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The Council on Environmental Quality
Attn: Ted Boling
Senior Counsel
722 Jackson Place, N.W.
Washington, DC 20503

Mike Smith
Director of Regulatory Affairs

Sent via email to: Mitigation.guidance@ceq.eop.gov

Re: Proposed NEPA Guidance

Dear Mr. Boling:

Questar Exploration & Production Company (Questar) appreciates the opportunity to comment on The Council on Environmental Quality (CEQ) document entitled “Draft Guidance for NEPA Mitigation and Monitoring,” dated February 18, 2010. Questar Exploration & Production acquires, explores for, develops and produces natural gas, oil and natural gas liquids in the Rocky Mountains and Midcontinent. As such, Questar has extensive experience with federal agencies and application of the National Environmental Policy Act (NEPA).

Questar welcomes any sincere efforts to make NEPA more efficient and to encourage federal agencies to take a more focused approach to monitoring. NEPA in its current state is broken. The process takes too long. The process is managed with too much attention on the inevitable frivolous lawsuits sponsored by anti-development activists that follow every decision. And in far too many instances, NEPA documents are developed without a clear understanding that NEPA is about process and disclosure, not mandating particular results. Unfortunately, some of that lack of understanding finds its way into this draft guidance. This guidance should be amended to emphasize the procedural aspect of NEPA, and the role the project proponent needs to play in proposing or voluntarily adopting various mitigation measures.

Questar has several main concerns with the draft guidance. First, the guidance seems to imply that pursuant to NEPA, federal agencies are required to prepare a detailed mitigation plan prior to approving an action. The guidance would benefit from a clear statement of current legal precedents that NEPA does not require mitigation of all environmental harm, nor does it mandate that any mitigation occur at all. The point is that IF mitigation measures are included in a NEPA document, the result is a reduction in the anticipated impacts of the particular project and the disclosure of those impacts, which is the sole purpose of NEPA to begin with, cannot be adequately done without a discussion of the mitigation adopted.

Second, the draft guidance section on Mitigation Failure at page 4 overreaches. (“However, if mitigation . . . does not mitigate the effects as intended by the design, the agency responsible should, based upon its expertise and judgment regarding any remaining Federal action and its environmental consequences, consider whether taking supplementary action is necessary.”). Clearly, operators and agencies need to follow through with the commitments made in NEPA documents, but that is a totally different situation than using mitigation failure as an excuse to reopen prior federal decisions and restrict actions that have already been approved, even if the reason for the mitigation not “performing” as anticipated is unknown or is completely unrelated to the obligations of the project proponent. Contrary to the statement in the draft guidance that the agency response to a mitigation failure in effectiveness should depend on whether there is any remaining Federal action and with it the opportunity to address the failure, the response must depend instead on the language and structure of the original NEPA document containing the mitigation commitments. As written, this section seems to sanction a constant hindsight approach that can lead to reopening old decisions any time the impacts turn out to be more than discussed or anticipated in the original decision document. This would be an unmitigated disaster in addition to violating the law.

Third, when discussing monitoring, the draft guidance cites the regulation that clearly states monitoring plans may be utilized in “important cases,” but in the next sentence states monitoring plans should be referenced in all agency decision documents. That language should be amended to make it clear that monitoring plans and programs are not appropriate in every instance. In addition, in the section discussing the release of monitoring data to the public, CEQ should consider providing guidance to agencies on how to structure monitoring contracts with vendors in such a way as to ensure data collected is provided to the agency and project proponent immediately when available. Questar is familiar with several instances where vendors hold the data for their own interest and refuse to provide the data to the parties that paid for the data and hired the vendor.

Thank you again for the opportunity to comment. Please contact me if you need any additional information.

Sincerely,



Mike Smith
Director of Regulatory Affairs