

Conversation Contents

Fwd: Question on mitigation and the Clean Air Act

Attachments:

/15. Fwd: Question on mitigation and the Clean Air Act/1.1 MITIGATION - SO 3349 partial response - THAlexander.docx

"Kruger, Jeremy" <jkruger@blm.gov>

From: "Kruger, Jeremy" <jkruger@blm.gov>
Sent: Thu Aug 17 2017 12:49:02 GMT-0600 (MDT)
To: Thomas Bartholomew <tbarthol@blm.gov>
Subject: Fwd: Question on mitigation and the Clean Air Act
Attachments: MITIGATION - SO 3349 partial response - THAlexander.docx

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----- Forwarded message -----

From: Alexander, Theresa <talexander@blm.gov>
Date: Fri, Apr 7, 2017 at 11:28 AM
Subject: Fwd: Question on mitigation and the Clean Air Act
To: Jeremy Kruger <jkruger@blm.gov>
Cc: McKinley Ben Miller <mbmiller@blm.gov>

Here is the addition I included in the write-up on Mitigation (mine is highlighted in yellow). Please edit, if required, and forward to Deborah. Thanks.

----- Forwarded message -----

From: Mead, Deborah <dmead@blm.gov>
Date: Wed, Apr 5, 2017 at 2:15 PM
Subject: Question on mitigation and the Clean Air Act
To: Theresa Alexander <talexander@blm.gov>

Theresa,

Jeremy referred me to you. It looks like you are away from your desk at the moment, hence this email.

We're drafting the response to SO 3349 to ASLM--the mitigation portion. Karen Kelleher ask that we briefly cite laws other than FLPMA under which mitigation can be required (and by mitigation I think she meant specifically compensation). Would you please take a look at the middle paragraph in the attached file and let me know if the CAA can be correctly included here, and if so could you fill in the blank that briefly describes under what circumstances?

Thank you,

Deblyn

Deborah (Deblyn) Mead
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MITIGATION

BLM has been using mitigation to address impacts to a wide variety of resources and land uses across the landscape for decades. While the use of avoidance and minimization is most commonly used, compensatory mitigation has also been used although not always consistently. BLM began working on formal mitigation policy in the early 2000s to provide clarity and guidance for the field and increase consistency in the implementation of mitigation, in particular, identifying, considering, and, as appropriate, requiring mitigation, to address impacts to resources from public land uses.

The BLM has included specific mitigation provisions in essentially all of its land use planning decisions, implementation decisions, strategies, and National Environmental Policy Act (NEPA) documents—before and after issuance of the 2015 Presidential Memorandum and Secretarial Order 3330. In accordance with NEPA, the BLM routinely evaluates mitigation measures in its Environmental Impact Statements and Environment Assessments on land use plans and specific projects. For example, the BLM included specific mitigation provisions in various approved land use planning decisions, including the Desert Renewable Energy Conservation Plan and the Greater Sage-Grouse land use planning decisions. Most of these mitigation provisions are avoidance and minimization measures that are often referred to as best management practices or included as stipulations in leases. Reclamation is a mitigation measure (i.e., “rectifying the impact by repairing, rehabilitating, or restoring the affected environment,” as defined by the Council on Environmental Quality in its regulations at 40 CFR 1508.20). Avoidance, minimization, and sometimes compensation are included as design features in proposed projects. Compensation may be necessary or even required by law under certain conditions (e.g., under Clean Water Act when restoration is required to meet no net loss of wetlands mandate, under the Endangered Species Act as a reasonable and prudent alternative to avoid jeopardizing the continued existence of a listed species, under the Clean Air Act to assess the impact that projects may have on air quality and to take actions to prevent air quality degradation, under the National Historic Preservation Act to, and under the Federal Land Policy and Management Act (FLPMA) to prevent unnecessary or undue degradation of public resources).

The BLM has developed or is in the process of developing regional mitigation strategies to facilitate responsible oil and gas development and solar energy development in designated Solar Energy Zones (SEZs). For example, in 2008, when BLM authorized natural gas development in the Pinedale Anticline in southwestern Wyoming, that record of decision was challenged on the grounds that it violated FLPMA’s prohibition on preventing unnecessary or undue degradation. The D.C. Circuit, however, found that BLM’s authorization complied with FLPMA, citing with approval BLM’s reliance on mitigation measures to reduce project impacts (*Theodore Roosevelt Conservation Partnership v. Salazar*, 661 F.3d 66; 398 U.S. App. D.C. 199 (2011)).