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May 24, 2010

White House Council on Environmental Quality  
NEPA Process Guidance

SUBMITTED VIA WEB SITE:

**Subject:       Comments on NEPA Mitigation and Monitoring Guidance**

To Whom it May Concern:

The Wyoming Stock Growers Association would like to submit comments supporting responsible development of new guidance governing Mitigation and Monitoring actions in the federal process for National Environmental Policy Act (NEPA) projects and actions.

WSGA has represented the state's livestock industry for over 137 years. Today our membership includes approximately 1,100 cattle producers. Our member ranchers are affected in their daily lives and businesses by many activities that are subject to federal NEPA review. These include public land grazing, air and water quality and management of endangered species. Maintaining a business climate free of excessive and unnecessary federal regulatory burdens is a critical part of our mission.

We believe that the CEQ proposal to require mitigation is illegal, outside the boundary of law, and we do not support it. Further, the CEQ proposal would do more to slow an already sluggish NEPA process – the worst thing to do in the current economic climate. The Council does have a role to issue guidance; however, such guidance should stick to high level processes, not actions on the ground. Many agencies already use mitigation and monitoring, and those processes can always be improved – the basic process framework should be the only thing addressed by this guidance.

Specifically as it relates to federal grazing permittees, any grazing would be subject to continual monitoring, which would constantly impact a permittee's permits and their business. This has already happened in the case of the Forest Service, where permit allotments have been reduced in Wyoming for water quality issues, but there has been no further analysis of whether the reductions have changed conditions on the ground, and therefore allotments are not increased again after a certain period of time. This is an area where a more well-defined process for mitigation and monitoring could be improved, including a detailed monitoring plan and

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specifications to respond and evaluate whether the mitigation has had an impact. We would also use this to draw a contrast between resource monitoring and compliance monitoring, which are two very different issues.

While transparency in government is generally a positive thing, 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 overworked 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 make it easier to do things, not more difficult. The NEPA process is already very expensive, and this guidance would add to that expense – who would pay for the additional cost? 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 easier for everyone, not harder to manage or work with.

We have several more general concerns with the mitigation and monitoring guidance – particularly that the guidance goes far beyond the bounds of what NEPA was created to do. The NEPA itself is a procedural statute – it includes no mandates for action or non-action, rather its goal was 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, it would be irresponsible and unwise for the federal government to add bureaucratic impediments to projects that would create jobs and allow for continued economic development in rural and urban communities. Mitigation and monitoring, by themselves, 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.

If the guidance is finalized as currently written, we would be obligated to take up a legal challenge to the 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, we 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.

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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 we admire 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 allowing us to comment on this effort. Please take these comments into consideration, as you finalize the guidance on whether to expand Mitigation and Monitoring

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efforts in the NEPA process for all federal agencies. The [organization] looks forward to continuing to provide comment throughout this effort.

Sincerely,

A handwritten signature in black ink that reads "Jim Magagna". The signature is written in a cursive, flowing style.

Jim Magagna  
Executive Vice President