

Part 610 – National Environmental Compliance Handbook

Subpart H – Exhibits

610.130 Sample Notice of Intent (NOI) for an Environmental Impact Statement (EIS)

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DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Environmental Impact Statement on Watershed Planning and
Implementation of Resource Protection Measures for the Rockhouse Creek
Watershed, Leslie County, KY

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent (NOI).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the U.S. Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), Kentucky State Office, announces its intention to prepare an environmental impact statement (EIS) to evaluate the impacts of resource protection measures that would be employed under a watershed plan to reduce risks to life and property caused by frequent flooding of the community located in the Rockhouse Creek Watershed, Leslie County, Kentucky. Under the agency's proposal, NRCS would provide financial and technical assistance to sponsoring local organizations, including the Leslie County Fiscal Court, the Leslie County Conservation District, and the City of Hyden, for construction of two flood-retarding structures (earthen dams) in the upper reaches of the watershed. Such measures are authorized under the Watershed Protection and Flood Prevention Act of 1954, Public Law 83-566 (Pub. L. 566). The Draft EIS will assess the potential environmental and socio-economic impacts of the NRCS proposed action, as well as a range of alternatives to dam construction as identified in the watershed planning/NEPA process, including other structural and non-structural measures that would address recurrent Rockhouse Creek flooding. The EIS analysis will incorporate mitigation measures NRCS would use to minimize to the greatest extent practicable any potential adverse environmental or socio-economic impacts. Because the proposed flood retarding structures would be located on Federal

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lands on the Daniel Boone National Forest, the Forest Service has agreed to be a cooperating agency for preparation of the EIS.

Public Participation: The NRCS invites full public participation to promote open communication and better decision-making. All persons and organizations that have an interest in the Rockhouse Creek flooding problems as they affect Leslie County and the environment are urged to participate in the NEPA environmental analysis process. Assistance will

be provided as necessary to anyone having difficulty in determining how to participate.

Public comments are welcomed throughout the NEPA process.

Opportunities for public participation include: (1) During the EIS scoping period when comments on the NRCS proposal will be solicited through various media and at a public meeting to be held in Hyden, KY; (2) during the 45-day review and comment period for the published Draft EIS; and (3) for 30 days after publication of the Final EIS.

Scoping Process: NRCS is soliciting comments from the public indicating what issues and impacts the public believes should be encompassed within the scope of the EIS analysis, voicing any concerns they might have about the NRCS proposal and alternatives, and submitting any ideas they might have for addressing risks to life and property in the Rockhouse Creek Watershed.

Date Scoping Comments are Due: Comments may be submitted by regular mail, toll-free telephone line, facsimile, or e-mail until 6 p.m. e.s.t. on May 21, 2004. Written comments submitted by regular mail should be postmarked by May 21, 2004, to ensure full consideration. Comments submitted after this date will be considered to the extent practicable.

ADDRESSES: Comments on what the public wishes to be analyzed or addressed within the Draft EIS should be mailed to: Rockhouse Creek EIS, c/o Leslie County Conservation District, P.O. Box 932, Hyden, KY 41749.

Comments also may be submitted by calling the toll free telephone number 1-866-760-1421, by sending a facsimile to 1-703-760-4899, or e-mail to rockhouse@mangi.com. Respondents should provide mailing address information and indicate if you wish to be included on the EIS mailing list. All individuals on the mailing list will receive a copy of the Draft EIS.

Scoping Meeting: A public scoping meeting will be held April 20, 2004 to provide information and the opportunity to discuss the issues and alternatives that should be covered in the Draft EIS and to receive oral and written comments. The meeting will be held from 6 p.m. to 8:30 p.m. in the Tim Lee Carter Senior Center, Hyden, KY.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Kuhn, Assistant State Conservationist--Natural Resources Planning, 771 Corporate Drive, Suite 210, Lexington, KY 40503-5479, (859) 224-7371.

An information package providing additional details about the watershed and proposed project is available upon request. Requests should be directed to the same mailing address, telephone number, facsimile number, or e-mail address noted above under ADDRESSES. NRCS also plans to publish a newsletter to keep interested parties up to date on the project. Requests to be included on the newsletter mailing list should be made to the same addresses noted above.

Responsible Officials: The State Conservationist, NRCS, Lexington, Kentucky is the responsible official for this proposed action. The

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Forest Supervisor for the Daniel Boone National Forest, located at 1700 Bypass Road, Winchester, KY 40391, is the responsible official for the decision concerning issuance of a special use permit that would allow construction of the flood retarding structures on National Forest lands under the proposed action.

Decisions to be Made: The responsible NRCS official will decide whether to approve the proposal, an alternative to the proposal, or no action. Contingent on the NRCS decision, the FS responsible official will make a decision as to whether to issue a Special Use Permit and will also determine whether the Daniel Boone National Forest Land and Resource Management Plan will need to be amended.

SUPPLEMENTARY INFORMATION:

Background: Rockhouse Creek is a tributary of the Kentucky River that flows approximately seven miles from its origins through the community of Hyden to its confluence with the Middle Fork of the Kentucky River. The Rockhouse Creek Watershed encompasses 9,450 acres of primarily steep, mountainous terrain with ``V'' shaped valleys and narrow ridge tops ranging from 856' above mean sea level at Hyden to 1,772' at its headwaters.

The major water resource problems in the Rockhouse Creek watershed are serious flooding and deposition of sediment. Moderate floodwater damage occurs every year in the watershed with more severe damage occurring every 5 to 10 years. A longtime resident has stated that there were major flood events on Rockhouse Creek in 1927, 1937, 1947, 1957, 1963, 1977, 1984, and 1989. The most recent major flood events in June and October of 1989 each caused damages in excess of \$450,000. Other concerns identified in planning were inadequate and vulnerable public water supply and lack of public water-based recreation.

In 1993, sponsoring local organizations (SLO) that include the Leslie County Fiscal Court, Leslie

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County Conservation District, and the City of Hyden requested assistance from NRCS and the USDA Forest Service (FS) in development of a Resource Protection Plan for the Rockhouse Creek Watershed, with major emphasis on providing flood protection for businesses, homes, and roads located along the floodplain. A preliminary ecosystem-based resource plan (preliminary watershed plan), developed in 1994, described existing floodwater damages, some additional water resource concerns, and alternatives for addressing these concerns. Among the options evaluated at the time were channel enlargement of Rockhouse Creek, flood proofing of affected structures, replacement of certain culverts, and removal of obstructions. The preliminary evaluation led to the conclusion that these measures were not fully adequate to address Rockhouse Creek flooding because the large volume of run-off generated from storm events would quickly overwhelm even the expanded channel capacity. Possible relocation of affected households was also considered but the preliminary evaluation found it not to be a viable option because of the resulting community disruption and expected high cost, and the difficulty involved in identifying suitable relocation sites.

In 2000, NRCS representatives met with local sponsors and public officials to discuss conducting a more detailed flood protection analysis by evaluating the upper reaches of the watershed for the

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placement of floodwater retarding structures. A report was issued in 2002 that evaluated six different locations for floodwater retarding structures (FRS) and one location for a multi-purpose structure (MPS) that would also meet the area's water supply and water-based recreation needs as well as floodwater control. The NRCS proposal in the EIS includes the two structures evaluated in the 2002 report that provided

substantial flood protection and that also met applicable cost-benefit criteria.

The Watershed Protection and Flood Prevention Act of 1954, Public Law 83-566, authorizes NRCS to provide financial and technical assistance to local sponsors to address local flooding problems and implement watershed protection measures. Under the agency proposal for Rockhouse Creek, NRCS would provide financial and technical assistance to the sponsors for the construction of two dams and the sponsors would be responsible for operation and maintenance. In the case of the MPS, the sponsors must pay fifty percent of the water supply costs under Public Law 83-566 authority (e.g. cost of a pipeline to connect the impoundment to existing Rockhouse community water supply lines) unless otherwise authorized by Congress.

Need for the Proposal: The proposal is needed to address the problems associated with recurrent flooding due to periodic intense rainstorm events in the Rockhouse Creek Watershed, which continue to pose a hazard to human safety and to cause extensive flood damage to properties along the Creek.

Purpose of the Proposal: The purpose of the proposal is to assist the local community in taking appropriate measures to assure public safety and protect property in the face of the recurrent flooding problems on Rockhouse Creek. Constructing the flood-retarding structures would impound and reduce peak floodwater flows associated with intense rainstorm events on Rockhouse Creek, thereby reducing flood levels and potential risk to life and property downstream. Secondly, the impoundments could provide an opportunity for water-based recreation, including fishing and swimming. The largest of the dams might also serve as a multi-purpose structure providing drinking water and water for fire protection, for the city of Hyden and the greater Rockhouse Creek community, although the SLO have indicated they have an alternative water source that is currently considered preferable to meet those purposes.

Preliminary Issues: Among the issues that NRCS plans to consider in the scope of the EIS analysis are the:

- Impacts to the environmental resources of the public lands that would be flooded by the proposed dam impoundments, particularly impacts to any protected plant or animal species;
- Economic and social impacts of the proposed action and alternatives;
- Availability of borrow sites of suitable material large enough for constructing the dams and within close proximity to the dam sites;
- Environmental impacts of realigning roads, pipelines, or other infrastructure that would be required to allow for dam construction and floodwater impoundment;
- Geologic integrity of the proposed dam sites;
- Natural gas wells, coal mines, or other mineral resources that might be affected; and
- Costs and benefits of the proposed action and alternatives.

Preliminary Alternatives: The Draft EIS will assess the potential environmental and socio-economic impacts of a range of alternatives,

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including structural and non-structural measures, for reducing risks to life and property presented by Rockhouse Creek flooding. The preliminary list of alternatives for the Draft EIS includes: (1) The Proposed Action--constructing two flood retarding structures--one a

flood retarding dam, the other a multipurpose dam in the watershed; (2) building two flood retarding dams and one multipurpose dam in the watershed; (3) using other structural measures to deal with flooding and reduce damages; (4) using non-structural flood protection measures to reduce the potential for damage, including relocating households to remove them from flood-prone locations in the watershed; (5) employing a combination of structural and non-structural measures, and (6) taking No Action--making no improvements for flood protection. The alternatives will be refined and supplemented, as appropriate, based on input by the public and agencies during the public scoping process.

Alternative 1--the Proposed Action: Construct Two Flood Retarding Structures. Under the Proposed Action, NRCS would provide financial and technical assistance to the SLO for construction of two earthen dams in the headwaters of Rockhouse Creek. One would be a flood retarding structure on the mainstem of the creek (FRS 3 from the 2002 Study), the other a multipurpose structure on the Laurel Creek tributary (MPS 2 from the 2002 Study). The FRS would be located on the upper reach of the Rockhouse Creek main tributary approximately 7,000' upstream of its confluence with Puncheon Camp Branch. It would be 85' high, have a pool surface area of 6.4 acres, and store 291 acre-feet of water and 100 acre-feet of sediment from a drainage area of 1,200 acres. The MPS would be located on Laurel Creek approximately 5,000' upstream of its confluence with the left fork of Rockhouse Creek. It would be 98' high, have a pool surface area of 14.9 acres, and store 350 acre-feet of water and 156 acre-feet of sediment from a drainage area of 1,880 acres. Both dams would be located on Forest Service lands. Installation of this alternative would provide a 5-year level of flood protection to 43 percent of the properties subject to first floor flooding at that frequency and protect 23 percent of the properties subject to flooding by a 100-year storm.

Alternative 2--Construct Three Flood Retarding Structures. Under this alternative, NRCS would construct three dams, including the two dams identified under the proposed action and a third structure located on the Left Fork of Rockhouse Creek, approximately 1,000' upstream of its confluence with Laurel

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Creek and listed as FRS 1 in the 2002 Report. It would be 78' high, have a pool surface of 2.4 acres, and store 95 acre-feet of water and 46 acre-feet of sediment from a drainage area of 550 acres. The third dam would be located on private lands, the rights to which the SLO would need to secure.

Alternative 3--Employ Other Structural Measures. Under this alternative, NRCS would provide financial and technical assistance to the SLO for implementation of structural measures other than dams to address flooding problems. Such measures would include channel widening of Rockhouse Creek, replacement of certain culverts and bridges, and removal of obstructions to flow.

Alternative 4--Employ Non-Structural Flood Protection Measures. Under Alternative 3, NRCS would provide financial and technical assistance to the SLO for implementation of non-structural measures

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only. Flood proofing would be implemented to protect structures in the floodplain, including installation of floodwalls, raising structures on pilings, or moving structures out of the highest risk locations. Households at high flood risk would be relocated out of the Rockhouse

Creek watershed to another suitable location. Under this alternative NRCS would consider moving households to existing dwellings outside the watershed and demolishing the remaining structure after payment of fair market value or would consider relocation of the home structure itself to a new location.

Alternative 5--Employ a Combination of Structural and Non-Structural Flood Protection Measures. Under this alternative, NRCS would provide financial and technical assistance to the SLO for implementation of a combination of flood protection measures that would include the structural and non-structural measures determined to be most appropriate and cost-effective to protect property and reduce flood damages. Dams and other structural measures and the use of flood proofing measures and household relocation would be considered.

Alternative 6--No Action Alternative. Under this alternative, NRCS would provide no financial or technical assistance to sponsoring local organizations for flood protection measures in the Rockhouse Creek watershed. Federal agencies are required to evaluate the impacts of a No Action alternative in preparing an Environmental Impact Statement, even though the alternative would not meet the agency's purpose and need.

Permits or Licenses Required: Construction of flood retarding structures is authorized under the Watershed Protection and Flood Prevention Act of 1954, (Pub. L. 83-566) administered by NRCS. A special use permit would have to be issued by the Forest Service for construction of such structures and impoundment of water on National Forest lands. A permit would be required from the State of Kentucky, Division of Water for any dam structures.

A permit would be required from the U.S. Army Corps of Engineers under Clean Water Act (CWA), Section 404 for any project that would impede the flow of waters of the U.S. or that would affect any wetlands. The project would also require a water quality certification by the State under CWA, Section 401, which could be issued in conjunction with the CWA 404 permit. Approval from the State Historic Preservation Office would be required if any National Register-eligible historic properties would be affected. Consultation with the U.S. Fish and Wildlife Service would be required if the proposal may affect any species listed as threatened or endangered under the Endangered Species Act.

Estimated Dates for Draft EIS and Final EIS: NRCS expects to file the Draft EIS with the Environmental Protection Agency (EPA) and to have it available for public review and comment during the summer or fall of 2004. At that time, EPA will publish a Notice of Availability (NOA) of the Draft EIS in the Federal Register. The public comment period on the Draft EIS will be a minimum of 45-days from the date EPA publishes the NOA.

NRCS and the Forest Service believe, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the Draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and concerns (Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978)). Also,

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environmental objections that could be raised at the Draft EIS stage, but are not raised until after completion of the Final EIS, may be waived or dismissed by the courts (*City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490

F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this project participate by the close of the Draft EIS review period, so that substantive comments are made available to the NRCS and Forest Service at a time when the comments can be meaningfully considered in the Final EIS.

To assist NRCS and the Forest Service in identifying and considering issues and concerns on the proposed action and alternatives, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft EIS. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the Draft EIS. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 153.3 in addressing these points.

After the comment period on the Draft EIS ends, the comments will be analyzed, considered, and responded to by NRCS and the Forest Service in preparing the Final EIS. The Final EIS is scheduled for completion by the end of 2004. The responsible officials will consider the comments, responses, environmental consequences discussed in the Final EIS, and applicable laws, regulations, and policies in making a decision regarding this proposed action. The responsible officials will document the decisions and reasons for the decisions in a Record of Decision. That decision will be subject to appeal in accordance with 36 CFR Part 215.

Dated: March 12, 2004.

David G. Sawyer,
State Conservationist, Natural Resources Conservation Service, USDA.
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