
Administration Announces New Mitigation Policies

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This afternoon, the Administration issued two policies intended to encourage private investment in natural resource conservation and to facilitate application of the mitigation hierarchy—avoiding, minimizing and compensating project impacts. These policies will apply to a wide array of projects with impacts on public lands and federally managed natural resources—from oil and gas development, to renewable energy facilities, to pipelines, roads and bridges. They follow through on commitments made in the Federal Plan on Infrastructure Permitting and the Department of the Interior’s Strategy for Improving the Mitigation Policies and Practices.

Presidential Memorandum on Mitigation

The first of the policies is a Presidential Memorandum directing the heads of five resource management agencies, including the Departments of Interior, Agriculture and Defense, to adopt clear and consistent policies for mitigating project impacts and encouraging private investment in conservation. The memorandum establishes a number of Federal Principles of Mitigation to be applied by each agency:

- Calls on agencies to identify the best places for development and most important conservation areas using existing federal, state, tribal, and local large-scale plans and analysis.
- Encourages agencies to adopt a “net benefit” goal or, at a minimum, a “no net loss” goal for mitigation.
- Directs agencies to give preference to advance compensation mechanisms with clearly defined environmental performance standards.
- Calls for greater public transparency in the implementation of agency mitigation policies and guidance, including specific measures to ensure the durability of compensatory mitigation, including measurable performance standards and financial assurances.
- Encourages each agency to take steps to ensure consistent implementation of its mitigation policies across its regional and local offices.

The Memorandum also outlines a number of concrete steps to be taken by agencies in the coming months to further institutionalize the policy objectives outlined therein. For example, the US Forest Service will develop and implement additional mitigation guidance within 180 days and finalize new

mitigation regulations within two years. The Bureau of Land Management will finalize within one year a policy creating a more consistent application of the mitigation hierarchy to projects impacting public lands and resources. And the Fish and Wildlife Service will finalize a revised mitigation policy within one year, including a policy for compensatory mitigation.

New Department of Interior Mitigation Policy

Consistent with the policy guidance in the Presidential Memorandum, today the Department of the Interior released its new Mitigation Policy, which institutionalizes the principles of landscape-scale, up-front mitigation of project impacts as directed in Secretary Jewell's first Secretarial Order and provides further guidance to the Department's bureaus on implementing the mitigation hierarchy in evaluating projects impacting the resources managed by the Department.

Importantly, the Mitigation Policy establishes a "no net loss" goal for applying the mitigation hierarchy to impacted resources and a "net benefit" goal where required or appropriate.

The policy also establishes clear direction for compensatory mitigation, intended to facilitate private investment in compensatory mitigation. Among other things, the policy establishes the following principles for compensatory mitigation:

- A preference for certain types of compensatory mitigation measures that are implemented in advance of project impacts; that maximize benefits to impacted resources; and that include measures to promote effectiveness, such as through performance-based credits.
- A direction to bureaus to apply equivalent standards to different mechanisms of compensatory mitigation, such as mitigation banks, in-lieu-fee programs and permittee-responsible mitigation.
- A requirement to establish clear implementation responsibilities and monitoring to ensure the effectiveness of compensatory mitigation.

As noted above, the Bureau of Land Management and Fish and Wildlife Service are also expected to issue further policy guidance on mitigation in the near future. The Fish and Wildlife Service is also developing a separate policy to facilitate and provide credits for private investment in advance conservation for species before a potential future listing under the Endangered Species Act.