



May 24, 2010

Nancy H. Sutley, Chair  
Council on Environmental Quality

Re: CEQ Guidance for NEPA Mitigation and Monitoring

Dear Ms. Sutley;

The Council on Environmental Quality (CEQ) issued draft guidance for conducting mitigation and monitoring of activities undertaken in a National Environmental Policy Act (NEPA) process. The Washington State Department of Natural Resources (DNR) supports CEQ's effort to institutionalize mitigation monitoring as part of the NEPA process. We believe mitigation monitoring is critical for achieving the purpose and intent of NEPA: "...to make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment." It is our experience that many federal agencies and states with mini-NEPAs have been conducting environmental analysis, making decisions, and implementing projects without verifying that identified mitigation is implemented and that it effectively mitigates identified impacts as predicted in the environmental document. Washington State implements the State Environmental Policy Act (SEPA) which is essentially a mini-NEPA. This guidance could be very useful for SEPA implementation.

Overall, the guidance in the document appears very appropriate. We noted some discussions and guidance that stand out as particularly valuable, especially those on implementation monitoring and effectiveness monitoring. We strongly support inclusion of these discussions in the guidance. These include:

- Make mitigation and monitoring reports readily available to the public. (*part II. Discussion and Guidance*)
- Use measurable performance standards. (*part II. Discussion and Guidance*)
- Monitor mitigated FONSI's, not just EISs. (*part II. A.3 Implementing Mitigation*)
- Address the environmental consequences of the mitigation failure in future NEPA analyses when there is no remaining agency action and mitigation has not been effective or fully implemented. (*part II. A.4 Mitigation Failure*)
- Fully resource all adopted mitigation measures or otherwise address the lack of funding in a NEPA analysis before proceeding with a proposed action. (*Appendix: Mitigation Planning*)
- Create a clear and accountable system for tracking and reporting both quantitative and qualitative measures of the mitigation efforts. (*Appendix: Mitigation Monitoring*)



- Include an action-forcing response to mitigation failure; it is essential to the success of any mitigation. (*Appendix Mitigation Monitoring*)
- Define parameters for effectiveness monitoring. (*Appendix Mitigation Monitoring*)

We do not have much experience with NEPA or SEPA mitigation monitoring. As a result, we have only a couple of suggestions and comments:

- Provide guidance for situations when monitoring or adaptive management triggers additional NEPA analysis. Sometimes monitoring or adaptive management warrants new or additional mitigation not previously discussed in the existing environmental document. Are there criteria an agency might use to determine when additional NEPA analysis is required and what level of analysis is appropriate? And, is there guidance on how an agency might do a more thorough NEPA analysis for the proposal so that adaptive management decisions do not always trigger extensive, additional NEPA?
- Should situations with no recourse to correct substantial mitigation failure affect the evaluation of the mitigation's effectiveness? You discussed situations when an agency would not have the authority to rectify substantial mitigation failure. That could be a factor the agency should consider when they conduct their initial analysis of impacts, significance, and mitigation effectiveness.

Thank you for the opportunity to review and comment on this draft guidance. If you have questions, please do not hesitate to contact Patricia Betts with the Department of Natural Resources at [patricia.betts@dnr.wa.gov](mailto:patricia.betts@dnr.wa.gov).

Sincerely,



Simon M. Kihia

Manager, Environmental Review and Analysis