

U.S. SENATE COMMITTEE ON

ENERGY & NATURAL RESOURCES

SENATOR MARIA CANTWELL, *Ranking Member*



@EnergyDems

Opening Statement Senator Maria Cantwell (D-Wash.) Hearing on Presidential Memorandum on Mitigation March 15, 2016

“Thank you, Madam Chair, and thank you for holding this hearing.

“Mitigation is a very general, but a fundamental aspect of environmental policy.

“Last November, the president issued a memorandum seeking more effective and consistent mitigation of negative environmental impacts from natural resource development.

“Building on work already completed by the Department of the Interior, the president directed five federal agencies to adopt clear, consistent mitigation plans. His memorandum incorporates lessons learned over several decades from existing mitigation programs about how to provide more predictability and entice more private investment into conservation.

“I applaud this important step forward. We want to work with everyone at the very early stages of implementation and modernizing mitigation.

“As the great conservationist Aldo Leopold said, ‘conservation will ultimately boil down to rewarding the private landowner who conserves the public interest.’

“Beginning early in the 20th century, Congress has included some kind of mitigation requirement in many statutes governing public lands and natural resources. It is bedrock law.

“But this was not always the case. For virtually all of the 19th century, federal law did not require corporations or government officials to mitigate the effects of mining, logging, drilling, emissions or construction.

“It’s not oversimplifying to say that this failure to mitigate is the reason we created national parks and national forests, and why we passed the National Environmental Policy Act, Clean Air Act and Clean Water Act.

“We also established the Abandoned Mine Lands program and created a Superfund because the failure to mitigate the effects of mines and factories had an impact on all of us. As we’ve learned in every state in this country – it is much more expensive to fix unmitigated



development after the fact, than it is to do the right thing upfront. I hope that we don't try to re-litigate all the environmental laws, but that we try to move forward.

"Today, before we hear from our witnesses, I want to emphasize two points.

"First, the Presidential Memorandum does not create any new mitigation requirements at any agency. It is merely guidance.

"At every agency, the legal requirements to mitigate harm to the environment were the same the day before the memorandum as the day after.

"In fact, the memorandum is peppered with caveats about how it should be applied. Phrases like 'to the extent allowed by an agency's authorities' and 'consistent with existing legal authorities' appears about 10 times in a five-page document. The president is acting well within the boundaries set by Congress.

"The second point I want to emphasize is that the concepts in the memorandum have a long history of bipartisan support.

"Beyond the general directive to make mitigation more consistent across federal agencies—and I believe to make sure that we are doing our stewardship—there are two significant directives. First, agencies should establish a 'net benefit' goal, or 'at minimum, no net loss.' Second, agencies should encourage advanced compensatory mitigation, including mitigation banking.

"It was George H.W. Bush who established the 'no-net loss' policy for wetlands in an executive order in 1989. Fifteen years later, it was George W. Bush who established the 'net-gain' policy for wetlands, moving beyond the goal of stemming the tide of habitat loss.

"Now, I don't think that monetizing nature is always the best way to manage it, but in many cases, creating incentives that bring private sector investments into the equation can lead to better outcomes. And this is old news.

"Many of our colleagues have worked for this. Sen. John Chafee, the chairman for many years of the Environment and Public Works Committee, was a champion of mitigation banking. I request unanimous consent to enter into the record his complete statement from a hearing almost 20 years ago on the topic. One of the things that he said was, 'one of the most gratifying things about mitigation banking is that it seems to enjoy such wide support.'



“What are some of the virtues? It can reduce the time and expense incurred by the permit applicant in working with the federal and state officials.

“Sen. Chafee was not alone. Sen. Kit Bond of Missouri said this about mitigation banking on the floor in 1999, ‘as a matter of policy, we have a great opportunity with mitigation banking to protect wetlands by making wetlands protection a profitable private enterprise.’

“Even Majority Leader Trent Lott felt the same way. He called mitigation banks ‘an incentive-based strategy for environmental protection that enjoys bipartisan support. Mitigation banks provide greater environmental benefits than piecemeal mitigation.’

“I understand this hearing today, but I think these issues have long been discussed by our former colleagues. They recognized that once regulators decide that a proposed mine, highway upgrade, oilfield exploration, wind farm or other development should move ahead, it is rarely a simple question how to mitigate the resulting damage. And for decades now, most federal agencies have given different answers.

“The result has been a patchwork of ad hoc mitigation that neither matches cumulative effects of development nor provides any predictability. We can do better.

“In the state of Washington, managing growth in the Puget Sound while keeping the sound itself healthy has often been challenging. We currently have 18 wetland mitigation banks, spread across 10 counties. These banks have helped my state improve on the patchwork approach.

“As we will hear in a moment, the Interior Department has begun to approach mitigation more systematically as well. The establishment of solar energy zones in the Southwest, while not a perfect process, is an early test of the concepts in the Presidential Memorandum.

“So, Madam Chair, I hope that will hear more from our witnesses today on this issue. And we need to continue to make sure that we are making improvements, so we are the good stewards that are required of us.

“Thank you.”

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