



HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: House Committee on Natural Resources Republican Members

From: Subcommittees on Water, Wildlife and Fisheries and Federal Lands; Kiel Weaver and Aniela Butler – Kiel.Weaver@mail.house.gov x58331 and Aniela@mail.house.gov x67736

Date: February 28, 2023

Subject: Legislative Hearing on H.R. ____ (Graves of Louisiana), the “Building United States Infrastructure through Limited Delays and Efficient Reviews (BUILDER) Act of 2023”

The Committee on Natural Resources will hold a legislative hearing on H.R. ____ (Graves of Louisiana), the “Building United States Infrastructure through Limited Delays and Efficient Reviews (BUILDER) Act of 2023”, on Tuesday, February 28, at 2:00 p.m. EST in 1324 Longworth House Office Building.

Member offices are requested to notify Madeline Bryant (madeline.bryant@mail.house.gov) by 4:30 p.m. on Monday, February 27, if their Member intends to participate in the hearing.

I. KEY MESSAGES

- Inefficient permitting reduces the value of the dollar invested, hurts U.S. competitiveness and security, and significantly reduces cumulative emissions reductions.
- The BUILDER Act would reform and streamline permitting, reduce litigation, and focus environmental reviews – helping reduce costs for Americans by speeding the development of more energy resources and innovation here at home while helping to lower global emissions.
- Committee Democrats are out of touch with the American public, their own conference, and their Democratic President when it comes to acknowledging that our burdensome and inefficient permitting process must be streamlined.

II. WITNESSES

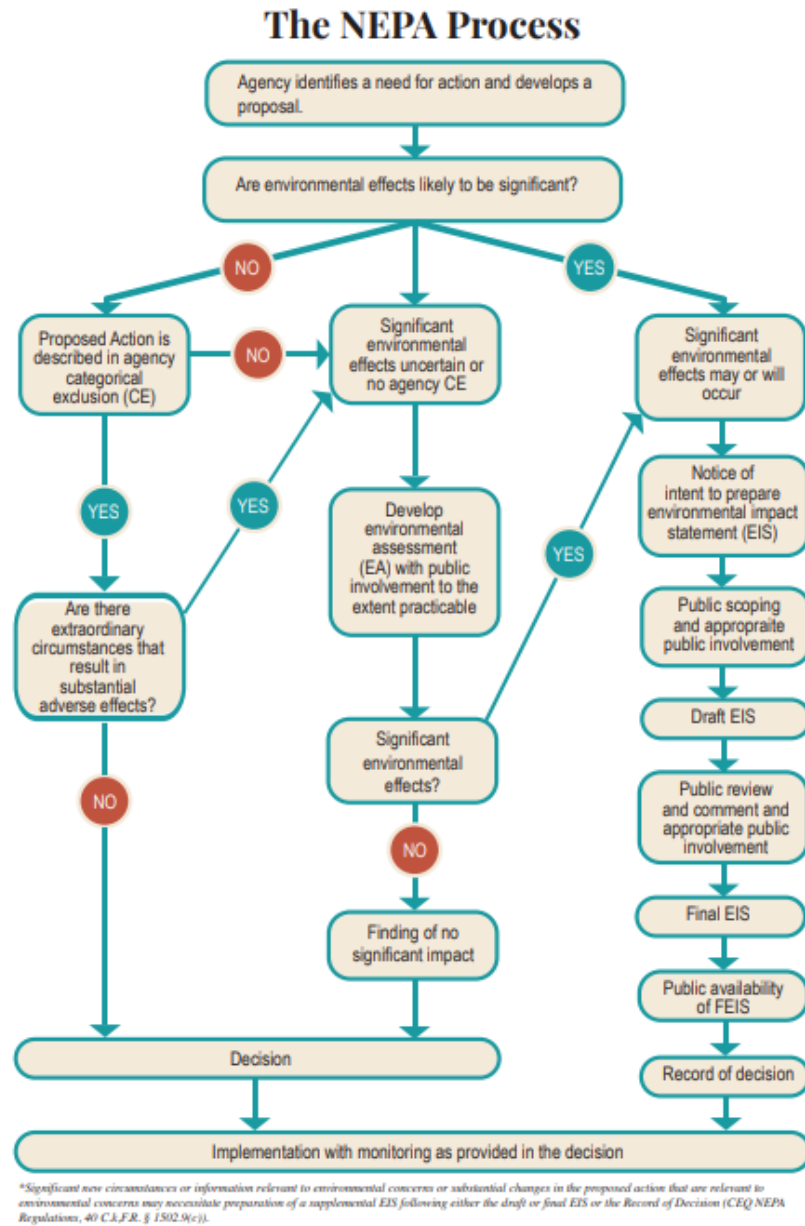
- **The Honorable Brenda Mallory**, Chair, White House Council on Environmental Quality, Washington, D.C. (*invited*)
- **Mr. John Carr**, Vice President, Dairyland Power Cooperative, La Crosse, Wisconsin
- **Mr. Brian Veerkamp**, President – Board of Directors, El Dorado Irrigation District, Placerville, California
- **Mr. Keith Pugh**, PE, PWLF, President, American Public Works Association, Asheville, North Carolina
- **Mr. John Beard, Jr.**, Founder, President and Executive Director, Port Arthur Community Action Network [Minority Witness]

III. BACKGROUND

Overview of NEPA

The National Environmental Policy Act of 1969 (NEPA) is a procedural statute that established parameters for assessing and publicly disclosing the environmental impact of all major federal actions and created the White House Council on Environmental Quality (CEQ).¹ Originally intended to ensure appropriate balance between protecting the environment and developing our natural resources, the NEPA process has instead morphed into project purgatory, extending reviews far beyond the time actually needed to construct projects.

Section 102(c) of NEPA directs federal agencies to produce “detailed statements” on major federal actions that “significantly [affect] the quality of the human environment” that contain the following information: (1) the environmental impact of the proposed action, (2) adverse environmental effects that cannot be avoided if the proposal is implemented, (3) alternatives to the proposed action, (4) “the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity,” and (5) any “irreversible and irretrievable” commitments of resources associated with the proposed action.² The “detailed statements” prepared by the agencies fall into one of three categories:



Source: Healthy Forests, Healthy Communities, 2020.

¹ Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982.

² *Id.*

- *Environmental Impact Statement (EIS)*: EISs are the most detailed and rigorous category of analysis for actions that are likely to have a significant environmental impact. Agencies must publish a Notice of Intent, conduct a public scoping process, publish a draft EIS for public comment for a minimum of 45 days, publish a final EIS with a 30-day waiting period, and ultimately issue a final Record of Decision (ROD). EISs can be supplemental if substantial changes are made to a proposed action or programmatic if they are evaluating more than a specific project.³
- *Environmental Assessment (EA)*: EAs are prepared when the environmental impacts of a proposed action are unknown. If an agency determines through an EA that a proposed action will have a significant impact on the environment, a subsequent EIS is prepared. If no significant impact is identified, a finding of no significant impact (FONSI) is issued, and a final decision is made.⁴
- *Categorical Exclusion (CE)*: CEs are used for proposed actions a federal agency has determined have no significant impact on the environment, either cumulatively or individually. Although its name may cause confusion, a CE (also referred to as a CATEX) “is a form of NEPA compliance; it is not an exemption from NEPA, but an exemption from requirements to prepare an EIS” or an EA.⁵ According to CEQ, “the use of categorical exclusions can reduce paperwork and save time and resources.”⁶

While well intentioned, ambiguity in the statute allowed NEPA to evolve into an extremely cumbersome and lengthy process for federal agencies that has delayed and increased costs for numerous projects ranging from transportation and infrastructure to forestry and energy development. Many key terms were not defined in NEPA, leaving subsequent CEQ regulations and litigation to determine whether proposed actions are considered “major,” “federal,” or whether they will have a significant effect or “foreseeable impacts” on the environment.⁷ CEQ finalized regulations in 1978 regarding the implementation of NEPA, but subsequently issued more than 30 guidance documents to federal agencies pertaining to NEPA compliance.⁸ Adding to this complexity is the fact that NEPA is the “most frequently litigated federal environmental statute,” adding to extreme project delays.⁹ This complex web of regulations has imposed significant time and cost burdens, with NEPA analysis adding an estimated average of \$4.2 million to project costs.¹⁰

³ EPA, “National Environmental Policy Act Review Process,” <https://www.epa.gov/nepa/national-environmental-policy-act-review-process#EIS>.
⁴ *Id.*

⁵ Bureau of Ocean Energy Management, “Categorical Exclusion Reviews,” <https://www.boem.gov/environment/environmental-assessment/categorical-exclusion-reviews>.

⁶ CEQ, “NEPA Practice,” <https://ceq.doe.gov/nepa-practice/categorical-exclusions.html>.

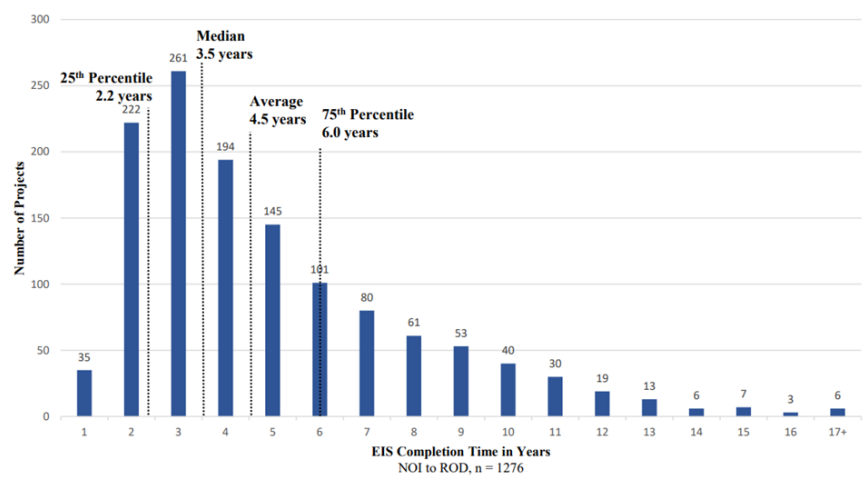
⁷ Congressional Research Service, “The Legal Framework of the National Environmental Policy Act,” *The Legal Framework of the National Environmental Policy Act*, IF11549.

⁸ CEQ, “Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act,” *Federal Register*, July 16, 2020, <https://www.federalregister.gov/documents/2020/07/16/2020-15179/update-to-the-regulations-implementing-the-procedural-provisions-of-the-national-environmental>.

⁹ Congressional Research Service, “National Environmental Policy Act: Judicial Review and Remedies,” Nina M. Hart and Linda Tsang, September 22, 2021, IF11932.

¹⁰ NEPA Modernization 101: An Outdated Environmental Law the is Impeding Clean Energy Developments, C3 SOLUTIONS, <https://www.c3solutions.org/policy-paper/nepa-modernization-101/>.

Distribution of EIS Completion Time (NOI to ROD)
All EISs Completed 2010-2018



Source: CEQ, 2020.

In 2020, the Trump administration took comprehensive action to update NEPA regulations for the first time since 1978 to help reduce the cost, time, and complexity of analyses. This involved establishing time and page limits for EISs and EAs, applying the One Federal Decision framework, and allowing applicants/contractors to assume a greater role in the preparation of EISs.¹¹ As part of a thorough review of previous NEPA practices, the Trump administration conducted an analysis of 1,276 EISs published in the Federal Register between 2010 and 2018 and determined that on average, EISs took 4.5 years to complete and one-fourth of all EISs took over 6 years to complete.¹² The review found the average page length of an EIS was 600 pages.¹³ This is double the length the Obama-Biden administration suggested for EISs in 2012, when they released guidance that EISs should normally be less than 150 pages and a final EIS for proposals of unusual scope or complexity should normally be less than 300 pages.”¹⁴

While NEPA-related cost overruns and delays impact every agency, the federal land management agencies have a particularly egregious track record of analysis paralysis. The Department of the Interior (DOI) ranked first among all federal agencies for the number of EISs undertaken and second in the average time taken to complete an EIS.¹⁵ Nearly every federal land and water management agency took longer to complete EISs than the average for federal agencies, including the Bureau of Reclamation (BOR) (5.32 years), National Park Service (NPS) (6.64 years), and U.S. Fish and Wildlife Service (USFWS) (4.75 years).¹⁶ The Bureau of Land Management (BLM) and U.S. Forest Service (USFS) took 4.36 years and 3.31 years, respectively; however, both agencies initiated more EISs than nearly every other agency (BLM recorded 143 while USFS recorded 299).¹⁷ These delays have stymied a host of important

¹¹ CEQ, “Final Rule: Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, August 2020, <https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/01/20200819-FINAL-Summary-of-NEPA-Rule.pdf>.
¹² CEQ, “ENVIRONMENTAL IMPACT STATEMENT TIMELINES (2010-2018),” June 12, 2020, https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Report_2020-6-12.pdf.
¹³ *Id.*
¹⁴ CEQ, “Memorandum for Heads of Federal Departments and Agencies, Nancy H. Sutley, March 6, 2012.
¹⁵ *Id.*
¹⁶ *Id.*
¹⁷ *Id.*

projects, impacting local communities, energy developers, ranchers, timber harvesters, and others who seek to utilize public lands for multiple use.

Unfortunately, the Biden administration initiated a rollback of the Trump administration's regulatory reforms in 2021, reverting to the 1978 regulations. On December 10, 2021, every House Natural Resources Committee Republican member signed a letter to CEQ opposing the rollback of these streamlined regulations, stating: "President Biden's decision to reverse reforms to [NEPA] will subject the American people to delayed projects and improvements when they need them most because of another misguided policy. Under the Trump administration, commonsense updates to NEPA helped streamline the federal government's decision-making process."¹⁸ The Senate later passed a bipartisan Congressional Review Act disapproval of the Biden administration's rule in August 2022.¹⁹

The Economic and Environmental Consequences of NEPA Weaponization and Delays

Energy Production and Development

Prolonged analysis under NEPA and constant litigation challenging the sufficiency of environmental documents have become significant barriers to all forms of energy development, causing uncertainty and deterring investment. The current permitting process is filled with repetitive, duplicative assessments and lengthy processing times, making it difficult for developers to plan, finance, and build projects efficiently.²⁰

For example, onshore oil and gas development must go through three rounds of review under the NEPA process before drilling can occur: 1) the Resource Management Plan phase, 2) the lease sale phase, and 3) the permitting phase.²¹ The Mineral Leasing Act requires BLM issue permits within 30 days, but the agency has a backlog of over 5,000 permits pending for, in some cases, over a year due to prolonged analysis under NEPA.²² Further, thousands of onshore oil and gas leases are currently tied up in litigation from environmental groups, meaning those leases cannot be developed by operators until those suits are resolved.²³

¹⁸ https://naturalresources.house.gov/uploadedfiles/westerman_et_al_to_mallory_re_nepa_revisions.pdf.

¹⁹ Brugger, Kelsey, "Senate approves resolution against Biden NEPA rules," E&E News, August 4, 2022, <https://www.eenews.net/articles/senate-approves-resolution-against-biden-nepa-rules/>.

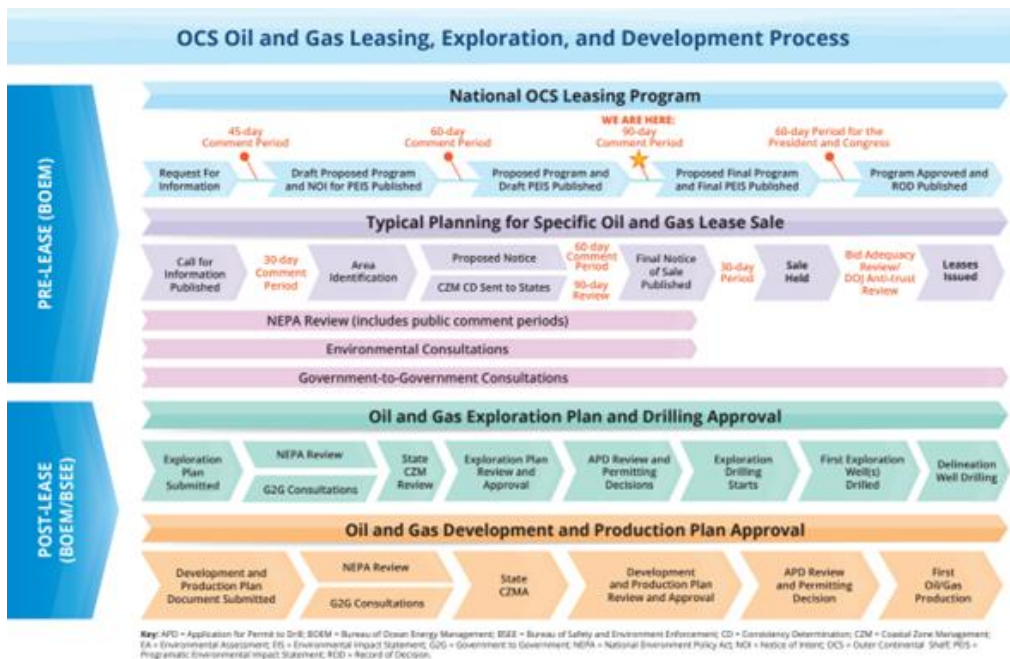
²⁰ Geothermal Rising, Letter to Secretary Debra Haaland, March 18, 2021, <https://geothermal.org/resources/geothermal-rising-letter-addressing-geothermal-permitting-public-lands>.

²¹ Bureau of Land Management. Land Use Planning and NEPA Compliance. <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/land-use-planning>.; Bureau of Land Management. Leasing. <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing>.

²² 30 U.S. Code § 226; Bureau of Land Management. Application for Permit to Drill Status Report. January 2023. <https://www.blm.gov/sites/default/files/docs/2023-02/FY%202023%20APD%20Status%20Report%20January.pdf>

²³ Testimony of Kathleen Sgamma before the Committee on Natural Resources. February 8, 2023.

Offshore oil and gas development must go through 4 rounds of NEPA review: 1) the National OCS Program phase (5-year-planning phase), 2) the lease sale phase, 3) the approval of the exploration plan and drilling permits, and 4) the approval of the development and production plan.²⁴ Litigation at the lease sale



The process to lease, develop, and explore for offshore oil and gas. The NEPA process, combined with other planning and approval processes, can make this process extremely time consuming and costly. **Source:** BOEM, no date.

phase has created significant uncertainty about the future of the offshore leasing program and delayed development of new leases in the Gulf of Mexico. For example, the Bureau of Ocean Energy Management (BOEM) held offshore lease sale 257 in November 2021, but a district court vacated the lease sale in January 2022 in an unprecedented decision, claiming the EIS prepared by BOEM was insufficient.²⁵ The Biden administration chose not to appeal this case, declining to defend their own work.²⁶

NEPA has also become a significant challenge for renewable energy development. According to a recent study by the R Street Institute, of all the Department of Energy's (DOE) active NEPA projects, 42 percent were related to either clean energy, transmission, or environmental conservation, while only 15 percent were related to fossil fuel.²⁷ R Street published a similar study for the BLM and found that 24 percent of their active NEPA documents were for renewable energy projects, and only 13 percent were for fossil fuels.²⁸

Hardrock mineral development requires hundreds of millions of dollars in upfront capital costs for exploration alone due to the distinct technical challenges associated with hardrock mineral exploration and development. In the United States, exploration is followed by almost a

²⁴ Department of the Interior. Bureau of Ocean Energy Management. OCS Leasing, Exploration and Development Process. <https://www.boem.gov/sites/default/files/documents/oil-gas-energy/national-program/OCS%20Leasing%20Process%20Diagram.pdf>
²⁵ Department of the Interior, Bureau of Ocean Energy Management, Final Notice of Sale, Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sale 257, <https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/Final-NOS-257.pdf>; Friends of the Earth, *et al.* vs. Debra Haaland, *et al.*, U.S. District Court for the District of Columbia, Memorandum Opinion, filed January 27, 2022, <https://subscriber.politicopro.com/eenews/?id=0000017e-a065-db8b-ab7f-f2ff5ec00000>.
²⁶ Rachel Frazin, "Biden administration won't appeal invalidation of offshore oil leases," The Hill, March 1, 2022, <https://thehill.com/policy/energy-environment/596334-biden-administration-declines-to-appeal-invalidation-of-offshore>.
²⁷ Addressing NEPA-Related Infrastructure Delays, Phil Rossetti, July 7, 2021, <https://www.rstreet.org/2021/07/07/addressing-nepa-related-infrastructure-delays/>
²⁸ *Id.*

decade of permitting under NEPA and other statutes before production can even begin.²⁹ It routinely takes over ten years and \$1 billion in start-up capital before a company produces any product in the U.S.³⁰ Prolonged delays under NEPA create significant uncertainty, deterring investment in the development of minerals needed for renewable energy and countless other high-tech applications.

Transportation and Transmission Infrastructure

NEPA is a major source of delays for transportation and infrastructure projects that require federal funding, permits, or approvals, including energy transmission projects as well as “roads, bridges, drinking water, wastewater, emergency management, sanitation, cybersecurity, and much more.”³¹ The United States spends approximately \$400 billion per year on infrastructure investments, meaning delays in this sector are particularly costly.³² Unfortunately, transportation projects are notoriously delayed by NEPA, with EISs conducted by the Federal Highway Administration (FHWA) taking an average of 7.37 years and 742 pages to complete.³³ In some cases, local communities have decided against applying for funding to complete vital infrastructure projects due to burdensome NEPA requirements, negatively impacting those communities.³⁴

As communities grow and the need for energy increases, so does the need to transmit electricity generation from its source to its destination. According to DOE, the United States will need to expand electricity transmission systems by 60 percent by 2030 and may need to triple those systems by 2050.³⁵ Last year, Congress passed the Investing in Infrastructure and Jobs Act (*Public Law 117 -58*), which included \$65 billion intended to invest in building and transforming energy transmission infrastructure.³⁶ However, electric utility companies continue to experience regulatory barriers, including NEPA, in upgrading existing and constructing new electricity transmission. According to the National Rural Electric Cooperative Association, “For years, electric cooperatives have encouraged policymakers to support solutions that modernize [NEPA] and facilitate coordinated, consistent, and timely agency decision-making. Lack of federal coordination, inconsistent processes, and protracted litigation have forced communities to endure costly project delays, some of which led to project cancelation, and threats to electric reliability.”³⁷

²⁹ Briefing from the National Mining Association. March 2019.

³⁰ Briefing from the National Mining Association. March 2019.

³¹ American Public Works Association, Letter RE: Proposed Rule on National Environmental Policy Act Implementing Regulations Revisions – Docket No. CEQ-2021-0002, November 19, 2021, <https://www.apwa.net/Library/APWA%20Comments%20on%2010.7%20NPRM%20on%20NEPA%20Implementing%20Regulations%20Revisions.pdf>.

³² Leah Brooks and Zachary Liscow, “Infrastructure Costs,” Brookings Institute, August 2019, https://www.brookings.edu/wp-content/uploads/2019/08/WP54_Brooks-Liscow_updated.pdf.

³³ *Id.*

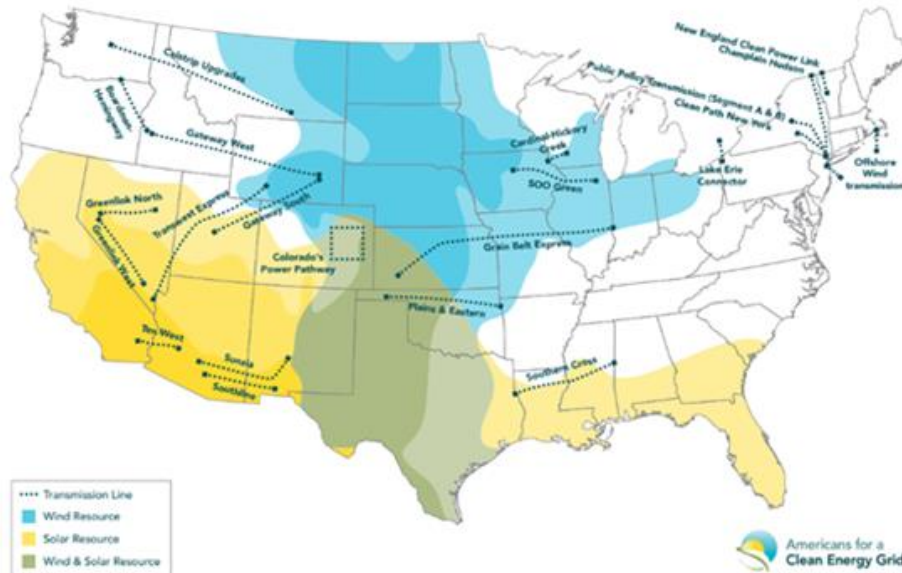
³⁴ *Id.*

³⁵ Queued up... but in need of transmission. Energy.gov. (n.d.). Retrieved February 16, 2023, from <https://www.energy.gov/policy/queued-need-transmission>.

³⁶ The United States Government. (2021, November 6). *Fact sheet: The Bipartisan Infrastructure Deal*. The White House. Retrieved February 16, 2023, from <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/06/fact-sheet-the-bipartisan-infrastructure-deal/>.

³⁷ Relations, A. M. (2022, May 11). *Biden's "Permitting action plan" falls short of needed reforms*. America's Electric Cooperatives. Retrieved February 16, 2023, from <https://www.electric.coop/bidens-permitting-action-plan-falls-short-of-needed-reforms>

Figure 1. Map of Proposed Projects



22 high-voltage transmission projects, including the Cardinal Hickory Creek Electric Transmission Line Project, that could “begin construction in the near term if more workable transmission policies are enacted.”

Source: Americans for a Clean Energy Grid, 2021.

An example of how existing federal regulations effect new projects is the Cardinal Hickory Creek Electric Transmission Line Project (CHC), a proposed 102-mile 345kv electric transmission line from Dubuque County, Iowa to Dane County, Wisconsin. CHC is one of 22 shovel-ready transmission projects that Americans for a Clean Energy Grid have identified as projects that could create 1.24 million jobs and increase solar and wind generation by 50 percent if the process for approving transmission lines was streamlined and expedited.³⁸ The CHC would improve grid reliability in the region, help bring over 100 renewable energy projects online and is expected to reduce regional carbon dioxide emissions by approximately 150,000 to 1.2 million tons per year, according to project proponents.³⁹ The CHC has been going through the federal and state permitting process since 2014 and required consultations with USFWS, the U.S. Department of Agriculture’s Rural Utilities Service (RUS), and U.S. Army Corps of Engineers.⁴⁰ Approximately 1.3 miles of the 102-mile line crosses federal lands at the Upper Mississippi River National Wildlife and Fish Refuge (Refuge). USFWS initially approved the CHC crossing through the Refuge, in part because the CHC line would replace two other existing transmission lines that run through the refuge and reduce the number of structures in the refuge by half. After the RUS, the lead federal agency, issued the ROD, an environmental group filed suit on the USFWS refuge crossing, citing alleged NEPA insufficiencies.⁴¹ The lawsuit (*National Wildlife Refuge Association, et al. v. Rural Utilities Service, et al.*, No. 22-1347) is currently pending in the U.S. Court of Appeals for the Seventh Circuit.⁴² As a result, the CHC has been effectively

³⁸ Goggin et al., “TRANSMISSION PROJECTS READY TO GO: PLUGGING INTO AMERICA’S UNTAPPED RENEWABLE RESOURCES,” Americans for a Clean Energy Grid,” April 2021, <https://cleanenergygrid.org/wp-content/uploads/2021/09/Transmission-Projects-Ready-to-Go.pdf>.

³⁹ <https://www.cardinal-hickorycreek.com/utilities-file-appeal-in-federal-nepa-case-for-cardinal-hickory-creek-transmission-line-project/>
⁴⁰ Regulatory approval. Cardinal. (n.d.). Retrieved February 16, 2023, from <https://www.cardinal-hickorycreek.com/regulatory-approval/>

⁴¹ <https://www.cardinal-hickorycreek.com/utilities-file-appeal-in-federal-nepa-case-for-cardinal-hickory-creek-transmission-line-project/>

⁴² Learner, H. A. (2022, April 26). *Nat'l Wildlife Refuge Ass'n v. Rural Utils. serv.* Legal research tools from Casetext. Retrieved February 16, 2023, from <https://casetext.com/case/natl-wildlife-refuge-assn-v-rural-utills-serv-9>

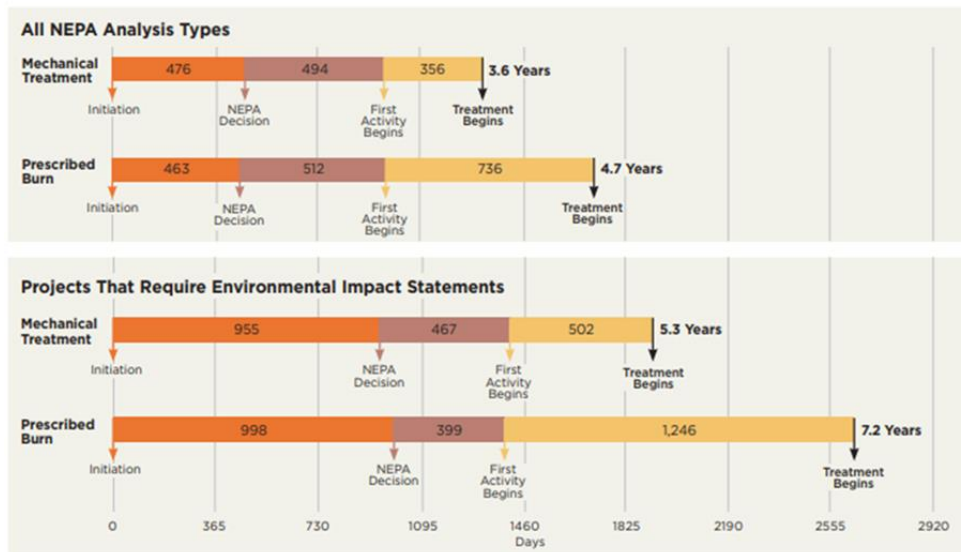
halted. A representative from Dairyland Power Cooperative, one of the CHC sponsors, will testify at this hearing.

Forest Health and Wildfires

For decades, burdensome NEPA regulations and frivolous lawsuits filed by extreme environmentalist organizations dramatically limited the pace and scale of active forest management projects, resulting in overgrown, fire-prone federal forests. According to a report from the Property and Environment Research Center (PERC), it takes the U.S. Forest Service (USFS) an average of 3.6 years to begin mechanical treatments and 4.7 years to begin a prescribed burn under NEPA.⁴³ This timeline dramatically increases depending on the level of analysis conducted, with EISs taking 5.3 years and 7.2 years for mechanical treatments and prescribed burns, respectively.⁴⁴ After analyzing more than 30,000 NEPA decisions made by USFS, PERC found that:

The odds that a project with an EA or EIS designation will be completed quickly are low. While almost 85 percent of Forest Service CE projects are approved within one year, this is true for only 42 percent of EAs and only about 20 percent of EISs. Because forest restoration projects are more likely, on average, to require an EA or EIS, they are also less likely to be completed quickly.⁴⁵

Average Time to Begin U.S. Forest Service Fuel Treatments



Source: PERC, 2022.

Despite the fact that Congress created several forest management CEs for the agency, USFS often fails to use these streamlined authorities as they seek to “bullet proof” NEPA documents to avoid potential litigation threats. According to PERC, “between 2001 and 2008, the Forest Service was litigated more than any other federal

agency under NEPA.”⁴⁶ As a result, in 2020, USFS published more CEs in the Federal Register

⁴³ PERC, “Does Environmental Review Worsen the Wildfire Crisis”, Eric Edwards, Sara Sutherland, June 14, 2022, <https://perc.org/2022/06/14/does-environmental-review-worsen-the-wildfire-crisis/>.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

than all but two other agencies and had the lowest share of projects classified as CEs during the first term of the Obama-Biden administration among all agencies.⁴⁷

Instead of utilizing forests as tools to address climate change, the cumbersome and lengthy NEPA process has made federal forests contributors to climate change through the release of millions of metric tons of carbon due to wildfire every year.⁴⁸ A lack of active management due to analysis paralysis, combined with historic drought conditions and rising temperatures, has resulted in 1 billion acres across the United States as being at risk of wildland fire.⁴⁹ Last year, wildfires burned 7.6 million acres across the country and in the past 10 years, wildfires have destroyed 71.8 million acres.⁵⁰ In 2020, the wildfires in California alone emitted roughly 112 million metric tons of carbon dioxide, the equivalent of 24.2 million passenger cars driving in a single year.⁵¹ When U.S. travel came to a near halt after COVID-19, the wildfires in California and Oregon alone wiped out all the resulting US clean air gains.⁵² Recent USFS data show forest carbon pools offset the equivalent of approximately 12.9 percent (768.1 MMT CO₂ Eq.) of all greenhouse gas emissions in 2020. However, that year, 7 Western states (Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming) saw emissions increases due to tree mortality related to wildfire.⁵³ These substantial emissions in the West from wildfire were “particularly true on forest land within the National Forest System” due to continued mismanagement.⁵⁴

⁴⁷ *Id.*

⁴⁸ Murphy, Zoëann, and Chris Mooney. "Montana's Forests Have Swung from Pulling Carbon Dioxide out of the Air to Putting It Back Again." *The Washington Post*. January 29, 2019. Accessed January 31, 2019. https://www.washingtonpost.com/graphics/2019/national/gone-in-a-generation/forest-climate-change.html?utm_term=.8d7a6e691000.

⁴⁹ Chris French, Testimony before the Senate Energy and Natural Resources Committee, 6/24/21, <https://www.energy.senate.gov/services/files/AAF7DF40-2A47-4951-ADA4-4B124AD3894F#:~:text=In%20the%20United%20States%2C%20there.high%20risk%20of%20wildland%20fire>.

⁵⁰ National Interagency Fire Center, "Wildfires and Acres," <https://www.nifc.gov/fire-information/statistics/wildfires>.

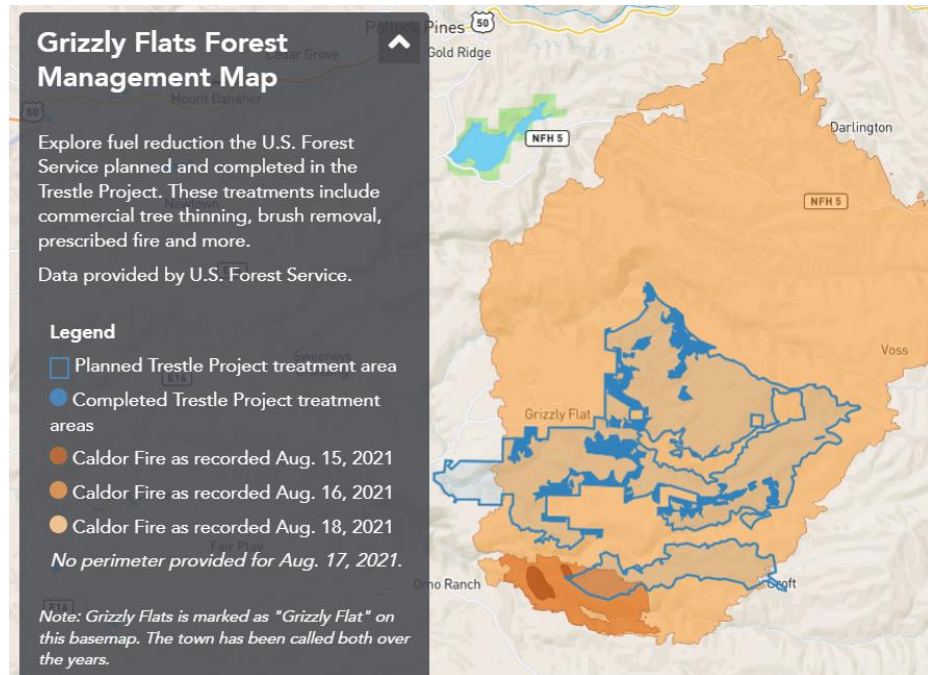
⁵¹ "California's 2020 Wildfire Emissions Akin to 24 Million Cars." *Bloomberg Law*, <https://news.bloomberglaw.com/environment-and-energy/californias-2020-wildfire-emissions-akin-to-24-million-cars>.

⁵² Dormido, Hannah, et al. "Smoke from Wildfires Wiped out the U.S. Pandemic-Related Clean Air Gains in 2020." *The Washington Post*, WP Company, 17 Mar. 2021, www.washingtonpost.com/climate-environment/2021/03/17/air-pollution-us-wildfires/.

⁵³ USFS, "Greenhouse Gas Emissions and Removals From Forest Land, Woodlands, Urban Trees, and Harvested Wood Products in the United States, 1990–2020," Northern Research Station, November 2022.

⁵⁴ *Id.*

While opponents of NEPA streamlining make unsubstantiated claims that changes to the law will completely bypass public input, NEPA-related delays and cancelations of forest management projects have disproportionately affected local communities who have called for proactive management before catastrophic wildfires. A prime example of this is Grizzly Flats, a community in California that was



Source: CapRadio, 2022.

completely decimated by the Caldor Fire in 2021. Despite USFS warning the community in the early 2000's that a catastrophic wildfire could potentially destroy Grizzly Flats, the Forest Service delayed work on the Trestle Forest Health Project around the town for decades. Originally scheduled to be completed the year before the Caldor Fire ignited, USFS ultimately only completed 14 percent of the planned 15,000-acre project.⁵⁵ According to "wildfire experts, career firefighters, former Forest Service officials and residents ... Grizzly Flats would have stood a better chance of surviving the Caldor Fire if the Trestle Project had been completed."⁵⁶ A major contributor to this delay was NEPA, as the only 15,000-acre project required a full EIS and was objected to by environmentalists "spreading 'agenda-driven science' that promotes specific unsupported narratives and avoids data to back up their litigious claims."⁵⁷ These delays came at the expense of the local community, which repeatedly asked the Forest Service to move more expeditiously to complete the project. In 2015, the Grizzly Flats Fire Safe Council (Council) wrote: "The most aggressive treatment of the [Trestle Project's] fire fuels is critical to preventing the 'loss of our community ... Everything that can be done, must be done."⁵⁸ Kathy Melvin, a member of the Council, lost her home in the Caldor Fire and stated: "The history of the Forest Service, in the time that we lived there, was that everything took forever ... I wish they had done more."⁵⁹ Republican witness Brian Veerkamp of the El Dorado Irrigation District will discuss Grizzly Flats and the effect of weaponizing NEPA on forest health and catastrophic wildfires.

⁵⁵ Rodd, Scott, "Stalled U.S. Forest Service project could have protected California town from Caldor Fire destruction," CapRadio, August 16, 2022, <https://www.capradio.org/articles/2022/08/16/stalled-us-forest-service-project-could-have-protected-california-town-from-caldor-fire-destruction/>.

⁵⁶ *Id.*

⁵⁷ Sacramento Bee Editorial Board, "Rogue environmentalists put Californians in harm's way by blocking forest thinning projects," Sacramento Bee, October 21, 2021.

⁵⁸ *Id.*

⁵⁹ *Id.*

Drought

With much of the West experiencing several years of drought conditions, there has been heightened interest expressed for the need for additional water infrastructure. NEPA implementation has a direct impact on the development of critical water supply projects. Obtaining permits typically involves many agencies, each with specific requirements, timelines, and procedures that can result in an expensive and inefficient process. Throughout the West, there are several examples of water projects that have taken decades to get through the convoluted and complex federal regulatory process.

One such project is Sites Reservoir, a proposed off-stream water storage facility northwest of Sacramento, California. Sites Reservoir is anticipated to be operational around 2030, but its origins date to the 1960s.⁶⁰ While this project has had several starts and stops, it has been continuously studied since the early 2000's, with the Final Environmental Impact Report/EIS expected to be released in Spring 2023.⁶¹ The NEPA requirement to analyze project alternatives has been a leading factor delaying many federal water projects, including the Sites Reservoir. BOR and the State of California investigated 52 different project alternatives for Sites Reservoir.⁶² The BUILDER Act helps address this concern by ensuring that only “a reasonable number of alternatives to the proposed agency action that are technically and economically feasible, are within the jurisdiction of the agency, meet the purpose and need of the proposed agency action” are completed.

As another example, the Little Snake Supplemental Irrigation Supply Project in Wyoming was built in less than two years but took more than fourteen years to permit.⁶³ The federal permitting agency, the U.S. Army Corps of Engineers, changed the project purpose from a project planned for future agricultural, municipal, and domestic uses to a narrow “late season irrigation water supply”.⁶⁴ This change conflicted with the Wyoming law that authorized funding for the project and resulted in a stalled process. In the end, the project was only able to move forward under its newly defined narrow purpose. However, that reservoir delivers water that benefits multiple uses, not just irrigation.⁶⁵

The often excessive and unrealistic alternative analysis done by agencies makes project approval often cost prohibitive and procedurally burdensome. As described by Mr. Pat O’Toole, President of the Family Farm Alliance: “By the time project applicants approach federal agencies for permits to construct multi-million-dollar projects they have already invested extensive

⁶⁰ In the 1960s, Reclamation evaluated construction of a 1.2 million-acre-foot Sites Reservoir. California Department of Water Resources (DWR). Bulletin 76-81: State Water Project – Status of Water Conservation and Water Supply Augmentation Plans. 1981.

https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/comments102612/desjardins/bulletin76-81.pdf

⁶¹ DWR received authorization to study Sites Reservoir in 1996 under State of California Proposition 204, The Safe, Clean, Reliable Water Supply Act. The Bureau of Reclamation was authorized by Congress through the California Bay-Delta Program (CALFED, Public Law 108-361, Water Supply, Reliability, and Environmental Improvement Act).; <https://sitesproject.org/environmental-review/>.

⁶² Statement of Thad Bettner, General Manager, Glenn-Colusa Irrigation District before the Subcommittee on Water and Power. Oversight Hearing: “Water for our future and job creation: examining regulatory and bureaucratic barriers to new surface storage infrastructure.” February 7, 2012. <https://www.govinfo.gov/content/pkg/CHRG-112hhrg72805/pdf/CHRG-112hhrg72805.pdf>

⁶³ O’Toole, Pat, President, Family Farm Alliance before the Subcommittee on Water and Power. Oversight Hearing: “Water for our future and job creation: examining regulatory and bureaucratic barriers to new surface storage infrastructure.” February 7, 2012.

<https://www.govinfo.gov/content/pkg/CHRG-112hhrg72805/pdf/CHRG-112hhrg72805.pdf>

⁶⁴ *Id.*

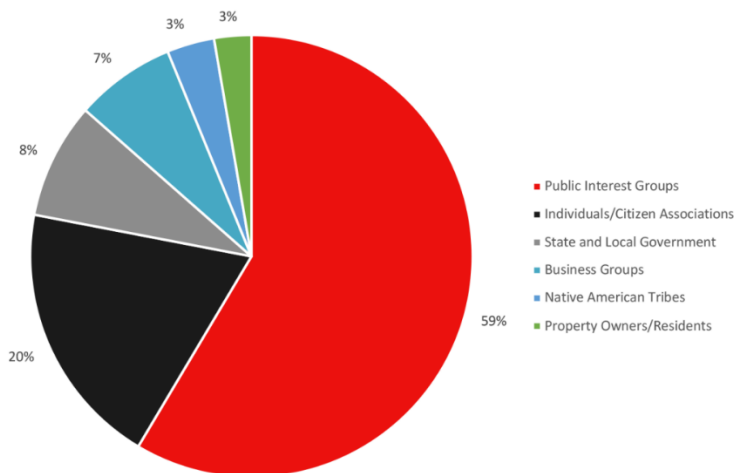
⁶⁵ O’Toole, Pat, President, Family Farm Alliance before the Subcommittee on Water and Power. Legislative Hearing On H.R. 4419 “Bureau of Reclamation and Bureau of Indian Affairs Water Project Streamlining Act”. November 30, 2017.

<https://docs.house.gov/meetings/II/II13/20171130/106710/HHRG-115-II13-Wstate-OTooleP-20171130.pdf>

financial resources toward analyzing project alternatives to determine which project is best suited to their budgetary constraints. However, current procedure dictates that federal agencies formulate another list of project alternatives which the applicant must assess, comparing potential impacts with the preferred alternative. Some of these alternatives may often conflict with state law or are simply not implementable in the first place; yet valuable resources are required to be expended to further study these additional alternatives in the federal permitting process.”⁶⁶

Bipartisan Support for Streamlining NEPA

FIGURE 5: NEPA LITIGATIONS BY PLAINTIFF TYPE 2001-2013



Source: R Street Institute, 2021.

Committee Democrats are out of touch with the American public, their own conference, and their Democratic President when it comes to streamlining NEPA. To deploy the types of clean energy projects Democrats support, these projects must undergo the same permitting reviews and environmental assessments as traditional fossil fuel development, forest management, or water storage projects. There is broad, bipartisan support for streamlining NEPA and a growing consensus that to achieve the climate goals Democrats purport to champion, streamlining the

permitting process will be essential. In fact, even the Select Committee on the Climate Crisis Democrats acknowledged that “given the urgency of deploying clean energy infrastructure to meet near-term climate goals, a comprehensive strategy for efficient, effective permitting is required.”⁶⁷ While some Committee Democrats will broadly claim that *any* NEPA streamlining (either programmatic or parochial) will somehow cut out local voices, data from NEPA lawsuits ranging from over a decade show that most litigation is filed by public interest groups, not members of the public.⁶⁸

Democrats are increasingly recognizing that updating the permitting and environmental review process is the linchpin of accomplishing their climate goals. U.S. Senator Joe Manchin (D-WV) publicly pushed for streamlining the permitting process at the end of 2022. U.S. Senator Tina Smith (D-MN) supported this effort, saying “looking at how to reform or improve the permitting process does not mean you are reducing environmental standards.”⁶⁹ U.S. Senator Martin Heinrich (D-NM) concurred, saying “I’ve got enough experience with these big

⁶⁶ *Id.*

⁶⁷ Majority Staff Report, “Solving the Climate Crisis 2022: Accomplishments and Additional Opportunities,” House Select Committee on the Climate Crisis, 117th Congress, <https://docs.house.gov/meetings/CN/CN00/CPRT-117-CN00-D001.pdf>.

⁶⁸ Rossetti, Philip, “ADDRESSING NEPA-RELATED INFRASTRUCTURE DELAYS,” R Street Institute, July 2021, https://www.rstreet.org/wp-content/uploads/2021/07/FINAL_RSTREET234.pdf.

⁶⁹ Dayen, David, “The September Issues,” September 6, 2023, <https://prospect.org/power/the-september-issues/>.

engineering projects and transmission lines to know that right now, it takes too long to go through this process.”⁷⁰ House Natural Resources Committee Democrat Debbie Dingell (D-MI) recently stated that, “I look at permitting reform as a tool to combat climate change, strengthen our economy, and protect our national security.”⁷¹ During a House Energy and Commerce hearing, Rep. Scott Peters (D-CA) stated:

Ironically, many laws intended 50 years ago to protect the environment could undermine us. Some claim that NEPA isn’t the problem or that it can’t be touched. As someone who practiced law in this field, I don’t believe we can sustain project by project litigation on climate initiatives and achieve climate action with the money and time we have. These excessive process requirements effectively inflict a punitive tax on clean energy. And fixing laws to serve the public good is our job. We can achieve high environmental standards with less time. NEPA was signed into law in 1970. 165 of our Congressional colleagues were not yet born. We are as far in time from 1970 as 1970 was from 1917. This is an old law, and we are charged to update it for our times. And that’s OK. It’s not sacred text. It didn’t come from Moses on stone tablets.⁷²

There have also been consistently bipartisan votes to streamline NEPA, including: a bill to expedite computer-related projects under the FAST Act (303-89 House and unanimous Senate passage), and the 2014 and 2018 Farm Bills (251-166 House and 68-32 Senate passage and 369-47 House and 87-13 Senate passage, respectively); to name just a few.⁷³

The BUILDER Act

The BUILDER Act addresses the delays, cost increases, and project cancellations discussed above by modernizing outdated NEPA provisions to make project reviews more efficient, reduce project costs, spur economic recovery, and rebuild America. The bill would lower costs by providing direction to agencies to reduce delays associated with the environmental review process, imposing practical and predictable project review timelines, and clarifying the necessary scope of review. The bill would also provide certainty regarding the duties of federal, state, tribal and local governments when conducting environmental reviews and emphasize early coordination and collaboration with the project sponsor. Further, the bill would reduce frivolous litigation by requiring litigants to have participated meaningfully in the NEPA process before filing suit and providing a reasonable timeline of 120 days to file those lawsuits.

⁷⁰ St. John, Jeff, “Manchin’s permitting-reform bill splits Dems, pro-renewables groups,” Canary Media, September 23, 2022, <https://www.canarymedia.com/articles/transmission/manchins-permitting-reform-bill-splits-dems-pro-renewables-groups>.

⁷¹ Remarks at HNRC Hearing on “Unleashing America’s Energy and Mineral Potential,” February 8, 2023, <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=412760>.

⁷² Remarks as prepared for Rep. Scott Peters, January 31, 2023, “American Energy Expansion: Strengthening Economic, Environmental, and National Security.”

⁷³ P.L. 117-173; P.L. 113-79, P.L. 115-334.

IV. MAJOR PROVISIONS & ANALYSIS

SEC. 1. Short Title.

- The “Building United States Infrastructure through Limited Delays and Efficient Reviews Act of 2023” or the “BUILDER Act of 2023”.

SEC. 2. National Environmental Policy Act of 1969.

- *Statutory Clarity and Section 102 of NEPA.* Amends NEPA to clarify and narrow agency considerations to “reasonably foreseeable environmental impacts with a reasonably close causal relationship to the proposed action,” “reasonably foreseeable adverse environmental effects,” and “a reasonable number of alternatives to the proposed action that are technically and economically feasible, are within the jurisdiction of the agency, meet the purpose and need of the proposed action, and, where applicable, meet the goals of the applicant.”
- *Interagency Coordination and Timely Reviews.* Codifies key elements of the One Federal Decision Framework, including development by the lead agency of a joint schedule, procedures to elevate delays or disputes, preparation of a single EIS and joint ROD to the extent practicable, reasonable time limits for environmental reviews, reasonable page limits for environmental documents and paper reduction measures.
- *NEPA Thresholds and Streamlining.* Includes threshold considerations for agencies assessing whether NEPA applies to a proposed activity or is otherwise fulfilled through another statute. This recognizes that the application of NEPA by Congress and the courts has evolved over the last four decades in light of numerous other statutory requirements implemented by federal agencies. The bill also includes provisions facilitating adoption of categorical exclusions where the action is substantially the same as an action previously categorically excluded by another agency.
- *Project Sponsor Preparation.* Permits a project sponsor to assist agencies in conducting environmental reviews to help speed up the process and to resolve issues without taking control or authority away from the lead agency.
- *Major Federal Action.* Amends NEPA and clarifies that a major federal action is limited to those which are “subject to Federal control and responsibility.” It establishes a threshold consideration that is independent of the significance of impacts that may follow. It includes examples of actions that are not “major Federal actions.”
- *Transparency and Data.* To address data gaps relating to the administrative costs of NEPA compliance, this bill requires agencies to provide the estimated total cost of preparing an EIS, including full-time equivalent personnel hours, contractor costs, and other direct costs.

- *Scientific Accuracy and Modern Technology.* Includes provisions requiring agencies to use reliable existing data sources and clarifies NEPA does not require undertaking new scientific and technical research to inform analyses.
- *Recognition of the Sovereign Rights, Expertise of Tribes.* To ensure consultation with tribal entities and reaffirm existing NEPA practice to coordinate or consult with affected tribal governments, this bill amends NEPA to add “tribal” to the phrase “state and local” throughout the statute and the addition of new sections.
- *Judicial Review.* Requires claimants to have participated meaningfully in the NEPA process before filing suit and provides a reasonable timeline of 120 days to file those lawsuits. Claimants must have submitted a comment during the comment period for the EIS and in a sufficient manner to allow the agency to remedy the problem. A claimant may only sue on matters related to that comment and claims must concern alternatives or analysis contemplated in the environmental document. The courts may not vacate a proposed agency action if there is another remedy available to address the court’s concerns.

V. COST

A formal Congressional Budget Office (CBO) cost estimate has not yet been completed.

VI. ADMINISTRATION POSITION

The administration’s position is unknown at this time. In part, this is due to conflicting and contradictory messages from the Biden administration. While the administration acted to undo the Trump administration’s NEPA streamlining efforts, President Biden later supported Senator Manchin’s permitting reform efforts, stating:

Today, far too many projects face delays — keeping us from generating critical, cost-saving energy needed by families and businesses across America. That’s an impediment to our economic growth, for creating new jobs, and for lessening our reliance on foreign imports. Senator Manchin’s legislation is an important step toward unlocking the potential of these new energy projects to cut consumer costs and spur good-paying jobs. It is critical to improve the permitting process so we can produce and deliver energy to consumers in all parts of the country.⁷⁴

VII. EFFECT ON CURRENT LAW

[The BUILDER Act](#)

⁷⁴ The White House, “Statement from President Joe Biden on Senator Joe Manchin’s Permitting Reform Proposal,” December 15, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/12/15/statement-from-president-joe-biden-on-senator-joe-manchins-permitting-reform-proposal/>.