Testimony of Christy Goldfuss, Managing Director of the Council on Environmental Quality, before the House Committee on Natural Resources, Subcommittee on Oversight and Investigations

Chairman Gohmert, Ranking Member Dingell, and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss this Administration's work on the Presidential Memorandum entitled, Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment, which I will refer to as the Mitigation PM.

Mitigation—the practice of avoiding, minimizing, and compensating for environmental impacts—and specifically this Presidential Memorandum, are good government actions to coordinate approaches across federal agencies to produce faster permitting times and stronger environmental outcomes. To develop the Mitigation PM, the White House, through The Council on Environmental Quality (CEQ), coordinated with the resource agencies to pull together commonly-accepted, high-level principles for mitigating impacts on natural resources. The result of that effort is the Presidential Memorandum issued on November 3, 2015. The Presidential Memorandum is not a regulation or new requirement. Rather it encourages agencies to, within their legal authorities, have consistent standards for mitigation and to institutionalize best practices that reduce the time and cost required to complete permitting and review.

This Administration is not the first to recognize the importance of advanced planning for mitigating adverse impacts to our environment. For more than 45 years, both Democratic and Republican administrations have sought to improve government policies to encourage development while simultaneously promoting strong environmental outcomes.

Mitigation as Good Government

This Administration has prioritized streamlining and reducing timelines for permitting across all agencies. The Administration has worked to create more certainty and predictability for businesses, while delivering better social and environmental outcomes in that process. The President's Executive Order No. 13604, "Improving Performance of Federal Permitting and Review of Infrastructure Projects" (EO) issued in March of 2012 and the Presidential Memorandum of August 31, 2011, "Speeding Infrastructure Development through more Efficient and Effective Permitting and Environmental Review" (PM), directed the Council on Environmental Quality (CEQ) to coordinate efforts to improve the performance of Federal agencies in reviewing major projects. In that role, CEQ has been working with agencies to institutionalize best practices that reduce the time and cost required to complete permitting and review.

The interagency dialogue convened around infrastructure permitting identified the need for consistent natural resource mitigation policies across agencies to permit projects effectively. Those discussions facilitated much of the development of the Mitigation PM and indicated consensus that the Administration should incorporate long-standing best practices of avoiding, minimizing, and compensating for natural resource damages across the Administration. In particular, the PM presents the opportunity to spur investment in conservation or wetland banking, so that compensatory mitigation is readily accessible to businesses who are permitting projects.

We know federal mitigation policies produce results. That's why, since 2008, businesses and agencies have proactively sited and designed projects to avoid impacting wetlands, When compensatory mitigation is required, the Army Corps of Engineers has found that the use of mitigation banks leads to more than a 50% improvement in permitting speed compared to situations where the permittees plan and implement their own off-site mitigation.

Development of the Presidential Memorandum on Mitigation

Building off of the infrastructure permitting conversations, CEQ facilitated a dialogue among agencies to develop the best practices across agency authorities and missions, with the goal of establishing compatible mitigation policies. The conversations aimed to harmonize agency efforts by coalescing around a set of common, well-accepted principles, which could be incorporated across different and, at times, conflicting agency policies. By analyzing lessons learned through the implementation of the infrastructure permitting EO and PM and the decades of implementing existing mitigation policies, agencies identified barriers associated with mitigation that, if addressed, could make infrastructure permitting work better. The result of those efforts is the Mitigation PM, which articulates a common policy through a set of core mitigation principles and common terms that will be interpreted and incorporated into agency policies.

Eight of the core principles identified through the process and outlined in the PM are:

- Using a mitigation hierarchy – to avoid, minimize, and only then compensate for any remaining impacts;
- Using large-scale plans, when available, and analysis to assist in identifying the impacts of proposed projects;
- Establishing a net benefit, or at least a no net loss goal for the management of natural resources;
- Giving preference to advance compensation mechanisms;
- Considering the extent to which beneficial environmental outcomes are demonstrably new;
- Increasing public transparency and establishing measurable performance standards;
- Addressing the long-term durability of mitigation measures; and
- Ensuring consistent implementation

In addition to streamlining policy and producing environmental benefits, an Administration-wide mitigation policy aims to drive the development of private markets to achieve natural resource policy objectives. Where the Administration can incentivize investment in our natural resources and set clear government standards to define when such investments have met their mark, we create the opportunity for the private sector to deliver public benefit potentially better and faster than government. As noted before, in cases where compensatory mitigation is needed and private sector wetland and stream mitigation banks can provide those offsets in advance, permitting can be 50% faster.

To encourage investment, the Administration has worked to recognize the risks that investors take and understand the importance of certainty and predictability in private investment. That is why the Mitigation PM's focus on quantifying impacts, giving a preference for mitigation in advance of impacts and producing consistent standards across federal agencies to create certainty for investors. The private sector's role in providing mitigation has grown under existing policies. Since 2008, the number of mitigation banks providing stream mitigation credits has more than doubled and the number of mitigation banks providing wetland credits has increased by 52%. The clarity the Mitigation PM provides will continue to expand opportunities for the private sector and deliver faster permitting for permittees.

Bipartisan History of Mitigation

As noted before, mitigation is not a new idea and mitigation policies have been implemented for decades by Republican and Democratic Administrations. The concept of mitigation dates back to the 1930s. In 1970, CEQ first defined mitigation in guidance and in 1978, CEQ established a comprehensive definition of mitigation, which continues to be used. In 1981, a wildlife mitigation policy was put in place by the U.S. Fish and Wildlife Service for all non-endangered wildlife and a White House task force directed agencies to take steps to streamline and speed Clean Water Act permitting. The 1982 amendments to the Endangered Species Act allowed non-federal applicants to impact listed wildlife after, creating Habitat Conservation Plans that avoided, minimized, and offset their impacts with beneficial actions elsewhere.

President George H.W. Bush declared a national goal of 'no net loss' of wetlands and later took steps to build that goal into our Clean Water Act policies, including action taken to establish a definition of 'no net loss.' Wetland mitigation policies continued to evolve through a series of actions under President Clinton.

George W. Bush's Administration launched a series of actions associated with wetland, endangered species, and public lands mitigation. An endangered species banking policy – a bank is a site, or suite of sites, where resources (e.g., wetlands, streams, and habitat) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts – was created in 2003. Today there are more than 140 approved endangered species banks.

Under the Clean Water Act in 2008, a joint rule from the Army Corps and EPA, which was directed by Congress, created similar high standards for different types of compensatory mitigation. With this compensatory mitigation policy, the regulations created a clear preference for restoration in advance of any harm to the environment, providing a faster and more effective means of permitting, dramatically expanding the private market of mitigation banks, and helping agencies meet their restoration goals. Today, there are more than 1,500 approved Clean Water Act mitigation bank sites across the country.

Conclusion

Decades after the first mitigation policies were created, we are continuing to find innovative ways to effectively avoid, minimize, and compensate for natural resource damages through market-based tools. The Presidential Memorandum continues the good government practice of mitigation by encouraging alignment of agencies' policies to provide a more streamlined process and reduce permitting time, while improving environmental outcomes.

Chairman Gohmert, Ranking Member Dingell, and Members of the Committee, I appreciate the opportunity to testify before you today and look forward to answering your questions.