



Wyoming Association of Conservation Districts
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White House Council on Environmental Quality
NEPA Process Guidance

SUBMITTED VIA WEB SITE:

[http://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/submit?topic=Monitoring Environmental Mitigation Commitments](http://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/submit?topic=Monitoring%20Environmental%20Mitigation%20Commitments)

RE: Comments on NEPA Mitigation and Monitoring Guidance

To Whom It May Concern:

The Wyoming Association of Conservation Districts submits the following comments on the above referenced proposal.

WACD represents Wyoming's 34 local Conservation Districts (political sub-divisions of state government), which are governed by 170 locally elected officials and charged specifically, pursuant to Wyoming §§ 11-16-101 *et seq.*, with the protection of natural resources, stabilization of farming and ranching operations, protection of public lands and protection of the tax base. The districts in Wyoming have a history, as a local government, of participating as a cooperating agency in many federal land planning processes throughout the state and working cooperatively with the federal agencies on resource management projects.

WACD believes that the CEQ proposal to require mitigation is outside the CEQ's statutory authority. Further, the CEQ proposal would exacerbate an already extraordinary slow NEPA process. The Council does have a role to issue guidance; however, such guidance should focus on the high level processes, not dictate down to the minute details. Many agencies already use mitigation and monitoring and the CEQ role should be minimized to providing broad level guidance at the most.

While transparency in government is generally a positive, this could be taken to an extreme that is not realistically feasible for federal employees to implement. If this guidance were finalized as currently written, it would add significant workload to already overburdened federal employees and stall all activity or interactions that the public has with the federal government. Especially in

the current economy, government agencies should implement processes to streamline their ability to conduct business and manage the resource, not more difficult. The NEPA process is already very expensive, and this guidance would add to that expense.

Under the current budget constraints, and considering the need for timeliness in resource management decisions on the ground, we would urge the Council to make the process more conducive to responsive and timely resource management.

WACD has several more general concerns with the mitigation and monitoring guidance, of primary concern is that this guidance goes far beyond the bounds of what NEPA was intended to accomplish. The NEPA itself is a procedural statute. NEPA includes no mandates for action or non-action, rather its goal is to analyze and show potential environmental impacts. This guidance would significantly increase and expand the parameters of NEPA, and goes beyond the bounds of the legal jurisdiction of that law.

If this guidance were to be implemented as written, it would lead to complete gridlock of any projects on federal land across the country. In the current economic climate and considering the health of some of the public land resources, primarily the forest health issues being observed in the western United States, it would be irresponsible and unwise for the federal government to add bureaucratic impediments to projects. Rather, efforts should be taken to allow for timely, responsive management in circumstances where there is an imminent threat to human health and safety, watershed health and water resource supplies while simultaneously creating jobs and allowing for continued economic development in rural and urban communities. Mitigation and monitoring are necessary and should be dealt with at the appropriate levels within each agency. This guidance, as written, provides an innumerable source of new points for litigation.

WACD would reiterate that the guidance is clearly an expansion of the mitigation and monitoring program beyond what is required in NEPA itself. In *Robertson v. Methow Valley Citizens Council*, the Supreme Court held that NEPA does not obligate agencies to require mitigation of impacts; rather, several court decisions have held that mitigation measures developed or recommended during the NEPA process need only be developed “to a reasonable degree.” Again, the Association would encourage the Council to develop basic guidance allowing for mitigation and monitoring plans within the NEPA process, without requiring such plans and creating additional bureaucratic roadblocks to activities on federal lands.

Regarding specific goals, as written in the guidance, we have the following reaction:

“Proposed mitigation should be considered throughout the NEPA process”

Mitigation may be considered, and uses of best management practices or other measures should be strongly suggested; however the NEPA process was designed to show various possible environmental impacts from activities on public land, not necessarily to pass judgment on any one alternative over another. Therefore no contingencies should be mandated on the process

which would restrict the ability of land managers on the ground to make their most informed decision to approve a FONSI or Decision Record.

“mitigation measures...should be identified as binding commitments”

This specific goal of the guidance overreaches the Act itself more than any other. Nowhere in NEPA is authority given for agencies to enact binding requirements before approval of activities on federal land. In monitoring after a project has been approved in a manager’s decision record or FONSI, an agency cannot legally retract that decision or change the terms of the decision after the fact. If mitigation is implemented, the federal government does not have the authority to enforce any changes after a decision has been made.

“public participation and accountability should be supported through proactive disclosure of, and access to, agency mitigation monitoring reports and documents”

Placing additional steps into the NEPA process by adding a public participation component to any mitigation measures defeats the purpose and efficiency of completing an EA versus an EIS. While the Association admires the goal of having more transparency in government, this would place an undue burden on federal employees.

One of the challenges of NEPA as the process works today is that any environmental review and ongoing mitigation measures take an inordinate amount of time to complete; hence you have members of Congress exempting specific projects in their districts from the NEPA process to bypass the gridlock that already exists. If this guidance is enacted as currently written, the gridlock that we see today would be considered a best-case scenario in a new world where no projects could be completed in any reasonable amount of time.

One other issue that concerns us is the use of “outside resources” or experts by agency staff in the development of mitigation measures for any federal project. Any such experts should be true, neutral third parties with impartial and unbiased scientific credentials. If outside resources other than academic or scientific experts are used, consultations should also include adjacent landowners, local governments, and any other impacted entities, including grazing permittees, in the discussion. We would be highly concerned with any one group having more influence or access in the process than another, and would caution the CEQ to ensure that any guidance ensures the use of impartial experts, such as university researchers.

Thank you for the opportunity to comment. Please take these comments into consideration, as you finalize the guidance on whether to expand Mitigation and Monitoring efforts in the NEPA process for all federal agencies.

Sincerely,

A handwritten signature in black ink that reads "Bobbie K. Frank". The signature is written in a cursive style with a large initial "B".

Bobbie K. Frank
Executive Director

cc: WACD Board of Directors
Wyoming's Conservation Districts
Senator Mike Enzi
Senator John Barrasso
Congressman Cynthia Lummis