and cumulative impacts of alternatives on affected resources that are identified during the scoping process, including, but are not limited to: Water quality, stream flows, air quality, fish and wildlife (including federally-listed endangered species and their designated critical habitat), floodplains, wetlands, climate, cultural resources, and social and economic resources such as noise, aesthetics, environmental justice."

In addition to information presented Monday by USACE about their proposed project, the open house also included representatives discussing the RCPP project. This included a table and large poster about the project, including the "Why Are We Doing This Watershed Project Plan" visual.

This visual explicitly states:
To support the NRCS funding decision three project alternatives were considered before choosing a preferred alternative:
- *No action.*
- *Removal of four, low-head beautification dams without substrate improvements.*
- *Removal of four, low-head beautification dams with substrate improvements*

The preferred alternative is removal of four, low-head beautification dams and creation of more substrate diversity that will create riffle habitat features with associated run, pool, and glide habitats.

When I saw this information at Monday's meeting, it seemed to me (from a NEPA perspective) that a decision on the RCPP project and a "preferred alternative" had already been made. It was not clear if the NEPA process had been concluded already, or if those public-facing statements are being made even though NEPA hasn't concluded. While this project seems to have a long history, here at EPA we have no record of involvement with the project, which is why I reached out this morning to find out what the status of NEPA is for the RCPP. When we spoke, you mentioned that NEPA is currently ongoing for the RCPP project. It is currently progressing as an Environmental Assessment (EA), although you stated that an Environmental Impact Statement (EIS) was initially planned when the project was in earlier stages.

As you and I discussed, the RCPP project is downstream of USACE's proposed project. The two projects are adjacent, and both are located within a designated area called the "Grand River Revitalization and Rapids Restoration Project Boundary." NRCS's project starts at Fulton Street and continues north of I-196; it's about 3,300 feet. USACE's proposed project runs from I-196 to Ann Street. Project figures I have reviewed show a geographic overlap of the two projects, as NRCS's project boundary includes a portion of USACE's proposed project.

The reason I reached out to you today was to discuss the overlap of NRCS's and USACE's project. As you know, USACE's project has many similar environmental impacts to NRCS's proposed project, but is progressing as an EIS. NRCS's project proposes the removal of four dams; USACE's project only includes one dam, although they are undertaking the issue of

preventing sea lamprey passage. Both projects are expected to have take and impacts to federally- and state-listed mussel species. NRCS's project has impacts to one federally-endangered mussel and 15 state-listed mussels.

The project as proposed will impact federally-listed and state listed mussel species, and USFWS is currently reviewing a Biological Opinion for impacts to the federally-endangered snuffbox mussel associated with the NRCS project. There will also be direct, indirect, and cumulative impacts due to the RCPP project, USACE's project, and the "River for All" initiative being undertaken. According to the NRCS Park 610 National Environmental Compliance Handbook, Subpart E, NRCS *"must prepare an EIS, rather than an EA...for proposed actions for which it is reasonable to anticipate cumulatively significant impacts."*

My understanding is that representatives from the Michigan Department of Natural Resources (MDNR) and the Michigan Department of Environmental Quality (MDEQ) have ongoing and current concerns with the RCPP project as well as the USACE project. Through discussions with MDEQ and MDNR representatives, I have been made aware of their ongoing concerns on backwater issues, potential impacts to existing fisheries and passage of the host fish for the federally-endangered snuffbox mussel, and the potential for flooding from installation of in-channel structures associated with dam removals. Based on this history of this project and the magnitude of involved players, public interest, and environmental impacts, I would like to understand why NRCS is moving forward with an EA and not an EIS to satisfy the requirements of NEPA.

As NRCS moves forward with their NEPA review, I would urge you to review some additional NEPA information, including NRCS's NEPA implementing regulations (linked from CEQ's webpage) and the "Forty Most Asked Questions Concerning CEQ's NEPA Regulations", commonly called the 40 Questions document), also linked from CEQ's website (https://ceq.doe.gov/guidance/guidance.html). It may also be beneficial to coordinate with NRCS's Agency NEPA contact.

I am happy to help you out as much as I can with understanding the NEPA process. I would also, at a minimum, suggest that you get in touch with the USACE representatives undertaking the EIS, and determine the best way to coordinate your efforts under NEPA. *"Under 40 CFR Section 1501.5(b), federal, state or local agencies, as long as they include at least one federal agency, may act as joint lead agencies to prepare an EIS. Section 1506.2 also strongly urges state and local agencies and the relevant federal agencies to cooperate fully with each other. This should cover joint research and studies, planning activities, public hearings, environmental assessments and the preparation of joint EISs under NEPA and the relevant "little NEPA" state laws, so that one document will satisfy both laws. The preparation of an area-wide or overview EIS may be particularly useful when similar actions, viewed with other reasonably foreseeable or proposed agency actions, share common timing or geography. For example, when a variety of energy projects may be located in a single watershed, or when a series of new energy technologies may be developed through federal funding, the overview or area-wide EIS would serve as a valuable and necessary analysis of the affected environment and the potential cumulative impacts of the reasonably foreseeable actions under that program or within that geographical area."* (40 Questions). In this case, NRCS's project and USACE's project share overlapping geography and the two projects will affect each other, regardless of whether or not any federal agency has determined that a specific project may have independent utility. Further coordination with the U.S. Fish and Wildlife Service would also be beneficial, as they, as well as state regulatory agencies, could provide assistance to NRCS as cooperating agencies under NEPA. USACE may already be in discussions with USFWS regarding asking them to be a cooperating agency for their EIS.

"As a general rule, the CEQ NEPA regulations contemplate that agencies should use a broad approach in defining significance and should not rely on the possibility of mitigation as an excuse to avoid the EIS requirement. (See 40 CFR Sections 1508.8, 1508.27.) If a proposal appears to have adverse effects which would be significant, and certain mitigation measures are then developed during the scoping or EA stages, the existence of such possible mitigation does not obviate the need for an EIS. Therefore, if scoping or the EA identifies certain mitigation possibilities without altering the nature of the overall proposal itself, the agency should continue the EIS process and submit the proposal, and the potential mitigation, for public and agency review and comment. This is essential to ensure that the final decision is based on all the relevant factors and that the full NEPA process will result in enforceable mitigation measures through the Record of Decision."

I know this is a long email and a lot to take in. As I stated on the phone, I will be in the Lansing area next week and may be able to meet with you in person, should that work for your schedule(s). I can potentially meet with you on Monday afternoon (April 15th) or Thursday morning (April 18th). Let me know if an in-person meeting/discussion would be beneficial. Please feel free to call or email anytime to further discuss the project and NEPA procedures and requirements.

Thank you!
Liz Pelloso

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