

May 24, 2010

Nancy Sutley, Chair
Council on Environmental Quality

Dear Chairwoman Sutley:

I am writing to provide comments from the Theodore Roosevelt Conservation Partnership (TRCP) on the Draft Guidance Clarifying Appropriateness of "Findings of No Significant Impact" and Specifying When There is a Need to Monitor Environmental Mitigation Commitments.

We appreciate the CEQ and the Obama Administration's recognition that clarification and further guidance is needed for mitigation and monitoring under the National Environmental Policy Act and subsequent authorizations. Current approaches to mitigation and monitoring for federal agencies are not consistent nor do they adhere to the principles and guidelines that exist in the scientific community. Mitigation is often just a buzzword to allow projects to move forward with a meager attempt to "fix" the impacts later and monitoring has become a substitute for hard decision making for managers when science and experience tells them that other alternatives should be explored to avoid or minimize impacts from projects. The recent boom in energy development on much of our public lands is wrought with commitments to mitigate and monitor, but they are rarely followed through or effective.

We fully support the efforts to make mitigation and monitoring more proactive with more transparency and accountability for federal agencies. We also endorse efforts for public involvement, clearly stated objectives, measureable performance standards, and use of science and expertise. The integration of mitigation and monitoring more fully into the NEPA process and subsequent decision making should ensure that it is effective and efficient, therefore reducing impacts to resources and allowing for land and resource management. By making the mitigation and monitoring part of the approved action, proponents and federal agencies will no longer be allowed to skip the needed actions to alleviate impacts.

We also support the provisions to ensure adequate funding and implementation along with setting up a process to map implementation efforts. The provision that makes mitigation, and therefore, project implementation, contingent on adequate and available funding is much needed.

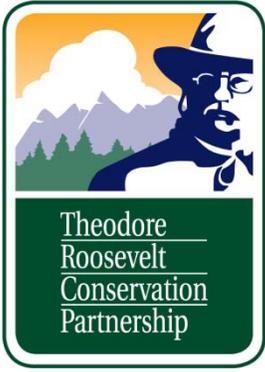
TRCP is in enthusiastic support of the integration of adaptive management into avoid mitigation failure but are cautious about continuing to allow federal agencies to determine and define what adaptive management is or is not. Currently, federal agencies do not have an adequate track record on adaptive management and the BLM has failed dismally in its efforts (particularly the Pinedale Anticline project – BLM's own showcase for adaptive management). We encourage you to address this deficiency in training, workshops, and practice.

We are encouraged to see more emphasis on monitoring, particularly effectiveness monitoring, and support efforts to ensure monitoring is done the right way and is adequately funded. The reliance on 3rd party contractors to complete monitoring requirements, often funded by project proponents and therefore controlled by proponents, has caused some significant issues recently and taken federal managers away from using the monitoring for the best benefit.

One of the best inclusions into this guidance is the increased involvement of the public into the process. Currently the public is often not seen as a stakeholder even though these are public lands and resources.

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Again, we are fully supportive of these clarifications and changes and we encourage you to add the following –

- A clear, definitive statement about the purpose for mitigation is for “value for value” replacement or substitution of the value that has been impacted or lost
- A process to incorporate these guidelines into existing agency policy and management plans with needed amendment or revision if necessary
- A way to review agency performance on implementing these guidance and policy
- A clear, definitive protocol for implementing mitigation according to CEQ’s previous guidance – Avoid, Minimize, Rectify, Reduce, Compensation
- A clear policy for when compensation should and can be considered – after other efforts have been determined to not be adequate
- Consequences for failure to implement effective and successful mitigation

I appreciate opportunity for comment. Please contact me if you have questions on my comments and recommendations.

Sincerely,

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