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If you have not already done so, please see the excellent ideas to improve NEPA compliance and related public involvement opportunities that are described on the Interior Department's "Open Government Initiative" web site. This web site is located at: <http://www.doi.gov/open/>

I submitted some of these NEPA related ideas, and I believe that they are relevant in the context of CEQ's current draft guidances that are out for public review and comment, including the one on mitigation and monitoring. Instead of reiterating those NEPA ideas here, it would be easier if you check out this DOI web site to locate and read them. The idea titles should enable you to immediately identify those with NEPA content. Thank you very much for considering this request.

Before I became aware of this CEQ draft NEPA guidance on monitoring and mitigation, I submitted comments on this same subject to the Interior Department's web site for its Open Government Initiative. As such, I have copied my comments from that DOI web site and I wish to paste them here as follows:

" I have followed and been involved in Interior Department and other federal agencies compliance with the National Environmental Policy Act (NEPA) since it was enacted in 1970. Based on this forty years of practical experience, I have noticed one frequent and fundamental flaw in the analysis in these Environmental Impact Statements (EISs), Environmental Assessments (EAs), Categorical Exclusions (CEs), and, for BLM, Determinations of NEPA Adequacy (DNAs). This flaw is the failure to honestly assess the likelihood that promised monitoring and mitigation measures will actually be tracked and fully and effectively implemented. This flaw may be less of a concern when a private company is the applicant, and when it must post a bond or other financial surety to ensure compliance upon and after project approval. However, when federal agencies are the applicant because it is their proposed action analyzed under NEPA, they often promise monitoring and mitigation measures that they know or reasonably should know they cannot consistently track, much less fully or effectively implement. For example, ask federal agency officials for their data base on tracking of implementation of past NEPA promised monitoring and mitigation measures to determine compliance success. Or ask them what percentage of approved projects have been audited to confirm such NEPA promises compliance. My guess is that they will have that deer caught in the headlights look, and try to quickly change the subject. This flaw can be very important because it is often relied upon by the NEPA analysis itself, as well as by the public and other decisionmakers. For example, an EA might say that the proposed action would cause a "significant" resource impact (which would trigger a requirement to prepare an EIS), but the agency then promises to faithfully implement mitigation and monitoring measures to reduce the impact below that threshold of significance. The agency saves a lot of time and money by avoiding having to do an EIS, but it is based on fraud if the agency knows or should reasonably believe that it likely won't have sufficient staff or funds to actually perform to the level promised. Another example is a CE where promised mitigation is used to avoid having to do an EA. In other words, this flaw undermines the adequacy and integrity of the NEPA analysis, misleads the public and decisionmakers, and may improperly circumvent opportunities for greater public involvement and scrutiny (since many EAs have no public reviews, but all EISs do). This flaw is so pervasive that it will take strong medicine to stop it. One idea would be for federal agencies to be required to disclose exactly what level of staff and funding would be sufficient to accomplish promised mitigation and monitoring measures, and then to explain how they can guarantee to provide it. If private companies may be required to post bonds or other surety to ensure compliance, why should federal agencies be trusted with "unsecured" promises? Another idea would be to require federal agencies to consistently track through a publicly accessible data base their level of success in keeping these promises. This data base should be searchable so that if someone is following a specific project, or has commented on that project NEPA, they can keep an eye on how compliance is proceeding (or not). Finally, the buck stops with the managers. I think that managers performance evaluations should include how well they make sure that their office's promised compliance measures are carefully tracked and actually achieved. Since most federal agencies are looking at flat or slightly increased budgets in the coming years, and there is a huge backlog of past NEPA documents with these promises that may never

have been tracked or implemented, I realize that we may need to largely forgive past misfeasance and basically look prospectively to fix this flaw moving forward. In any case, I recommend that future DOI and other federal agencies NEPA documents be more objectively honest about their limited capacity to keep these promises. At the very least, perhaps a disclaimer could be added to the NEPA analysis: "The promised monitoring and mitigation measures described and relied upon herein may or may not actually be tracked and implemented, subject to current and future staff and funding levels, and evolving workload priorities." If we want a more open government, I submit that more honesty is a great place to start." I hope that CEQ finds my comments helpful. Thank you very much for your consideration.

I strongly support and applaud this draft guidance on mitigation and monitoring under NEPA. I hope that this guidance will be finalized and fully implemented soon.

On page 1 in the second paragraph, I totally agree that ". . . mitigation and monitoring should be transparent and open." However, as you may know, many federal agencies' EAs now are long on mitigation and monitoring promises, but short on any documentation of actual fulfillment of those promises. The federal agencies tend to say what they need to for the appearance of NEPA compliance, with a low risk that their subsequent lack of implementation will be disclosed, or that their NEPA compliance may be found defective as a result.

As such, I also totally agree with the first full paragraph on page 2: "Mitigation adopted by an agency should be identified as binding commitments . . . ."

I further agree with the three central goals described. Of course, the key will be whether the agencies are held practically accountable by an objective third-party source, and whether there will be adverse consequences for agency officials who fail to fulfill their commitments.

One approach would be to treat such commitments as conditions. If the conditions are not fulfilled to an adequate level, the EA FONSI would become void and the agency could no longer rely on it as the proper basis for authorizing the overall project or program. In this sense, the NEPA commitments are like conditions in a contract. If the conditions are breached, the contract becomes void or voidable. The public could assist CEQ in enforcing the final guidance if there is a web site where people can report allegations of absent or inadequate compliance with mitigation and monitoring commitments in completed NEPA documents. Agencies might also be required to establish a reporting system and database for tracking such compliance. CEQ staff or others could then independently check this database, and perhaps perform random checks on a percentage of projects to confirm the accuracy of the database. The case study of Army regulations was interesting. Has there been an independent investigation to determine whether these Army regulations have indeed been effective, and that they essentially walk their talk? Thank you very much for considering my comments.