H.R. ____, "BUILDING UNITED STATES INFRASTRUCTURE THROUGH LIMITED DELAYS AND EFFICIENT REVIEWS ACT OF 2023"

LEGISLATIVE HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

Tuesday, February 28, 2023

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Tuesday, February 28, 2023

U.S. House of Representatives

Committee on Natural Resources

Washington, DC

The Committee met, pursuant to notice, at 2:16 p.m., Room 1324, Longworth House Office Building, Hon. Bruce Westerman [Chairman of the Committee] presiding.

Present: Representatives Westerman, Lamborn, McClintock, Gosar, Graves, LaMalfa, González-Colón, Fulcher, Stauber, Curtis, Tiffany, Boebert, Bentz, Moylan, Collins, Luna, Duarte, Hageman; Grijalva, Huffman, Levin, Porter, Leger Fernández, Peltola, Hoyle, Kamlager-Dove, Magaziner, and Lee.

Also present: Representative Van Orden.

The CHAIRMAN. The Committee will come to order.

Without objection, the Chair is authorized to declare a recess of the Committee at any time.

The Committee is meeting today to hear testimony on the BUILDER Act of 2023, offered by Representative Garret Graves of Louisiana.

I ask unanimous consent that the gentleman from Wisconsin, Mr. Van Orden, be allowed to sit with the Committee and participate in today's hearing from the dais.

Without objection, so ordered.

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member. I therefore ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted in accordance with the Committee Rule 3(b).

Without objection, so ordered.

I now recognize myself for an opening statement.

STATEMENT OF THE HON. BRUCE WESTERMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

The CHAIRMAN. Thank you all for joining us here today to talk about the need for permitting reform. This is a very pressing issue that affects every aspect of our society.

And I am guessing that, if you polled a random sample of our constituents, many of them wouldn't be able to define permitting reform, or wouldn't even know what the National Environmental Policy Act, often referred to as NEPA, is. But I do know that every single person in the United States, regardless of their zip code, has relied on infrastructure, energy, or other projects that underwent NEPA reviews. And all too often I know that Americans have faced bureaucratic nightmares and decades-long delays in attempts to build roads and bridges in their communities or access critical mineral resources.

The Mineral Leasing Act requires BLM issue onshore drilling permits within 30 days, but the agency has a backlog of more than 5,000 permits pending, due to prolonged analysis under NEPA. The Cardinal Hickory Creek Electric Transmission Line Project is one of 22 shovel-ready transmission projects identified as projects that could create 1.2 million jobs and increase solar and wind generation by 50 percent. The project has been going through review since 2014, and remains halted due to a wildlife refuge lawsuit, despite the fact that the project would actually reduce the number of transmission lines and structures in the refuge by half.

Energy isn't the only affected sector. The Sites Reservoir is a proposed offstream water storage facility northwest of Sacramento, and has been under continuous review since 2000, 23 years of continuous review.

NEPA requirements have been a leading factor in the constant delays, all while Western drought grows increasingly worse. That is why we need to change, and we need it now. NEPA has been a valuable tool, but it is not working for our 21st century needs. It is time to update and modernize it, making it a powerful force for good, rather than a weapon by which environmental groups block projects.

So, first we have to define our terms. What do we mean when we say permitting reform? The current permitting process is filled with repetitive, duplicative assessments and lengthy processing times, making it difficult to plan and build projects efficiently. We want to amend NEPA, not gut it—or worse yet, eradicate it—and make a law that provides robust environmental protections without bogging down projects in rounds of red tape and litigation.

The simple fact is we cannot re-establish energy independence or even meet President Biden's clean energy and emission goals without reform. Every kind of energy source, from oil and gas, to minerals, to wind and solar, to nuclear, falls prey to NEPA.

Take the Inflation Reduction Act as the most recent example. This bill funneled a staggering $369 billion in funding over 10 years from everything from heat pumps, to battery storage, to hydrogen and offshore wind. Most of it will not be possible without the ability to permit and build efficiently.

It is baffling that many of my Democratic colleagues seem content to let the status quo choke out American innovation and ingenuity, including the very renewable projects they claim to support. That is why the BUILDER Act is a necessary component of any permitting reform discussion. It clarifies and updates complicated terms, eliminates repetitive processes, and imposes reasonable timelines to prevent reviews from dragging on.

I ask any Member on the Democratic dais, if not NEPA reform, then what?

How will we achieve a single one of your clean energy goals—I will say our clean energy goals—if companies can't get the permits to build the necessary infrastructure?

How will we get Americans back to work if they are stuck in limbo waiting through endless reviews and litigation?

We invited the Council of Environmental Quality to testify before us today and answer these very questions. The empty chair you see at the witness table tells you everything you need to know about how willing this Administration is to back their talking points with facts and science.

People act like we have no choice but to shoulder these burdens, slowing down our development while China leaps us in energy production. I don't believe that for a second. I am proud to support these common-sense, science-based proposals. America has a bright future ahead, if we will just get out of our own way.

And I want to thank the gentleman from Louisiana for all the hard work that he has put into this bill. I think he would be the first to tell you it is not finished yet. We need to have these hearings. We need to have input. And this needs to be a bipartisan effort for the good of the country.

I challenge us to work together to come to some kind of reform, so that we can actually get things done.

With that I want to recognize the Ranking Minority Member, Mr. Grijalva, for any statement he may wish to make.

STATEMENT OF THE HON. RAÚL M. GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. GRIJALVA. Thank you, Mr. Chairman. It feels a little like déjă vu. A few weeks ago, we sat in this room while my colleagues across the aisle spent hours scapegoating our environmental review processes, namely those under the National Environmental Policy Act, or NEPA, for every single issue or delay the fossil fuel industry has ever had. Then, this morning, our Energy and Mineral Resources Subcommittee held a hearing on two bills that would act on that scapegoating by gutting NEPA and the environmental review, under other key laws. And now, we are here again, with yet another bill taking aim at NEPA and what is best for the public's interest is secondary, if that.

And as I have in our other hearings, I feel obligated to point out how irresponsible it is to cut environmental review while we are in the midst of the greatest environmental crisis of our time.

I will also point out again that it is especially, especially stark to cut environmental reviews for the fossil fuel industry, the biggest culprit responsible for the climate crisis that we are in.

And, finally, I will point out again that poor communities, communities of color, Indigenous people who have been bulldozed and poisoned for decades by fossil fuel companies, companies that have used their communities as dumping grounds, are the same ones who are being hit hardest by climate change. And as many times as I make these points, it doesn't change one key fact.

Republicans and their industry allies don't like NEPA, and they will push every bill they can to try to hobble its effectiveness. The extreme GOP platform has shifted to one that vilifies the Federal Government and its laws so they can put private industry, no matter how dirty, reckless, or greedy, up on a pedestal above the needs of the general public. That means NEPA will always be the nemesis, no matter how non-sensical it is.

If you need more convincing, let's look at some facts. As we will hear today, Republicans will cite a handful of delayed projects out of the tens of thousands of projects and actions reviewed under NEPA each year to say we should eliminate environmental protections they want to eliminate anyway. What you won't hear is how much of it, about the actual causes of the delays during the environmental reviews. Well, fortunately, experts have already researched the main causes of project delays, when they do occur.

The first one is lack of capacity at Federal agencies, lack of staff, expertise, or budgets for environmental reviews, at under-funded Federal agencies. This is, of course, largely due to the Republican campaigns to gut these very agencies and those programs.

The second main cause of delay is poor market conditions or other issues with the project's operator. For example, 9 out of the 10 years over the last decade, the Bureau of Land Management has spent more time waiting for oil and gas operators to submit information than it spent reviewing drilling permit applications. Market conditions may have led operators not to prioritize certain applications.

And the third main cause of delay is related to other laws, including state and local laws.

You probably noticed that not one of these causes is NEPA.

I would also like to point out that the Democrats on the Committee authored provisions in the Inflation Reduction Act to provide more than $1 billion to staff up and train Federal agencies' offices to carry out efficient and effective environmental reviews. This will address one of the main causes of project delay I just listed. Not one Republican voted for that Inflation Reduction Act or any other legislation.

So, you could imagine my skepticism when I hear about the need to accelerate environmental reviews through the so-called permitting reform, and see bills that allow the fossil fuel industry to pollute when and where it wants, without having to tell the public too much about it. Instead, these bills will be a detriment to the environment, our communities, and the future. The results of de-regulation, they are not more poignant than what happened in East Palestine and the derailment. That happened, cause and effect, after the former administration, the Trump administration, effectively de-regulated some of the safety regulations that existed for railroads.

With that, Mr. Chairman, I yield back.

The CHAIRMAN. Thank you, Ranking Member Grijalva. I am sure we will have some interesting discussions today. Maybe we can find out why billions of dollars were poured into ineffective agencies and the results haven't changed.

I will now introduce our first panel, which consists of Representative Graves of Louisiana, to provide testimony on his legislation before us today.

Representative Graves, you are recognized for 5 minutes.

STATEMENT OF THE HON. GARRET GRAVES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. GRAVES. Thank you, Mr. Chairman, and I want to thank you and thank the Ranking Member for opening statements. I think that each of your opening statements indicated the need for fundamental reform to our permitting process, our regulatory process.

Mr. Chairman, if you look at the current regulatory process, the NEPA law, for highway projects the average environmental review takes approximately 7 years. We have seen instances where we have had an average of 115 lawsuits per year filed against these NEPA reviews, the majority of which are actually settled with no action, meaning found that the government's actions were actually appropriate.

What we have seen, Mr. Chairman, over the last few decades, as this NEPA law has been put in place, is that we have seen this has become sort of a Christmas tree, all sorts of ornaments hung on this law, looking at all sorts of things that have absolutely nothing to do with the environment.

I think that one of the posters that Ranking Member Grijalva put up actually makes our case probably better than anything else, not just because it was actually mounted on a petroleum-based product, but also because it shows that you need to spend $1 billion, $1 billion, to actually comply with the law, you are giving agencies $1 billion to look at environmental impacts.

Mr. Chairman, here is the reality. The majority of projects carried out across the United States today are done without a NEPA review. They are done without a NEPA review. Why is that? Because you have certain threshold criteria that triggers NEPA. You have things like, are Federal funds involved, are Federal resources implicated, are Federal lands involved. Those are some of the threshold criteria that actually trigger NEPA. So, the reality is, if you are not triggering Federal permits, Federal resources, and you are not using Federal dollars, then you don't carry out a NEPA analysis.

So, if that is the case, if the majority of projects being carried out across the United States today are being done without a NEPA analysis, and we don't see this wholesale trashing of our environment, then why is this legislation to streamline this law, to pull it back to the original intent and truly focus on environmental outcomes, why is this bad?

But, Mr. Chairman, don't take my word for it. Don't. Because I had a meeting a few months ago with Brian Deese, who was the White House economic adviser, and with John Kerry, the White House climate czar. We are in the meeting. John Kerry and Brian

Deese said, "You know what? We need permitting reform," meaning they did, the White House did.

They went on to explain that, through ARA, the American Rescue Act, the infrastructure bill, and through the Inflation Reduction Act, that I will just make a little parenthetical on, the Inflation Reduction—I know, Mr. Huffman, your favorite quote is that John Kerry actually said that has nothing to do with inflation—but the Inflation Reduction Act, those three bills, they said that, cumulatively, they set aside $610 billion for this energy transition, and that they were going to be incapable of actually delivering it without permitting and regulatory reform.

I have to be honest, I didn't think I would be sitting here saying, "Listen to Brian Deese and John Kerry," but, Mr. Chairman, I think they are right. I think that we need litigation reform. I think that we need permitting reform.

And it doesn't matter if we are trying to restore coastal wetlands and restore ecological productivity in coastal Louisiana. It doesn't matter if we are going to try to triple the transmission grid for this newly-designed electrical transmission system that is going to be allowing us to send not just electricity from conventional fuels, but also from renewable sources like wave, and wind, and solar, and geothermal, and other sources, nuclear. But we are going to have to triple, triple all of the energy grid that is out there today. We are going to have to triple it in order to facilitate, in order to realize the "benefits" of this energy transition.

The reality is that we will approximately never finish that project. You can't implement it under these conditions. So, projects to actually benefit the environment, like restoring coastal Louisiana, projects that are designed to reduce emissions, like deploying new energy sources, those are actually thwarted by the very law that is supposed to be protecting our environment. Think about that for just a minute.

This bill takes a common-sense approach. It doesn't block public participation. It respects and, I think, increases the focus on environmental outcomes. It stops frivolous lawsuits. And at the end of the day, Mr. Chairman, most importantly, it helps us move forward on projects that actually achieve outcomes that are positive. Because, at the end of the day, projects don't achieve benefits until they are actually implemented.

So, with that, Mr. Chairman, I look forward to hearing from the witnesses, and yield back.

The CHAIRMAN. Thank you, Mr. Graves. And thank you again for all the work you have put into the bill, and I am sure additional work that will continue to go into it on this very important subject.

We will now move on to our second panel of witnesses, and let me remind witnesses that, under Committee Rules, they must limit their oral statements to 5 minutes, but their entire statement will appear in the hearing record.

When you begin your testimony, please press the on button on the microphone. We do use timing lights. When you begin, the light will turn green. At the end of 5 minutes, the light will turn red, and I will ask you to please complete your statement.

I will also allow all witnesses to testify before Member questioning. I will now introduce our witnesses.

As I mentioned in my opening statement, our first witness today was supposed to be Ms. Brenda Mallory, the Chair of the White House Council on Environmental Quality, or CEQ. And CEQ plays a very important role in the discussion that we are having today. However, as you can see, nobody from CEQ has decided to join us today. They couldn't even find an assistant or somebody else. Maybe they all haven't come back to work yet. Maybe they don't want to come to a public hearing. But it is really offensive that they wouldn't even show up for a hearing on the Committee that has jurisdiction over many of their actions. And maybe they think they got all the money in the last Congress, and they can just blow us off. But if anybody from CEQ is watching, this won't be the last that you hear from us.

Mr. HUFFMAN. Mr. Chairman, could I make an inquiry about that? A parliamentary inquiry about when you invited the CEQ chair. Because the custom is 2 weeks' notice. I am just wondering if you complied with that customary notice.

The CHAIRMAN. They were given ample time to be here.

Mr. HUFFMAN. Did you comply with the customary 2 weeks' notice? Because——

The CHAIRMAN. Yes, we gave them the 2 weeks. But you'd think this would be important——

Mr. HUFFMAN. We didn't even have a discussion draft until a little over a week ago. So, I find it hard to imagine that you provided them a draft of the bill.

The CHAIRMAN. Use your imagination, Mr. Huffman, as we move on here.

This Committee would have greatly benefited from the testimony of CEQ in this process. Instead, again, they have chosen to ignore the invitation of our Committee, and refuse to engage in an opportunity to educate and explain the Biden administration's position on permitting challenges that are impacting our nation. Maybe they don't see a challenge. Maybe they think it is working just like it should.

They have also been ignoring legitimate congressional oversight.

I ask unanimous consent to submit for the record a letter we previously sent in October asking CEQ to provide a list of their rulemakings and the specific congressional authorities for each rule, in light of the Supreme Court decision *West Virginia v. EPA*. CEQ has not responded to this request for over 3 months.

Without objection, so ordered.

[The information follows:]

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES
Washington, DC

February 14, 2023

The Honorable Brenda Mallory, Chair
Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 2050

Dear Chair Mallory:

The Committee on Natural Resources will hold a legislative hearing on the "*Building United States Infrastructure through Limited Delays and Efficient Reviews Act*" on Tuesday, February 28, 2023, at 2:00 p.m. in room 1324 Longworth House Office Building. I cordially invite you to testify at this hearing.

Enclosed with this letter are the parameters regarding written and oral testimony. Should you have any questions or need additional information, please contact Sophia Varnasidis, Director of Legislative Operations, Committee on Natural Resources at (202) 225-2761.

Sincerely,

BRUCE WESTERMAN,
Chairman

Enclosure

The CHAIRMAN. However, I am looking forward to hearing testimony from the witnesses who did decide to join us today. And with that, I will recognize Representative Van Orden for 30 seconds to introduce our first witness.

Mr. VAN ORDEN. Thank you, Chairman Westerman. It is an honor for me this afternoon to introduce one of my constituents, Mr. John Carr. He is the Vice President of Strategic Growth for Dairyland Power Cooperative in La Crosse, Wisconsin. As Vice President, John leads Dairyland's Resources Planning Division, and oversees strategic load growth, mergers, and power supply acquisitions.

Dairyland is a critical component of Wisconsin's energy market, providing power for a multitude of co-ops across my district and the region at large. They are also a member of the Midcontinent Independent Systems Operator, a transmission service that operates critical transmission systems and essentially dispatched market across the Midwest.

Electric co-ops are the backbone of reliable power in rural America, especially in Wisconsin, and ensuring that these systems are able to be upgraded in a timely and cost-efficient manner is critical for millions of Americans.

I look forward to hearing John's testimony, and working with you hand in hand, sir, and the rest of the Committee to ensure that innovative energy solutions are not being upheld by bureaucracy and unnecessary red tape, so that our co-ops can continue to provide reliable energy that is both affordable and as clean as possible.

I yield back.

The CHAIRMAN. I now recognize Mr. Carr for 5 minutes.

STATEMENT OF JOHN CARR, VICE PRESIDENT, DAIRYLAND POWER COOPERATIVE, LA CROSSE, WISCONSIN

Mr. CARR. Thank you, Representative Van Orden, Chairman Westerman, Ranking Member Grijalva, and members of the Committee. Thank you for the opportunity to participate in this hearing. My remarks and testimony today are on behalf of both Dairyland and the National Rural Electric Cooperative Association.

Electric co-ops provide reliable and affordable service to 42 million Americans, including many of your constituents. We are currently working to meet our consumer demand by bringing additional renewable energy and renewable supporting energy online.

Unfortunately, the current Federal permitting process creates delay and increases costs through inefficient reviews and costly litigation. This is not in the best interests of energy consumers, the economy, or the environment.

Co-ops operate at cost. That means every dollar we spend impacts the costs our retail consumers pay for electricity. Co-ops serve 92 percent of the country's persistent poverty counties. So, affordability is important.

Dairyland is committed to advancing clean energy in a way that does not sacrifice safety, reliability, or affordability. Our energy mix was once 95 percent coal. Today, it is around 50 percent. In 2021, we retired a coal plant that powered our region for more than 50 years. We provided skill development programs, special retirement options, and internal placement opportunities to lessen the impact that that closure had on our teammates.

While we have been able to maintain the integrity of the grid, any future coal plant closures will require us to have other alternatives in place. For Dairyland, this includes more renewable energy, battery storage, lower-emitting natural gas facilities, and transmission to get renewable energy to consumers.

To lower carbon dioxide emissions as quickly as possible without jeopardizing grid stability, we need a permitting process that supports a sense of urgency. Dairyland is pursuing two projects that are key to our clean energy transition. Both are delayed in a process that must be improved if we are to reduce CO_2 emissions in a prompt, reliable, and affordable way.

The first project is an efficient natural gas power plant to be built in Superior, Wisconsin called Nemadji Trail Energy Center, or NTEC. By enabling further renewable development and displacing higher CO_2-emitting sources of power, NTEC will reduce CO_2 emissions by almost 1 million tons per year, and it will bring stability to the grid. The NTEC environmental review began in 2017. It featured a robust public engagement period.

The review was completed in 2021, and the Rural Utility Service issued a FONSI, or a Finding of No Significant Impact. However, external groups petitioned RUS to re-evaluate the project's climate change impacts, and that FONSI was rescinded. A second study confirmed the plant would reduce greenhouse gas emissions, but we are still awaiting a final determination on an NTEC more than 5 years after the process began. Meanwhile, reliability concerns in

the Midwest have led to postponement of previously-announced coal plant retirements by other utilities in the region.

The second project is the Cardinal Hickory Creek Transmission Line. This line will bring wind energy from Iowa into Wisconsin. There are currently over 100 renewable energy projects, depending on the construction of this line. In this case, while the NEPA review was completed in a timely manner, delays due to litigation have increased the cost of the project.

We support Congress' effort to provide a pathway for more coordinated, consistent, and timely decision-making. NEPA modernization is necessary to advance clean energy projects that strengthen the economy and benefit the environment. We support placing reasonable parameters around the review process, and limiting unnecessary litigation.

The BUILDER Act would help to ensure outdated policies are not preventing our country from achieving its goal of reducing carbon emissions, while also ensuring that the grid remains safe, reliable, and affordable.

This concludes my prepared remarks, and thank you for the opportunity to participate today.

[The prepared statement of Mr. Carr follows:]

PREPARED STATEMENT OF JOHN CARR, VICE PRESIDENT, STRATEGIC GROWTH, DAIRYLAND POWER COOPERATIVE

Chairman Westerman, Ranking Member Grijalva, and members of the Committee, thank you for the opportunity to testify today. My name is John Carr, and I am the Vice President for Strategic Growth of Dairyland Power Cooperative. Electric cooperatives like Dairyland play a leading role in the ongoing transformation of the electric sector, and often need to obtain permits or other authorizations from federal agencies to construct and maintain electric generation, transmission, and distribution infrastructure. I appreciate the opportunity to testify on the "BUILDER Act" and offer a perspective on behalf of both Dairyland and the National Rural Electric Cooperative Association (NRECA).

About Dairyland Power Cooperative

Dairyland is a not-for-profit generation and transmission cooperative headquartered in La Crosse, Wisconsin, providing electricity to 24 distribution cooperatives and 27 municipal utilities, who in turn provide power to more than half of a million people in Wisconsin, Minnesota, Illinois, and Iowa. Dairyland is a critical service provider, and we are responsible to our members, local communities, and future generations. Our mission is to grow, innovate, and deliver value as a premier member-driven energy cooperative through safe, reliable, and sustainable solutions.

We are governed by a Board of Directors comprised of one representative from each of our 24 cooperative members. Our member cooperatives are in turn governed by locally elected boards. The cooperative model means that every dollar we receive from our members is directed to the operation of our projects. If excess revenue is collected, it does not go to investors; rather, it is sent back to our members. This model helps electric cooperatives keep rates affordable—an important consideration, because co-ops serve 92 percent of the country's persistent poverty counties.

Permitting Modernization is Essential to Meet Community Needs

Dairyland and other electric co-ops support the appropriate consideration of potential environmental impacts of energy projects during the permitting process, but the existing process impedes our ability to deploy clean energy to meet the current and future needs of our consumers and communities. We simply must reform the process to enable the transition that is already underway, and to ensure it can be done reliably and affordably for our customers.

Electric cooperatives across the country are committed to meeting our members' changing energy demands. Since 2010, co-ops have more than tripled their renewable capacity to more than 13 gigawatts, with another 7 gigawatts of additional renewable capacity planned through 2026. Since 2005, co-ops have reduced their

sulfur dioxide emissions by 82 percent, nitrogen oxide emissions by 68 percent, and carbon dioxide emissions by almost 20 percent. Dairyland supports a transition to lower carbon energy generation in a way that doesn't compromise the safety and reliability of the grid. In 2021, we completed the retirement of our coal-fired Genoa Station #3, which had reliably powered the region for more than five decades. We worked closely with the 80 impacted employees to provide skill development programs, special retirement options, and internal placement opportunities to assist in the transition, and we worked hand-in-hand with the community to fulfill our commitment to maintain a presence in the area.

Our commitment to supporting local communities and the environment is an important part of our work as a cooperative. Dairyland collaborates with non-profit organizations and provides funding support on initiatives and policies that benefit area residents, schools and businesses in the communities we serve. In La Crosse, where we are headquartered, we partner with an elementary school identified as serving one of Wisconsin's most impoverished populations with supportive nutrition and programming needs.

Our numerous environmental stewardship projects include the establishment of 50 acres of pollinator habitat, fish habitat improvements in the 2,000-acre Dairyland Reservoir near our Flambeau Hydro Station, as well as Peregrine falcon and osprey nesting structures. Dairyland and our member cooperatives are also national leaders in the establishment of electric vehicle (EV) charging infrastructure. Since 2018, Dairyland has supported the installation of over 150 EV chargers throughout our service territory.

Dairyland's Energy Future

We were able to close the Genoa power plant while maintaining the integrity of the grid. However, any potential future coal plant closures would require us to have alternative generation in place. This includes more renewable resources, battery storage, lower-emissions natural gas facilities to firm up intermittent resources, and transmission to get this generation from project site to load centers. A recent long-term reliability assessment by the North American Electric Reliability Corporation (NERC) highlights the critical need to maintain baseload generation, particularly given increasing levels of intermittent renewable generation.[1]

Two of Dairyland's essential projects, a combined-cycle power plant and a regional transmission line needed to deliver renewable energy, are prime examples of why modernization of the current permitting process is needed.

- **Nemadji Trail Energy Center**

  Nemadji Trail Energy Center (NTEC) is a collaborative project involving Dairyland, Basin Electric Cooperative, and ALLETE. NTEC will be a combined-cycle natural gas plant capable of delivering up to 625 MW of baseload power to the electric grid, supporting the growth of wind and other intermittent resources. Numerous studies have shown NTEC will help reduce emissions across the grid, reducing CO2 emissions by an average of 964,000 tons per year. This is the equivalent of removing 190,000 internal combustion engine cars from the road each year.

  A thorough National Environmental Policy Act (NEPA) process was conducted, beginning in September 2017 and included robust public involvement. The U.S. Department of Agriculture (USDA) issued an Environmental Assessment (EA) in October 2020 and a Finding of No Significant Impact (FONSI) in June 2021. Thereafter, the USDA Rural Utilities Service (RUS) accepted a petition to rescind the FONSI and to prepare a Supplemental EA.

  RUS is committed to a procedurally sound review, but we are still awaiting a final decision, which we hope is a re-issued FONSI. However, even if the RUS works quickly and diligently to permit this project, we may see the same petitioners challenge the permit in court, which would add further delays.

  Reliability concerns in the regional grid have led two investor-owned utilities in Wisconsin to postpone coal plant retirements that had previously been announced. It is not hard to see how the combination of lengthy reviews and litigation could lead to a project like NTEC being shelved—in our case, we need new, dispatchable clean and lower-emission resources to enable reliable operation of the grid.

[1] North American Electric Reliability Corporation. 2022. *2022 Long-Term Reliability Assessment*. https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2022.pdf

Dairyland's participation in regional transmission line projects serve the dual role of ensuring the continued safe delivery of electricity while facilitating the region's transition toward low-carbon energy resources.

- **Cardinal-Hickory Creek Transmission Line Project**

  The Cardinal-Hickory Creek (CHC) Transmission Line Project, co-owned by Dairyland, American Transmission Co. and ITC Midwest, is an essential 345-kV interconnection to our region's renewable energy developments. The new transmission line will reduce energy costs, improve the reliability and flexibility of the region's transmission system, and deliver wind energy from the upper Great Plains to southern Wisconsin.

  Federal involvement in the project is small, but requires approvals and permits from the U.S. Fish and Wildlife Service, the Army Corps of Engineers, and USDA RUS, from which Dairyland intends to seek financing for its 9 percent ownership interest in the project. The 102-mile route from Dubuque County, Iowa, to Dane County, Wisconsin, crosses mostly private and non-federal land, except for approximately 1.3 miles in the Upper Mississippi National Wildlife and Fish Refuge, which has led to costly delays and permitting challenges.

  Federal scoping for this project began in October 2016. Following several years of environmental review and extensive opportunities for public involvement, USDA issued the Final Environmental Impact Statement (EIS) in October 2019 and signed the Record of Decision (ROD) in January 2020. The federal government approved the refuge portion, in part, because the CHC line would replace two other existing transmission lines in the refuge, thereby reducing the number of structures in the refuge.

  Subsequent legal claims were raised alleging that the EIS and ROD violated NEPA. In March 2022, a Federal District Court vacated and remanded the EIS and ROD, based on those claims. It found that the new transmission line through the refuge was incompatible with the purpose of the refuge. USDA has appealed the decision, and Dairyland and the other project owners are intervenors in the case.

  Today, this line is needed more than ever. Its primary benefits continue to include economic savings for energy consumers, support for renewable energy projects and improvement of electric system reliability. As coal-fired plants are retired and the demand for renewable generation increases, energy needs a pathway to travel long distances.

  There are currently over 100 renewable generation projects depending upon the construction of the Cardinal-Hickory Creek transmission line. These projects will generate enough electricity to power millions of homes with clean energy. But only if the line can be completed.

Further afield, Dairyland continues to explore cutting edge carbon free energy generation resources. Nuclear will be the backbone of a low-carbon future. If you are for carbon reduction, nuclear needs to be part of the conversation. Nuclear is zero emissions, high reliability, well-regulated, and has an outstanding industry safety record.

- **Small Modular Rectors (SMRs)**

  We recently signed a memorandum of understanding (MOU) with NuScale Power to evaluate the potential deployment of carbon free power from small modular reactors. Under this agreement, Dairyland can explore this technology and evaluate whether it might be a viable long-term alternative to provide our members with safe, reliable and cost-effective electricity in a lower carbon future.

  Part of our evaluation of this exciting project will be focused on the Nuclear Regulatory Commission's review and approval process for advanced reactors, like SMRs, and whether we can count on the federal government to fulfill its permitting responsibilities on a project like this in a timely way at reasonable cost. Building and bringing such a plant into operation in the Midwest will take at least 10 to 15 years.

The BUILDER Act and Other Reforms are a Step in the Right Direction

The complicated federal permitting process under NEPA becomes even more challenging when multiple federal agencies are involved, and even well-researched and thorough federal reviews face the constant threat of litigation. As Dairyland has

experienced firsthand, lengthy NEPA reviews and litigation delay the completion of critical infrastructure projects, require significantly more time and resources, and have a direct negative impact on communities served by these projects.

Dairyland and electric co-ops across the country support solutions that provide a pathway for more coordinated, consistent, and timely agency decision-making. NEPA modernization is especially necessary to advance electric infrastructure project development in a manner that strengthens our economy and enhances environmental stewardship. We appreciate the work the House Natural Resources Committee is pursuing this Congress, under the leadership of Chairman Westerman and Ranking Member Grijalva, to identify commonsense and durable improvements that can be made to NEPA and other permitting processes.

Based on experiences like Dairyland's, our national trade group NRECA has identified several NEPA modernization recommendations that we encourage the Committee to consider. Among those areas that would benefit from changes to modernize the permitting process, while maintaining the integrity of a thorough and proper review:

- **Establish firm parameters for environmental reviews.** Originally, EISs were expected to take 12 months or less. Now, the average time to complete an EIS and issue a decision for a project is 4.5 years; and one-quarter of EISs take more than six years.[2] In addition, EISs on average are 661 pages in length, not including appendices.[3] Congress should mandate timelines of two years for EISs and one year for EAs, while providing agencies with authority to extend those deadlines in writing with the input of the project proponent, and mandate page limits so that environmental documents are concise, readable, and focused on relevant issues.
- **Promote greater applicant involvement in the NEPA process.** Greater applicant involvement in developing environmental documents will provide agencies with the information they need to facilitate more efficient and effective reviews and make timely decisions. Congress should allow project sponsors to work in a coordinated way with agencies in the development of environmental impact analyses, while maintaining agency authority over final NEPA documents and decisions. It should also limit agency recommendations on project modifications to those that are technically and economically feasible, are within the agency's jurisdiction, and meet the needs of the applicant.
- **Ensure more efficient reviews for projects with minimal environmental impacts.** NEPA regulations and procedures allow projects and activities that do not have significant environmental effects to be reviewed efficiently under a categorical exclusion (CE) instead of requiring an EA or EIS. Having an efficient and expedited process for reviewing these types of projects is beneficial for communities and allows agencies to better focus their time and resources. Individual agencies establish CEs through a notice and comment process which results in inconsistent CEs across agencies and inefficient reviews. Congress should provide government-wide authority for an agency to use another agency's CE if the proposed action fits within the CE to ensure its appropriate use.
- **Limit unnecessary litigation of NEPA reviews.** According to the U.S. Department of Justice, NEPA is one of the most frequently litigated environmental statutes. The constant threat of litigation creates excessive cost and agency documentation and needless delay in the permitting process. Congress should establish reasonable time limits for filing lawsuits after a final agency action. It should also require that any entity filing a lawsuit over a NEPA review has already sufficiently raised their concerns during any public comment period to put the agency on notice of the issues and allow the agency to cure any potential deficiencies in their documents prior to any litigation.

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[2] Council on Environmental Quality, June 12, 2020, *Environmental Impact Statements Timelines* (2010–2018), https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Report_2020-6-12.pdf

[3] Council on Environmental Quality, June 12, 2020, *Length of Environmental Impact Statements* (2013–2018), https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Length_Report_2020-6-12.pdf

The BUILDER Act, introduced by Representative Garret Graves, includes many provisions that would address these priority recommendations and would greatly improve the NEPA process. As Congress works toward bipartisan solutions and legislation to modernize the federal permitting process, the BUILDER Act should be a central part of those discussions.

We all benefit from the investments prior generations made in our nation's electric system. It is now our turn to build on those efforts for future generations. Meeting current and future energy needs is a major challenge. Rising to meet this challenge will require collaboration, creativity, and flexibility. Dairyland and our electric co-op brethren are ready to work with all of you and your colleagues in Congress and your federal agency partners to meet these needs.

Thank you for the opportunity to testify today and for your attention to the critical issues facing our nation. I look forward to working with all of you.

The CHAIRMAN. I thank the witness, and I now recognize Mr. McClintock to introduce the next witness.

Mr. MCCLINTOCK. Thank you, Mr. Chairman. I am pleased to introduce Brian Veerkamp, a 5th-generation resident of El Dorado County. He retired in 2011, after 30-plus years in public emergency services that began with the position as a volunteer firefighter and culminated in his last position as fire chief of the El Dorado Hills Fire Department.

In 2012, Brian was elected to the El Dorado County Board of Supervisors, and served two 4-year terms. He is currently serving as a member of the LAFCo, the Local Agency Formation Commission, and recently completed 2 years as Executive Director for El Dorado County Emergency Services JPA. He was elected to El Dorado Irrigation District's Board in November 2020, and has been selected as the Board President for 2023.

No one has more on-the-ground experience with the fires plaguing the Sierra and the communities that are threatened by them than Mr. Veerkamp, and we are very pleased to welcome him back to the Committee today.

The CHAIRMAN. Thank you, Mr. McClintock. I now recognize Mr. Veerkamp for 5 minutes.

STATEMENT OF BRIAN VEERKAMP, PRESIDENT, BOARD OF DIRECTORS, EL DORADO IRRIGATION DISTRICT, PLACERVILLE, CALIFORNIA

Mr. VEERKAMP. Thank you, Congressman McClintock, Chairman Westerman, Ranking Member Grijalva, and Committee members. Good afternoon and thank you for this opportunity to testify to my knowledge and experience relating to NEPA, catastrophic wildfire, the Endangered Species Act, and the need for reform. Being an elected official at multiple governance levels, I have a special respect for all of you and your public service to our country.

I spend at least a month a year traversing our California forests along with lands in Montana, Idaho, and Wyoming, usually by foot, whether it be hunting, recreational hiking, or just enjoying our public lands, but also taking note of the landscape. My career was in, obviously, as pointed out, emergency services, culminating as a Fire Chief and Director of Emergency Services, working in many different roles throughout that career, as well as being on an incident management team that traveled the states of California, Montana, Idaho, and Louisiana.

In 2019, I was honored to testify before this Committee on the topic of wildfire-resilient communities. During my previous testimony, I highlighted the facts of what the landscape was looking like in our forests, rural areas, and in wildland urban interface. It was not pretty, and it still isn't. Since that testimony, we have experienced some of the most catastrophic wildfires in history:

The Dixie Fire: Butte, Lassen, Shasta, Tehama Counties, 90-plus days, 963,000 acres.

Caldor Fire: El Dorado, Amador, and Alpine Counties, 70 days, 220,000 acres, a Trestle project, fuel modification project in progress for 4 years completed by the devastating Caldor Fire. This fire completely wiped out the town of Grizzly Flats: our wildlife habitat, including the spotted owl, a grammar school, a major ski resort, and so much more, including our major water supply to El Dorado County, our flume system.

The Moose Fire: Lemhi County, Idaho, 100 days, 130,000 acres, all in the Salmon River Watershed.

Mosquito Fire: Placer and El Dorado County, 60 days, 76,000 acres, all, again, in our watershed areas.

These fires have been responsible for civilian deaths, major economic loss to the tax base of these areas, destruction and devastation of our public education systems, devastation of our forests, wildlife, and habitat, not to mention drinking water supplies, the watersheds. And to me, the most two important items—and I think they would be to you, as well—the suppression costs of billions of dollars and the catastrophic damage to our environment.

The fires of 2020, in a UCLA study, wiped out 17 years of greenhouse gas reduction work. Think of what the fires since that have done. Just think. The facts are coming forward.

The consequences to public health, education, drinking water, and economics far outweigh any benefit realized by our current NEPA protection guidelines. And I am not saying they need to be gutted. There just needs to be some reform. The protections of NEPA and the Endangered Species Act handcuff our ability to get things done in a timely manner. If we don't speed up processes and streamline them, there won't be any habitat for us or environment left to protect.

My grandfather, George Wagner, 1899 to 2001, discussed with me on many occasions the issue of land management. And during his era, they learned from our Native Americans and others to use fire as a tool, do certain things like girdle trees when young, graze animals, harvest timber as a crop, create fuel breaks. And this was how they managed the landscape.

So, what do we need to do? We need to support language such as in this Act. A current example, case in point, was in the Tahoe Basin. Thanks to a NEPA categorical exclusion, it created 10,000 acres to expedite the NEPA process so that work could get done in a timely manner. This streamlined authority was brokered by Senator Feinstein and Congressman McClintock, and signed into law by President Obama, and it was a major factor in stopping the Caldor Fire before it completely annihilated the Tahoe Basin, one of our biggest jewels in this country.

Through the years, I have had many conversations with local forest supervisors, one this morning at the United States Forest

Service building that now is working here in DC. And the challenge of NEPA and the lack of funding prohibit any progress from being made in a timely manner, and the catastrophic results are, obviously, as mentioned.

We tend to spend forever trying something newfangled, or reinventing science, or waiting for new science. The facts are in the history behind us, and we should take advantage of that history. I was blessed and had an ability to recently review the Wallace, Idaho area and the Pulaski Trail, if anybody has ever been there.

[Slide.]

Mr. VEERKAMP. The great fires in the Inland Northwest in 1910 consumed over 3 million acres, and there was devastation, just as we see up here on the TV monitors. And along there, the trail, the kiosks speak of the massive vegetation buildup prior to those fires. It was sort of ironic, because those kiosks today relate to the massive vegetation that is still there; you can barely hike the trail.

In conclusion, reform is needed, and we must work together to do it. The landscape is very critical to us, our watersheds are critical to us, and the like. I would like to leave you, as well, with just a few of my truisms, one of them from my grandfather.

An ounce of prevention is worth thousands of pounds of environmental cure.

Per my grandfather, manage the land and it will manage you. And we are seeing that result today.

And the question: NEPA, at what cost?

Thank you for this opportunity, and I will be available for questions, as well. Thank you.

[The prepared statement of Mr. Veerkamp follows:]

PREPARED STATEMENT OF BRIAN K. VEERKAMP, EL DORADO IRRIGATION DISTRICT BOARD CHAIR, FORMER COUNTY SUPERVISOR, AND WILDLAND FIRE CONSULTANT

"Consequences of Good Intentions"

Good afternoon and thank you for this opportunity to testify to my knowledge, factual data, personal observations and experience relating to NEPA, Catastrophic Wildfire, the Endangered Species Act, and the need for reform/change. Being an elected official at multiple governance levels, I have a "Special" respect for all of you and your public service to our Country.

As introduced, my name is Brian K. Veerkamp. I am a 5th generation Northern California native, descending from two Gold Rush era families. For over 150 years our family has been involved in managing our private and public lands, both in the semi-urban and mountainous forest settings. Living and utilizing the land for ours and the environments mutual benefit. I also spend at least a month a year traversing our California Forests along with lands in Montana, Idaho, and Wyoming. Usually on foot. Whether it be hunting, recreational hiking or enjoying our public lands, but also taking note of the conditions on the landscape. My career was in Emergency Services, culminating as a Fire Chief and Director of our Emergency Services Authority. During my tenure in the Fire Service, I helped plan Fire Resilient Communities, served on a State Incident Management Team, responding to and mitigating disasters of many kinds throughout California, Idaho, Montana, and Louisiana. In 2019, I was honored to testify before this Committee on the Topic of "Wildfire Resilient Communities".

During my previous testimony I highlighted the facts of what the landscape was looking like in our Forests, Rural areas and in the Wildland Urban interface. It was not pretty and still isn't. Since that testimony we have experienced some of the most catastrophic wildfires in history." Dixie Fire" (Butte, Lassen, Shasta, and Tehama counties, 90+ days and 963,300 acres)." Caldor Fire" (El Dorado, Amador, and Alpine counties, 70 days, 220,000 acres, Tressel Fuel Modification project in progress for 4 years, completed only by the devastating fire; complete loss of the community of Grizzly Flat, wildlife habitat including the spotted owl, a grammar

school and major ski resort). "Moose Fire" (Lemhi county, Idaho, 100 days, 130,000 acres). "Mosquito Fire" (Placer and El Dorado county, 60 days, 76,000 acres). These fires have been responsible for civilian deaths, major economic loss to the tax base of the area, disruption and devastation of Public Education, devastation of our forests, wildlife and habitat, drinking water supplies, watersheds and the two Most Important items: Suppression costs in the Billions and the damage to our Environment. The Fires of 2020 wiped out 17 years of Greenhouse gas reduction work. Think of what the fires of 2021–22 have done. The air quality alone for the duration of these fires brings many things to a halt and the effects will be felt for years to come. The consequences to Public Health, Education, Drinking Water, Economics, etc. far outweigh any benefit realized by the current NEPA Protection regulations. These protections have created far more serious consequences and must be amended for NEPA to meet its intent. Tree mortality is at an all-time high, primarily due to choked up stands and the trees cannot survive, they are weakened allowing insects and dry conditions to kill them. Being nearly 50 years old, this regulatory framework must be updated and modified. There are many other regulatory opportunities to protect the environment and so many in fact they compete with each other to the detriment of their intent. The protections from NEPA and the Endangered Species ACT handcuff anyone from accomplishing the needed tasks to mitigate catastrophic consequences from occurring. Whether it be Environmental Lawsuits or time delays, reality takes over and the fallout goes against any common sense solutions most would utilize. Locally we have been attempting to mitigate hazards along roadway infrastructure and the Environmental Assessments have taken a year and a half and there still not complete. These are existing roadways in the Public Forests needed for ingress and egress. One has to ask why does it takes so long, especially when it's for existing infrastructure?, If we don't speed up processes and streamline them, there won't be any habitat, forests, or environment left to protect. My Grandfather (George Wagner 1899–2001) and I used to discuss this issue of land management. During his era, they learned from our Native Americans and others to use fire as a tool, girdle evasive trees when young, graze animals, harvest timber as a crop, create breaks in the fuel, etc., to manage the landscape. There used to be a multitude of resources (loggers, ranchers, livestock grazing, etc.) available on our Public Land, but now there are restrictions at times for public access due to potential danger, making people fearful for stepping onto our taxpayer funded Public Lands.

So, what do we need to do? Support language such as introduced in this Act. There are many examples of these processes already working, but the rules have been modified to accomplish results. Case in point, the fuels work that had been done in the Tahoe Basin thanks to a NEPA categorical exclusion. That streamlined authority was brokered by Senator Feinstein and Congressman McClintock and signed into law by President Obama. It created a 10,000 acre categorical exclusion to expedite the NEPA process so the work could be done in a timely manner. This work had a beneficial consequence, it made a great fuel break to help stop the Caldor Fire from devastating the Lake Tahoe Basin. The Rocky Mountain Elk Foundation in which I am a Life Member also works with the USFS, Federal Fish and Wildlife, State Fish and Wildlife, and others to accomplish habitat restoration and fuel modification work for the preservation of Wildlife, the Environment, improve habitat, and develop long term action plans to keep the land that way. There are many studies and a lot of data that they have developed to more than justify their action plans. Through the years I've had many conversations with Forest Supervisor's wanting to do work in their Regions and the challenge of NEPA and lack of funding prohibits any progress from being made. Well, funding is beginning to flow and now its time to take off the other handcuff. We need to utilize the tools that are in the toolbox. Stewardship contracts, Good Neighbor programs, utilize our Resource Conservation Districts, just as is occurring currently at the devastated Ski Resort, Sierra at Tahoe. (Caldor Fire) Unfortunately for them its on rehabilitation work. But still, it is an example of how with some reform we can tackle this problem of overgrown and out of control vegetation proactively. They may as well be called jungles, not Recreational Forests. There are many other "Best Practices" that can be instituted across the landscape that the professionals know and the amazing thing is, they are items from the past and other Countries deploy them and they work. We tend to spend forever trying to do it in some newfangled way or it gets delayed, when the simple, common sense solutions are right in front of us. We are making major mistakes in managing our Natural Resources, specifically Vegetation, and it's smacking us right in the face. When is enough, enough? I recently visited Wallace Idaho to review the Polaski Trail and the current level of vegetation in the area. I was aware of the History of the Great Fires in the Inland Northwest in 1910, consuming over 3,000,000 acres and destroying so much,

including 87 deaths. As you hike the Polaski Trail the Kiosks along the way speak volumes to you about the extreme vegetation levels throughout the region and the need for proper management of the landscape during that period and that contributed to the devastating fire. I found this very hypocritical, as the vegetation as of that visit was so thick and overgrown it was crazy. Have we not learned a thing, or do we just talk about it. Oh, did I mention it had been hot and dry for some time leading up the fires. Records of drought and extreme moisture exist through our El Dorado Irrigation weather archives and regional records. They verify that things such as weather, change over time and there is enough patterned history to reasonably predict and prepare for too much or not enough precipitation. I learned long ago "If its Predictable, its Preventable"! Again, we fail at looking to the past to predict the future.

In Conclusion, one can see reform and modification is needed. Could be exemptions for Vegetation Management work (such as we instituted in our Vegetation Management Ordinance for El Dorado County), modifications such as proposed in this Act, Best Practices, or combinations of all three that have and will work in the future. If we don't manage our Public Lands for the benefit of all interests that can be prioritized, we may as well give the land to other entities who can. All we are doing is creating a huge "Liability" for our Federal Government to have to come in post incident or occurrence and mitigate. These mitigations are costing Billions, just look at the recovery costs paid out by FEMA of late. Our Governments lack of proactive actions as evidenced by the devastating consequences warrant paying any FEMA claim. We can and should do better. We have the tools. We have the intelligence, we have the history to learn from. Its more than time to be proactive and not reactive. We can be strategic, surgical and protect our environment while doing so. Billions should be prioritized and spent on proactive management and the eventual overall costs will go down. Working together behind the scenes and on the Landscape is the answer Let's get to it. I leave you with a couple simple Veerkamp truisms and a question.

An ounce of prevention is worth thousands of pounds (our environment) of cure!

Per my Grandfather, "Manage the Land or it will Manage YOU!

The question: NEPA—At what cost?

Thank you for this opportunity. I wish you all well, God Bless and Godspeed! Please feel free to ask questions.

Also, I have included some photos of Pre and Post project work on our Water District recreational property, the drinking water supply canal for El Dorado County damaged by the Caldor fire, Caldor Fire photos of damaged forest and Ski resort.

The CHAIRMAN. Thank you, Mr. Veerkamp. I now will introduce Mr. John Beard, Jr., who is the Founder, President, and Executive Director of the Port Arthur Community Action Network in Port Arthur, Texas.

Mr. Beard, you are now recognized for 5 minutes.

STATEMENT OF JOHN BEARD, JR., FOUNDER, PRESIDENT, AND EXECUTIVE DIRECTOR, PORT ARTHUR COMMUNITY ACTION NETWORK, PORT ARTHUR, TEXAS

Mr. BEARD. Thank you, Mr. Chairman. To the Chairman, Ranking Member Grijalva, fellow members of the Committee, staff, fellow Americans in this room, and guests, I thank you for allowing me this opportunity to come here today to speak to you with regard to the BUILDER Act. And I have heard a lot of what has been said already, but before I get started into this I will give you a little bit of a brief on myself.

I am a second generation refinery worker in the petrochemical industry. I worked for ExxonMobil Corporation for 38 years. My father worked for Gulf Oil, which is now Valero. We were both union men, and proudly so. I was also a city councilman for 9 years and mayor pro tem in the city of Port Arthur, which is one of the

petrochemical hubs that holds this country together in the petrochemical industry. And I have also served in numerous other capacities in my city since I have come away from there. But I also started the Port Arthur Community Action Network for the sole purpose of addressing the disparities that I saw from within the industry, and as a city councilman, and also now, as a regular citizen in this current capacity.

[Slide.]

Mr. BEARD. So, if you will, I would like for you to take a brief look as I speak and talk through this of what environmental injustice looks like, the flarings that you see going on there, and the various other pictures. This is what we deal with on a daily basis. We are bombarded by chemicals and pollution.

As a matter of fact, in 2010, the city of Port Arthur was declared an environmental showcase city by the EPA. What we are showcasing, I don't know. But if it is this, then that tells a lot of the story.

But as you all have said today in talking about permit reform, let me say this to it—and no offense to Mr. Graves, because we are sister, I guess you could say, states—but what we don't need is permitting reform that guts and takes away the protections that NEPA gives to communities like mine.

As I said, we are an environmental justice showcase community, because we also have twice the state and national average for not just cancer, but heart, lung, and kidney disease. And then we also have a high poverty rate, almost 30 percent in the city of Port Arthur, yet we have over $80 billion of industrial development going on in Jefferson County and in the city of Port Arthur proper.

We are home to the largest refinery in the country. We are also home to one of the largest export facilities for LNG in the country, Cheniere. And all of this and more are being brought here. And do you know why? They are brought to communities like Port Arthur, not to River Oaks, not to Beverly Hills, and other places, but because, in the words of one of the captains of industry, that is the path of least resistance. They are least able and affordable to be able to fight back.

So, when you talk to me about restricting access to the legal system, which is a foundation of our country, then you are telling me exactly that you are not going to give their voice to be heard. The Chair mentioned earlier going so far to say that we respect that, and that is good, that is fine and perfect. But respect without access means you are not going to be heard. We have to be heard to stop some of this from going on.

But let me say this as we get to the end with regard to permitting. I have sat in some of the meetings of FERC and heard them talk about this. And one of the FERC commissioners said that this project was held up 30 months, and that one 15, and the other. But as I came to know, in some of the filings that I have seen in Texas and in my city, the permits were not held up because of government inefficiency, but because the permits were incomplete that were sent to the agencies that had to oversee them. Therefore, they got sent back, and they sat on them. That is not the fault of the government.

But what is the fault of the government is to not fully fund those agencies so that they have the manpower and the training and the staff to do the work that they are designed to do. So, if you are talking about reforming that way, I am in total agreement with you. But if you are talking about reform that guts those agencies, that minimizes and reduces their effectiveness to do their job, that doesn't protect communities like mine that are overburdened.

Let me tell you something as I close. We are called a sacrifice community. You know why? Because America, to have oil and gas, and drive planes and cars, and fly and go places, that is what we have to put up with. We have to put up with smelly odors in our homes that have been released, yet no one knows where it came from. And there are any number of other things that I will be glad to talk with you about if you ask me the questions.

But I am here to say today that this bill, in the current form it is written, is not permitting reform. It is a death knell. It is a death sentence to communities like mine all along the Gulf Coast, from Florida all the way to the tip of Texas and Brownsville. Those communities deserve and need protection, not weakening the protection. Strengthen it so we can do this thing and have an energy transition that is clean, green, and helpful, but not to where we allow industry to have a blank check and continue what you are seeing there. Thank you.

[The prepared statement of Mr. Beard follows:]

PREPARED STATEMENT OF JOHN BEARD, FOUNDER, PRESIDENT, AND EXECUTIVE DIRECTOR, PORT ARTHUR COMMUNITY ACTION NETWORK

In 1987 the United Church of Christ, under the leadership of the venerable Dr. Benjamin Chavis released the landmark report, *Toxic Wastes and Race in the United States*.[1] In characterizing environmental racism, a term Dr. Chavis coined and how it operates and manifests, the report notes, "Racism is the intentional or unintentional use of power to isolate, separate, and exploit others." It continues, "Both consciously and unconsciously, racism is enforced and maintained by the legal, cultural, religious, educational, economic, political, environmental, and military institutions of societies. Racism is more than just a personal attitude, it is the institutionalized form of that attitude."

My name is John Beard, I serve as the founder and executive director of the Port Arthur Community Action Network. I live in Port Arthur, Jefferson County, Texas, an environmental justice community afflicted by institutionalized environmental racism. West Port Arthur is a predominantly Black community along the Gulf Coast of Texas, that has been an economic and energy "sacrifice zone" for the fossil fuel industry. West Port Arthur, like many Black, Brown, and Indigenous communities throughout the United States, was intentionally segregated through the practice of redlining—a discriminatory and racist practice that consisted of the systematic denial of mortgages based on race, and the forced centralization of Black people in ways not seen since the height of chattel slavery in the United States. In addition to pillaging the ability of Black folk to establish and maintain generational wealth, redlining also is responsible for the placement of toxic facilities and operations proximate to Black and Indigenous communities, which, in too many instances, has denied their generational health.

Port Arthur, home to one of the largest concentrations of oil refineries in the nation, with three major refineries and 8 additional oil and gas operating facilities, is the epitome of the afflictions directly associated with redlining. For instance, the asthma rate for children in West Port Arthur is twice the national average. In comparison to the average Texan, Black residents in Jefferson County, where Port Arthur is located, are 15% more likely to develop cancer and 40% more likely to die

[1] "Toxic Wastes and Race In The United States: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites", Benjamin Chavis, Commission for Racial Justice; 1987. Article found at: https://www.nrc.gov/docs/ML1310/ML13109A339.pdf

from cancer.[2] Sulfur dioxide, a hazardous chemical that is released by fossil fuel facilities like those in West Port Arthur, has been correlated with an increase in strokes, pulmonary diseases, and death.[3] While the Environmental Protection Agency (EPA) has set the Sulfur Dioxide threshold at 75 parts per billion, nearby facilities in West Port Arthur routinely surpass 100 parts per billion,[4] proving the sage words of environmental justice scholars and practitioners Dr. Beverly Wright and Dr. Robert Bullard who describe communities like mine as, "the wrong complexion for protection".[5]

And while the fossil fuel industry argues that oil and gas development placement in West Port Arthur supports the local economy, the unemployment rate of my community has continued to grow in spite of fossil fuel industry expansion.[3] Additionally, the proximity of West Port Arthur to fossil fuel facilities and operations continues to exhibit an adverse impact on property values—in effect, reducing them to levels that are lower than when some of them were originally purchased. The impacts of redlining are still felt in communities like West Port Arthur and other cities and states nationwide—in "blue states" just as much as in "red states" and throughout Indian Country.

The struggles of my community are not felt in isolation. Numerous "cancer alley" communities are along the gulf coast, just like "asthma alleys" throughout the northeast and western cities. While we all consume oil and gas products, a study found that in the United States, PM2.5 air pollution is disproportionately induced by White Americans and disproportionately inhaled by communities of color.[6] And while fossil fuel industry pollution creates health and economic consequences for everyone, these consequences are unquestionably borne unequally and disproportionately impact communities of color, low-income communities and Indigenous communities.[7]

The gulf coast has been lucrative for fossil fuel executives, who benefit financially from fossil fuel extraction at the cost of the health and well-being of fenceline communities, predominantly low-income communities of color, who breathe in the toxins released by these facilities. From West Port Arthur, Texas, to Houston, Texas, to St. Johns Parish, Louisiana—our communities are interconnected by a shared struggle that is intensifying in severity. We are the fenceline of polluting industries and the frontline of climate catastrophes as increasingly powerful hurricanes continue to batter our coasts and are anticipated to become more powerful and calamitous if we continue to pollute our atmosphere with toxic emissions that result from the extraction, refining, and emitting of fossil fuels. With each storm, we witness the destruction of our communities, coupled with the massive displacement of our communities and deeper entrenchment into poverty.

Communities in the Gulf Coast stand at the intersection of social justice movements rooted in environmental justice, climate justice, civil rights, feminist economies, and much more. Our fight for justice goes beyond the Gulf Coast, as communities of color throughout the United States disproportionately bear the brunt of toxic facilities. The National Environmental Policy Act (NEPA) of 1970 is one of the few federal laws that provides some protections and requires environmental review and consideration for proposed actions in communities like mine.

Attempts to deregulate and weaken NEPA represent a clear and present danger for residents of West Port Arthur and surrounding communities and must be seen as nothing more than a thinly veiled diminishing of the scanty defenses available to us in the first place. Previous bipartisan efforts have attempted to weaken protections offered to public health and the natural environment. Yet, as I explain below,

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[2] "Fumes Across the Fence-Line: The Health Impacts of Air Pollution from Oil & Gas Facilities on African American Communities", National Association for the Advancement of Colored People (NAACP); November 2017. Article found at: https://naacp.org/resources/fumes-across-fence-line-health-impacts-air-pollution-oil-gas-facilities-african-american

[3] "Port Arthur, Texas: American Sacrifice Zone", Natural Resources Defense Council; Article found at: https://www.nrdc.org/onearth/port-arthur-texas-american-sacrifice-zone

[4] "Any Way the Wind Blows: A Koch-owned chemical plant in Texas spent years running from the Clean Air Act. New evidence suggests it bent the law until it broke.", Naveena Sadasivam, Clayton Aldern; Grist, February 2023; Article found at: https://grist.org/project/accountability/koch-oxbow-port-arthur-texas-clean-air-act-pollution/

[5] "The Wrong Complexion for Protection: How the Government Response to Disaster Endangers African American Communities", Robert D. Bullard, Beverly Wright, 2012, Article found at: https://muse.jhu.edu/book/17926

[6] "Inequity in consumption of goods and services adds to racial-ethnic disparities in air pollution exposure", Tessum et al, March 2019, Article found at: https://www.pnas.org/doi/full/10.1073/pnas.1818859116

[7] "The 2020 Report of the Lancet Countdown on Health and Climate Change: Responding to Converging Crises," The Lancet, vol. 397, no. 10269, pp. 129–170, 9 January 2021. https://www.thelancet.com/article/S0140-6736(20)32290-X/fulltext.

the Building United States Infrastructure through Limited Delays and Efficient Reviews Act or "BUILDER Act" is yet another bill that will benefit fossil fuel corporations who have donated extensively to members advancing their interests.[8]

I will specifically discuss the proposed rollbacks to NEPA contained in the BUILDER act and how they would have deleterious effects in the areas of Community Input/Public Participation, Due Process, and Federal Transparency as stipulated in myriad United States codes and regulations, including but not limited to, 5 U.S.C. §§ 551–559, the Administrative Procedure Act.

I. Community Input and Public Participation

Pursuant to the plain language of Title 40 Section 6.203(a)(5) of the Code of Federal Regulations, "[Lead Agencies and Responsible Officials] must use appropriate communication procedures to ensure meaningful public participation throughout the NEPA process." The section goes on to say that agencies must "make reasonable efforts to involve the potentially affected communities where the proposed action is expected to have environmental impacts or where the proposed action may have human health or environmental effects in any communities, including minority communities, low-income communities, or federally recognized Indian tribal communities."[9]

As pointed out by EPA, Department of Energy, and other federal agencies, "In addition to promoting transparency, public involvement is crucial for facilitating better decision-making."[10] Further, key benefits of a robust and transparent public participation process, "is the development of capacity for managing difficult social problems. This capacity includes improved relationships and trust between decision-makers and the public, and among different stakeholders themselves. Also, when done well, public participation helps to teach stakeholders meaningful and collaborative ways to approach each other, manage difficult decisions, and resolve disputes".[11] All to say, enhancing and improving community involvement and public participation would not result in impediments to proposed actions. Rather, it would improve trust between stakeholders, and establishing trust, in turn, can reduce legal challenges and other actions that could delay the environmental review process.

The Motiva Port Arthur Refinery is the largest oil refinery in North America.[12] The Motiva Refinery was located 300 yards from the Carver Terrace public housing project.[13] Residents at the Carver Terrace public housing project experienced such poor health and associated diminished economic mobility that advocates pushed for the relocation of the public housing project. Advocates were successful in their pursuit. However, it is unsettling to comprehend that residents intentionally sought relocation to escape the hazardous conditions of the Motiva Refinery. Community input allowed residents to escape the toxicity of the Motiva refinery. However, the Motiva Refinery never underwent public input since it was erected in 1902, decades before NEPA was enacted.

The largest air pollution emitters in Texas are by and large in Jefferson County—The Motiva refinery, Oxbow Calcining's Port Arthur plant, the Beaumont Refinery, and Valero's Port Authority Refinery were all created before the enactment of NEPA.[14] Over the decades, many of these refiners have undergone significant expansions and have been able to subjugate parts of the NEPA process since the primary facility itself was "grandfathered" in. For example, ExxonMobil announced last week that they intend to start up its expanded Beaumont Refinery, becoming the second largest in refining capacity.[15]

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[8] "Fossil Fuel Subsidies Overview," Oil Change International. Article found at: https://priceofoil.org/fossil-fuel-subsidies/

[9] 40 CFR § 6.203—Public participation. Article found at: https://www.law.cornell.edu/cfr/text/40/6.203

[10] "Public Involvement in NEPA", Department of Energy. Article found at: https://www.energy.gov/em/public-involvement-nepa

[11] "Public Participation Guide: Introduction to Public Participation" Environmental Protection Agency (EPA). Article found at: https://www.epa.gov/international-cooperation/public-participation-guide-introduction-public-participation

[12] Motiva—Homepage; Found at: https://motiva.com/about/what-we-do/refining

[13] "PORT ARTHUR, TEXAS: The End of the Line for an Economic Myth", Environmental Integrity Project; August 2017. Article Found at: https://environmentalintegrity.org/wp-content/uploads/2017/02/Port-Arthur-Report.pdf

[14] "Nitrogen Oxides Pollution Reductions Needed in Texas to Meet new EPA Health Based, Air Quality Standard for Ozone"; Sierra Club Lone Star Chapter; Article Found at: http://www.energyjustice.net/map/server-test/uploads/tx_facilities_nox.pdf

[15] "Exxon prepares to start up $2 bln Texas oil refinery expansion"; Erin Sewba, Reuters; January 2023, Article Found at: https://www.reuters.com/business/energy/exxon-prepares-start-up-12-bln-texas-oil-refinery-expansion-sources-2023-01-13/

The environmental degradation of these fossil fuel projects, alongside many other projects throughout the United States, catalyzed numerous environmental protection bills, including NEPA. In the 1970s, when NEPA was signed into law, it seemed widely agreed upon that the federal government must step in to protect the earth's resources, especially air, and water, that are fundamental to the health and well-being of communities. While NEPA could not mitigate past harms caused by facilities, it ought to be used to prevent further ecosystem deterioration.

Since the inception of NEPA, the opportunity for public comment has been an integral part of the NEPA process. Public comment has served as a way for communities to have their voices heard. Public comment is vital in communities intentionally placed alongside facilities due to practices such as redlining and who had no say in the initial development of the fossil fuel infrastructure.

II. Due Process and Government Accountability

The United States legal system is based on the concept of due process—that is, when and where harm to people and communities can be demonstrated, these entities are then afforded due process of the law pursuant to Amendment 14 of the Constitution. In fact, various iterations of the US Supreme Court have held in its decisions that this entitlement and associated protections apply to ALL people regardless of race, color, and citizenship.

For NEPA, due process is actualized by the environmental review requirement, including an analysis of potential environmental justice and other socioeconomic impacts, for all federally funded and sponsored projects/proposed actions. NEPA enables communities to ensure due process in the face of major projects and developments. Should any environmental review process be deemed by an impacted community to be incomplete, inadequate, or intentionally or unintentionally duplicitous, due process provides these communities with the use of the judicial system to intervene and determine if NEPA was complied with and, if not, direct mitigation for those impacts significant threats to public health, safety, and welfare and the natural ecosystem at large.

A recent example of a judicial intervention that supported communities was blocking the Keystone XL pipeline. In November 2018, in Indigenous Environmental Network v. U.S. Department of State, Indigenous Environmental Network won its case against the U.S. Department of State when a federal judge ruled that the Keystone XL pipeline had an inadequate assessment conducted, violating NEPA.[16] Due to this ruling, construction of the tar sand pipeline was halted. The Keystone XL pipeline went on to have numerous other legal battles before the project was ultimately discontinued by President Obama, and again by President Biden—since the pipeline's terminus was slated for Port Arthur, the end of the Keystone XL pipeline was a victory for my community.

A more recent example of how NEPA intervention prevented environmental harm and environmental racism is the defeat of the controversial Byhalia Pipeline that was slated to be constructed, in part, through Memphis, Tennessee. The pipeline would have disproportionately impacted the majority Black communities, including Boxtown, a community founded by freed slaves during the Civil War. Additionally, according to the Southern Environmental Law Center (SELC), Boxtown, based on a 2013 study, has a cumulative cancer risk that's four times higher than the national average, likely due to the high concentration of industrial facilities in the area and associated exposure to high levels toxic solid waste and air emissions.[17]

The NEPA process, combined with powerful and indomitable grassroots organizing, prevented the Byhalia Pipeline from becoming another example of environmental racism and, instead, an example of how NEPA assists with increasing environmental justice. Had laws like the BUILDER Act been in effect, Byhalia would have been fast-tracked and rammed through a community already experiencing disproportionate environmental and health impacts, which is why we need to understand and state plain that the BUILDER Act, if passed, would extend our nation's toxic legacy of treating Black, Indigenous, other People of Color, and the poor communities as disposable, ineffable, and sacrificial.

The BUILDER Act includes multiple provisions that would impede communities' ability to exercise due process. The BUILDER Act seeks to prohibit injunctive action, allowing long-term damage to begin despite community concern. If judicial injunctions were no longer a legal tool, then the KeystoneXL pipeline would have

[16] "Final Ruling—Case 4:17-cv-00029-BMM" November, 18. Article found at: https://www.sierraclub.org/sites/www.sierraclub.org/files/blog/KXL%20ruling.pdf

[17] "How the Byhalia Pipeline would have impacted Memphis" March 10. Southern Environmental Law Center. Article found at: https://www.southernenvironment.org/news/byhalia-pipeline-basics/

been able to begin construction while the case was in court. The BUILDER Act would also block communities from filing claims if they could not participate in the public comment period. Public comment periods are often inaccessible to communities, especially due to their short time frames. Failure to participate in the public comment period should not lead to the exclusion of communities from participation in the judicial system. The BUILDER Act would also limit the time to file a claim from the typical statute of limitations of 6 years to 120 days. This would essentially bar communities, particularly low-income communities, from being able to file a claim due to the financial obstacles that communities face in seeking legal aid. Communities have often been protected from harmful developments due to the judicial system. Any actions that limit communities' ability for judicial intervention directly infringes on our right to due process. The BUILDER Act's attempt to minimize meaningful participation must be called out, confronted, and elucidated as an infringement on communities' self-determination nationwide so that fossil fuel corporations can continue their business model that prioritizes profits over people.

So let's be clear, this is less about NEPA and constitutional due process slowing down proposed actions like KXL and Byhalia and more about the inability of projects like these to demonstrate no significant impacts on public health and the natural environment in a way that is legally defensible. And further, it's also about the proclivity of these kinds of projects to exacerbate environmental racism and the climate crisis alike and their inability to prove otherwise.

III. Federal Transparency

The BUILDER Act would allow project sponsors the opportunity to create their environmental documents. We have seen numerous times, especially among the fossil fuel industry, that fossil fuel companies will intentionally omit and manipulate information to the public that would hurt their bottom line.

One example that has gained much national attention is that Exxon did complex scientific analysis in the 1970s that accurately predicted the impacts of climate change.[18] Yet, despite Exxon's awareness of the catastrophic effects on the globe of their fossil fuel operations, Exxon spent millions of dollars over the past few years on public campaigns and lobbying to deny the impacts of climate change. While Exxon's deception has gained attention due to its national reach, they aren't the only Texas-based fossil fuel company that has decreased public trust by withholding information.

Oxbow Calcining's Port Arthur plant was recently found to have intentionally changed its operating procedures to avoid getting noticed for air quality violations.[4] Oxbow would reduce or modify their operating systems when the wind blew toward air quality monitors. When the wind was not blowing toward monitors, they would resume normal operations, although the operations themselves exceeded air quality regulations.

If major fossil fuel companies with the most financial resources to hire researchers have used their scientific expertise to deceive the public, can we trust them to disclose and conduct environmental impact statements accurately? The scientific process is meant to be an unbiased analysis. However, the scientists themselves often hold their own biases. Allowing scientists with a vested interest in corporations to prepare documents would mean the scientific integrity of the reports is diminished, the efficacy of the statement reduced, and the legitimacy of NEPA at large eroded.

Allowing sponsors to prepare their documents is a giveaway to the fossil fuel industry that would inevitably lead to fast-tracking fossil fuel industries at the continued demise of communities like mine. To further weaken the analysis performed under an environmental statement, the BUILDER Act would make it so that agencies are no longer liable to do new scientific research when conducting environmental impact assessments. This is deeply troubling as we continue to see more and more new scientific research showcasing the negative health impacts of chemical pollutants and the effects of the fossil fuel industry on the climate. In not conducting necessary additional scientific studies, the federal government would choose a path of negligence on the potential long-term ramifications of a proposed project.

Conclusion

Each of you took an oath in which you swore to uphold and defend the United States Constitution—yet there are those of you who are advocating for a piece of legislation that would ostracize the people who employ you from exercising an epochal and cherished Constitutional right to Due Process. If we are truly to be a

[18] "Exxon Knew about Climate Change almost 40 years ago"; Shannon Hall, Scientific American; Article Found at: https://www.scientificamerican.com/author/shannon-hall/

nation of laws, they cannot be established or articulated by legislative bodies that operate through a lens of profound contradictions.

As we discuss the future of NEPA, we must shift away from determining ways that NEPA should be "reformed" and instead imagine ways in which NEPA can be strengthened to better serve and protect communities based on the best scientific understanding and analysis available today. The science is clear—communities of color disproportionately bear the brunt of polluting industries and the accompanying health impacts. The science also shows us that climate change already has, and will continue to be, a threat multiplier, wherein communities struggling today will be the first and worst impacted by impending climate catastrophes. Inequality in the United States continues to grow—from America's disparities in life expectancy to the racial wealth gap. We cannot bring equality, let alone equity, in our nation without intentionally putting protections for communities of color into law.

The CHAIRMAN. Thank you, Mr. Beard, for your testimony. And again, our hearing today is on NEPA, not on the Clean Air Act or FERC.

And I want to finally introduce Mr. Keith Pugh. He is the President of the American Public Works Association from Asheville, North Carolina. I very much look forward to hearing his testimony, a fellow engineer.

Mr. Pugh, you are now recognized for 5 minutes.

STATEMENT OF KEITH PUGH, PE, PWLF, PRESIDENT, AMERICAN PUBLIC WORKS ASSOCIATION, ASHEVILLE, NORTH CAROLINA

Mr. PUGH. Chairman Westerman, Ranking Member Grijalva, members of the Committee, thank you for the opportunity to provide testimony on reforming NEPA. I am Keith Pugh and am proud to serve as President of the American Public Works Association, which represents over 30,000 public works professionals.

In 1988, I started my career as a municipal engineer, and worked my way up to Director of Engineering Services for the city of High Point, North Carolina, a position I held for 15 years. Today, I continue my work with WithersRavenel, a 100 percent employee-owned, multi-disciplinary civil and environmental engineering firm that delivers services across North Carolina.

APWA members serve in the public and private sectors, providing expertise on local, state, and federal levels. They plan, design, build, operate, and maintain transportation, water systems, sanitation, public buildings and grounds, emergency planning, and response, and other structures and facilities essential to our economy and our quality of life.

Since NEPA was enacted, environmental protection has become a prime consideration in infrastructure. Like any policy that has been in place for five decades, NEPA should be updated to address current societal needs, and to maintain adequate environmental protections.

And as reported by CEQ, for Federal Highway projects the average length of a final EIS was 645 pages, and NEPA reviews took 7.3 years. The increased time and page length is due to administrative burdens placed on communities investing in their infrastructure. These burdens are often overwhelming for public works professionals, who have limited resources to carry out their responsibilities.

Our infrastructure needs continued updating and maintenance and, in some cases, full replacement. Roads, bridges, water systems, emergency management, sanitation, and so much more need investment right now. While the Federal Government does appropriate funds for projects like these, some communities decide against applying, due to the onerous nature of permitting requirements.

In my experience, any time Federal funds were introduced into a project, we immediately added at least 25 percent to our budget. Most agencies can't handle the additional documentation, so they seek outside assistance, which automatically increases the overall cost further. Some communities that cannot access other financing sources rely on Federal funding, and end up spending a large portion of the project dollars on the permitting requirements. In the worst cases, communities defer maintenance until infrastructure fails. In the end, many are not upgrading and maintaining their infrastructure as needed, which leads to a lower quality of life for our residents, lower environmental protection, and higher public health risks.

For infrastructure programs to be most effective, the application process should not be so complex that it dissuades small and disadvantaged communities from attempting to access funding. Public works professionals are doing what is best for their communities, despite an array of challenges, and APWA places a high priority on respecting and enhancing local autonomy.

Relief is desperately needed from supply chain shortages and inflation. The cost of construction and materials has rapidly increased beyond original project estimates. Even proactive communities are not immune to these cost and timing issues, which are exacerbated by permitting delays. Higher costs are ultimately passed on through more expensive rates or the diversion of resources from other community priorities.

APWA supports continuing efforts to streamline the regulatory process, and we have been vocal during administrations of both parties, including in the FAST Act and One Federal Decision, as codified in the Infrastructure Law. These actions have provided a more predictable, transparent, and timely review and authorization process for delivering major infrastructure projects.

However, work remains, and APWA supports establishing a lead Federal agency to develop a joint review schedule; establishing time and page limits for completion of environmental documents; extending the completion period with the approval of the applicant, when necessary, to allow for further consultation with local agencies; bringing the statute of limitations for NEPA cases in line with other environmental statutes; reducing duplicative reporting by allowing adherence to state or even local standards; and finally, examining a reasonable number of feasible alternatives for projects, including an analysis of any negative environmental impacts, for taking no action. All of these recommendations we are pleased to see included in the BUILDER Act.

Thank you for holding this hearing and your work on permit reform. APWA stands ready to assist you to work to make these reforms law.

[The prepared statement of Mr. Pugh follows:]

PREPARED STATEMENT OF B. KEITH PUGH, PRESIDENT OF THE AMERICAN PUBLIC WORKS ASSOCIATION

Chairman Westerman, Ranking Member Grijalva, and Members of the Committee, thank you for the opportunity to provide testimony on proposed reforms to the National Environmental Policy Act (NEPA). My name is Keith Pugh, and I am proud to serve as President of the American Public Works Association (APWA) representing more than 30,000 members and public works professionals. I started my career in public works as a municipal engineer with the City of Greensboro, N.C. in 1988 and worked my way up until I assumed the role of Director of Engineering Services for the City of High Point, NC, a position I held for 15 years. Today, I continue my work with WithersRavenel, a 100% employee-owned multidisciplinary civil and environmental engineering firm that delivers engineering, planning, and surveying services across North Carolina.

APWA members serve in the public and private sectors providing expertise on the local, state, and federal levels. They are dedicated to providing sustainable public works infrastructure and services to all people in rural and urban communities, both small and large. Working in the public interest, our members plan, design, build, operate and maintain transportation, water supply and wastewater treatment systems, stormwater management, drainage and flood control infrastructure, waste and refuse disposal systems, public buildings and grounds, emergency planning and response, and other structures and facilities essential to the economy and quality of life nationwide.

NEPA is important to public works professionals and serves as the regulatory framework for protecting America's environment while allowing vital infrastructure projects to be undertaken. In the half century since NEPA was enacted, environmental protection has become a prime consideration in the planning, design, and construction of infrastructure. Like any policy that has been in place for five decades, NEPA should be updated to address current societal needs.

As found by the Council on Environmental Quality, for federal highway projects the average length of a final Environmental Impact Statement (EIS) was 645 pages and the average time to conduct NEPA reviews was 7.3 years, we need to protect our environment and find efficiencies to reduce these burdens—it can be done. The increased time and page length is attributable to administrative burdens placed on communities investing in their infrastructure. These burdens are often overwhelming for public works professionals in carrying out their responsibilities with limited resources. For instance, I am working on a greenway project for which the NEPA process has already added approximately 18 months to our project timeline and tens of thousands of dollars to the cost.

Our nation's infrastructure needs continued updating and maintenance, and in some cases full replacement. Roads, bridges, drinking water, wastewater, emergency management, sanitation, cybersecurity and much more need investment right now. While the federal government does appropriate funds for projects like these across the country, some communities are deciding against applying for federal funds due to the onerous nature of permitting requirements, including NEPA. In my experience, any time federal funds were introduced into a project, we immediately added at least 25% to the project budget. However, the final cost could be significantly higher than that. This is due to the administrative burdens placed on the local government, the design professionals working on the project, the contractor, and the inspection close-out process. Furthermore, some small agencies do not have the staff capacity to handle the additional documentation, so they have to seek outside assistance which automatically increases the overall project cost.

Some communities that cannot access other financing sources rely on federal funding and end up spending a large portion of the project dollars on permitting requirements rather than on infrastructure improvement. In the worst cases, these communities defer maintenance until infrastructure fails. We have seen this occur across the country and the consequences for people and the environment, including in my home state where delays in water infrastructure improvements risk increased chances of flooding and contamination from major storm events. These delays extend to transportation systems including mass transit that reduce congestion and emissions. In the end, many communities are not upgrading and maintaining their infrastructure as needed, leading to a lower quality of life for residents, as well as lower environmental protections and higher public health risks.

For infrastructure programs to be most effective, the application process should not be so overly complex that it dissuades small, rural, tribal, and disadvantaged communities from attempting to access funding. Public works professionals are doing what is best for their communities despite an array of challenges, and APWA places a high priority on respecting and enhancing local control for infrastructure

projects. It is important that local governments have a seat at the table and are fully engaged in the permitting process since they know their communities best. We strongly encourage the federal government and industry to coordinate with state and local governments on infrastructure projects.

Additionally, unfunded mandates should be avoided, and financial support should be provided to states and localities to fulfill federal mandates. This is especially true now, as relief is so desperately needed from supply chain shortages and inflation. The cost of construction and materials has rapidly increased and necessitated the acquisition of significant additional funding beyond original estimates. Communities are considering, in some cases, pre-ordering items such as pumps, valves, pipe, iron castings, precast units, and other items to expedite the construction process. By pre-ordering materials, agencies can theoretically secure materials quicker than the contractor who would have to wait until having a fully executed contract with the agency before proceeding. The problem with this type of ordering is typically storage and delivery of materials, as well as warranty issues. This shows that even proactive communities are not immune to these cost and timing issues, which are exacerbated by permitting delays. These higher costs are ultimately passed on to the public through higher rates or the diversion of resources from other community priorities.

APWA supports continuing efforts to streamline the regulatory process related to infrastructure projects and has been vocal in that support during administrations of both parties. APWA has been supportive of streamlining efforts undertaken in the Fixing America's Surface Transportation (FAST) Act, and "One Federal Decision" when it was proposed by the Trump administration and codified in the Infrastructure Investment and Jobs Act (IIJA). These actions have provided a more predictable, transparent, and timely federal review and authorization process for delivering major infrastructure projects. However, work remains to be done, and **APWA supports**:

- Establishing a lead federal agency to develop a joint review schedule and preparation of a single environmental document and joint record of decision for projects that require multi-agency reviews.
- Establishing time limits of two years for completion of Environmental Impact Statements (EIS) and one year for Environmental Assessments (EA).
- Establishing a 300-page limit for EIS of "extraordinary complexity" and a 75-page limit for each EA.
- Extending the completion period with the approval of the applicant when necessary to allow for further consultation with local agencies.
- Bringing the statute of limitations for NEPA cases in line with other environmental statutes (120 days).
- Reducing duplicative reporting by allowing adherence to state or even local standards often equally or more stringent than federal rules to be used as evidence of compliance with federal standards.
- Examining a reasonable number of alternatives for projects that are technically and economically feasible, including, if considered, an analysis of any negative environmental impacts of a no action alternative.
- Clarifying that the environmental review process should consider any proposed action within the context of past, present, and "reasonably foreseeable" effects.

All recommendations we are pleased to see included as provisions in the BUILDER Act.

Chairman Westerman and Ranking Member Grijalva and Members of the Committee, thank you and your staff for holding this hearing and your work on permitting reform. We are especially grateful for the opportunity to submit this statement and speak to the experiences of our members with the permitting process. APWA stands ready to assist you and Congress as you work to make these reforms law.

The CHAIRMAN. Thank you, Mr. Pugh, and thank you again to all of our witnesses, not only for your oral testimonies, but for your written testimonies. I took time and read every one of your testimonies, and really appreciate you.

The testimony I didn't read, though, was the one that CEQ wrote and sent over here because, not only did they not come to our Committee, they didn't even submit their written testimony, which tells me they are either ashamed of what they are doing, they don't know what they are doing, or they don't care what we are doing. Any way you look at it, they are not at the table, and they should be.

So, again, thank you to the witnesses who came here today, who care about this issue. I want to now go to the dais and have Members ask questions. And we might not have time for all the questions today. Members may submit questions in writing, and we would ask that you would answer those.

Under Committee Rule 3, members of the Committee—OK, I am getting ahead of myself.

I now want to recognize Mr. McClintock for 5 minutes for questions.

Mr. MCCLINTOCK. I thank you, Mr. Chairman. Excess timber is going to come out of the forest in only two ways. Either we will carry it out or nature will burn it out.

During the 20th century, U.S. foresters would mark off surplus timber every year. They would auction it to logging companies who would then pay us to remove it—25 percent of the revenues from the Federal timber auctions went to the local governments affected, and the other 75 percent went back to the Forest Service to manage our lands. The result was healthy and resilient Federal forests and thriving local economies.

But then we passed the National Environmental Policy Act, with the promise that it would improve the forest environment. Well, now simple forest-thinning projects require an average of 4½ years of environmental studies, costing millions of dollars, more than the value of the timber. So, instead of forest-thinning projects making money for the Federal Government, they cost us money. So, not much gets done. Timber harvesting on Federal lands in the Sierra has fallen 80 percent under NEPA, and the number of timber mills declined from 216 to 32. Without loggers carrying out excess timber, nature has returned to burn it out.

California has done enormous damage to its economy by imposing the most draconian carbon restrictions in the country. Yet, a joint study by UCLA and the University of Chicago recently documented that the carbon released from just 1 year of forest fires in California completely negated the entire carbon emissions reduced over 16 years, combined. This is lunacy. When a law not only doesn't achieve its purpose, but becomes counterproductive to its purpose, it is long time to alter or abolish it, and that time is long overdue for NEPA.

The categorical exclusion from NEPA that was originally contained in my H.R. 3382 was included in the WIIN Act in 2016. That measure provided for a categorical exclusion from NEPA for forest-thinning projects in the Tahoe Basin. It reduced the study time required by NEPA from 4 years down to less than 4 months, and the environmental reports from 800 pages down to a few dozen. Over the last 5 years, the Tahoe Basin Management Unit has increased removal of excess timber from 1 to 2 million board-

feet a year to an average of 9 million board-feet under this authority, and the treated acreage in the Tahoe Basin has now tripled.

As Mr. Veerkamp said, when the Caldor Fire hit one of these treated tracks, it laid down and it was stopped before it could wipe out the city of South Lake Tahoe. The town of Grizzly Flats wasn't as fortunate, because they weren't covered by this legislation.

For decades, NEPA held up a similar treatment project that experts warned was absolutely essential to protect that town. The Trestle project was delayed so long that it couldn't be implemented by the time the Caldor Fire utterly incinerated the entire town of Grizzly Flats.

We desperately need to extend the categorical exemption from NEPA to all Federal lands. My bill to do so in this session is awaiting hearing in this Committee, and I hope that we will see it on the Floor without delay. Until then, we have this bill that would at least set time limits on environmental reviews to 2 years, and limit the size of the studies to about 150 pages.

After 50 years of experience with NEPA, the results are devastating: entire communities wiped out by catastrophic fire, countless species habitats destroyed, millions of acres of forest laid waste. The environmental left promised us that NEPA would protect our forests. Instead, it is destroying them.

Mr. Veerkamp, what do you think would have happened to Grizzly Flats if the Forest Service had been able to complete the Trestle project?

Mr. VEERKAMP. It more than likely would have been easily defended. We have numerous abilities to fight wildland fire and defend structures, but there was just no way, with all of that heavy fuel load that was present that was targeted to be thinned, mitigated and so forth. It more than likely would have been protected.

Mr. MCCLINTOCK. How is it that privately-held forests throughout the Sierra can be maintained at healthy densities, while making money doing it, while Federal lands directly adjacent to them have become morbidly overgrown and cost us money?

Mr. VEERKAMP. Well, it is primarily due to the complications of the protection acts that were put into place to protect our environment, and the consequences of them. Best intentions, but the consequences have turned totally negative. And we are seeing that annually now.

And, again, we are taking care of lots of other work for protection and wiping them out, as well as polluting our environment tremendously, as you alluded to in your study, as I did too, the UCLA study.

Mr. MCCLINTOCK. Should we extend a categorical exclusion throughout the Federal lands?

Mr. VEERKAMP. Absolutely. It has to be done because, again, there are enough other protections and avenues into the way we do things today that the lands will be protected, and the environment will be, the consequences will be good. And we just have gotten down the other side of that. So, absolutely, yes, and we can certainly do better.

And there are examples of those projects occurring today because of categorical exclusions, or other ways to do it that they have figured out. In our private lands we have some, as well, up in the

Sierra Nevadas. We don't have to abide by some of these things, and we go in with a masticator or proper thinning methods and take care of the land so our cattle can graze and so forth, which, at a minimum, our easements, our roadways, our critical infrastructure, our watersheds—50 percent of our watersheds in the country originate on public land. They have to be protected, not incinerated.

The CHAIRMAN. The gentleman's time has expired.

Mr. Veerkamp, I appreciate your enthusiastic answer there.

And Mr. McClintock, I have visited South Lake Tahoe, and I have seen the results on the ground of a healthy forest and a safe community because of the work that you have done.

I now recognize the gentleman from California for 5 minutes, Mr. Huffman.

Mr. HUFFMAN. Thank you, Mr. Chairman. I want to start with just a little bit of fact-checking. We hear so much scapegoating of NEPA every time this subject comes up, and we hear a lot of fake examples to justify it.

There is probably no greater poster child for the hollowness of some of this NEPA scapegoating than Sites Reservoir, which came up in the Chairman's opening remarks. Now, you would have to know nothing about Sites Reservoir to conclude that it is a NEPA problem and that it is an example of why we need to dramatically change NEPA.

The truth is—and I am familiar with Sites for many, many years of California water work—this is a project that has been resizing and reinventing itself for years to try to pencil out, economically. It is desperately trying to qualify for California water bond money that requires public benefits. So, they are constantly reimagining what kind of benefits they might be able to offer. And even still, even while stretching the state and federal dollars that might support it, they can't find folks willing to pay for the water. And that has been what is holding up Sites Reservoir, not even close to a NEPA problem. If anything, it might be a socialism problem, the kind of socialism some folks like. But it is not a NEPA problem.

Mr. Chairman, you also mentioned that $1 billion that we put into streamlining—because we do care about moving clean energy faster—that it hasn't changed anything. Well, I think the Chairman knows that was part of the Inflation Reduction Act that was only passed a few months ago. Give it a chance. I think it can and will move projects faster. That was the whole point.

And, Mr. Chairman, you have had great fun with the empty chair you have set up for CEQ Director Mallory. You would have a point if this Majority had followed the rules, the long-standing tradition of providing executive branch witnesses 14 days of legislative text review. You have a bill here that applies to 80 different Federal agencies. And my understanding is you gave her less than a week. You violated our own Committee Rules and House Rules by giving the Democratic Minority less than a week to read this bill, too.

So, look, I would join you in criticizing——

Mr. GRAVES. Would the gentleman yield?

Mr. HUFFMAN. No, I have limited time, Mr. Graves. I am happy to take it up on your time.

So, in any event, there is nothing new here. That is the good news. Even though we didn't have the required amount of time to review the bill, there is absolutely nothing new. It is a rehash of long-standing Republican attempts to gut NEPA—repackaged, I guess, as a climate and energy policy platform now. It is a long history of these things. Prior incarnations of this zombie legislation have been introduced in previous Congresses by Mr. Gosar, by Ms. Cheney, Mr. Pearce, Mr. Flores, and Mr. Denham.

And it is interesting. I know these bills come from Republican colleagues whose environmental voting scores are so low they have to be measured on the Kelvin scale, but they are great recyclers. So, I want to give credit where credit is due, because you have recycled this idea time and time again.

Mr. Carr, I appreciate the work that rural utilities do. I appreciate you being here. And I just want to ask you about the Cardinal Hickory Transmission Line. My understanding is the preferred route that was chosen does go through a Federal wildlife refuge. That is a very significant part of the Mississippi Flyway. And I am told that, as early as 2012, that refuge informed your cooperative that you should find a non-refuge crossing alternative, and that that was known long ago. My understanding is that you also declined to include a non-refuge crossing alternative in the NEPA document.

I am just wondering if that is true, and why you wouldn't at least include an alternative that didn't cross through the refuge, even if it is not viable. Including it and studying it would seem to comply with NEPA and let you move forward.

Mr. CARR. Yes, certainly, Dairyland and our project partners were engaged in the study many years back. You are correct, it goes back many years.

My understanding is that the study looked at numerous alternatives to crossing the Upper Mississippi National Wildlife Refuge. And, in fact, again, we are talking about a refuge that stretches roughly 200-and-some miles, north to south. It is an enormous refuge. And to cross the Mississippi River, the routing is a very complex subject.

My understanding is the project looked at trying to minimize the impact in terms of the crossing, and ultimately even is considering—they are trying to reduce the impact on the refuge, and condense multiple crossings into a single point.

So, I understand and respect your concerns. I believe they conducted significant, robust analysis of alternatives.

Mr. HUFFMAN. All right. Well, I thank the witness.

And Mr. Chairman, I know I am out of time, so I just want to enter a few things into the record, hopefully by unanimous consent.

I would like to propose entering this article from the *New York Times* from about a week ago. It is a deep dive on what is actually holding up clean energy and utility upgrade projects, one of the more in-depth pieces we have ever seen. It is all about FERC and the interconnection queue. Not a word about NEPA, but I would like to enter that in the record, with unanimous consent.

The CHAIRMAN. Without objection.

[The information follows:]

Wind and Solar Energy Projects Risk Overwhelming America's Antiquated Electrical Grids

New York Times, February 23, 2023 by Brad Plumer

**The U.S. Has Billions for Wind and Solar Projects.
Good Luck Plugging Them In.**

An explosion in proposed clean energy ventures has overwhelmed the system for connecting new power sources to homes and businesses.

Pouring concrete for a wind turbine in Nebraska. More than 8,100 energy projects were waiting for permission to connect to electric grids at the end of 2021. Credit—Walker Pickering for The New York Times

Plans to install 3,000 acres of solar panels in Kentucky and Virginia are delayed for years. Wind farms in Minnesota and North Dakota have been abruptly canceled. And programs to encourage Massachusetts and Maine residents to adopt solar power are faltering.

The energy transition poised for takeoff in the United States amid record investment in wind, solar and other low-carbon technologies is facing a serious obstacle: The volume of projects has overwhelmed the nation's antiquated systems to connect new sources of electricity to homes and businesses.

So many projects are trying to squeeze through the approval process that delays can drag on for years, leaving some developers to throw up their hands and walk away.

More than 8,100 energy projects—the vast majority of them wind, solar and batteries—were waiting for permission to connect to electric grids at the end of 2021, up from 5,600 the year before, jamming the system known as interconnection.

That's the process by which electricity generated by wind turbines or solar arrays is added to the grid—the network of power lines and transformers that moves electricity from the spot where it is created to cities and factories. There is no single grid; the United States has dozens of electric networks, each overseen by a different authority.

PJM Interconnection, which operates the nation's largest regional grid, stretching from Illinois to New Jersey, has been so inundated by connection requests that last year it announced a freeze on new applications until 2026, so that it can work through a backlog of thousands of proposals, mostly for renewable energy.

It now takes roughly four years, on average, for developers to get approval, double the time it took a decade ago.

And when companies finally get their projects reviewed, they often face another hurdle: the local grid is at capacity, and they are required to spend much more than they planned for new transmission lines and other upgrades.

Many give up. Fewer than one-fifth of solar and wind proposals actually make it through the so-called interconnection queue, according to research from Lawrence Berkeley National Laboratory.

"From our perspective, the interconnection process has become the No. 1 project killer," said Piper Miller, vice president of market development at Pine Gate Renewables, a major solar power and battery developer.

A building that formerly housed transformers at the Brayton Point Power Station, a decommissioned coal plant that is being repurposed to link a wind farm to the Massachusetts power grid. Credit—Simon Simard for The New York Times

After years of breakneck growth, large-scale solar, wind and battery installations in the United States fell 16 percent in 2022, according to the American Clean Power Association, a trade group. It blamed supply chain problems but also lengthy delays connecting projects to the grid.

Electricity production generates roughly one-quarter of the greenhouse gases produced by the United States; cleaning it up is key to President Biden's plan to fight global warming. The landmark climate bill he signed last year provides $370 billion in subsidies to help make low-carbon energy technologies—like wind, solar, nuclear or batteries—cheaper than fossil fuels.

But the law does little to address many practical barriers to building clean energy projects, such as permitting holdups, local opposition or transmission constraints. Unless those obstacles get resolved, experts say, there's a risk that billions in federal subsidies won't translate into the deep emissions cuts envisioned by lawmakers.

"It doesn't matter how cheap the clean energy is," said Spencer Nelson, managing director of research at ClearPath Foundation, an energy-focused nonprofit. "If developers can't get through the interconnection process quickly enough and get enough steel in the ground, we won't hit our climate change goals."

Waiting in line for years

In the largest grids, such as those in the Midwest or Mid-Atlantic, a regional operator manages the byzantine flow of electricity from hundreds of different power plants through thousands of miles of transmission lines and into millions of homes.

Before a developer can build a power plant, the local grid operator must make sure the project won't cause disruptions—if, for instance, existing power lines get more electricity than they can handle, they could overheat and fail. After conducting a detailed study, the grid operator might require upgrades, such as a line connecting the new plant to a nearby substation. The developer usually bears this cost. Then the operator moves on to study the next project in the queue.

This process was fairly routine when energy companies were building a few large coal or gas plants each year. But it has broken down as the number of wind, solar and battery projects has risen sharply over the past decade, driven by falling costs, state clean-energy mandates and, now, hefty federal subsidies.

"The biggest challenge is just the sheer volume of projects," said Ken Seiler, who leads system planning at PJM Interconnection. "There are only so many power engineers out there who can do the sophisticated studies we need to do to ensure the system stays reliable, and everyone else is trying to hire them, too."

The climate bill President Biden signed last year provides $370 billion in subsidies for low-carbon technologies like wind, solar, nuclear and batteries. Credit—Kenny Holston for The New York Times

PJM, the grid operator, now has 2,700 energy projects under study—mostly wind, solar and batteries—a number that has tripled in just three years. Wait times can now reach four years or more, which prompted PJM last year to pause new reviews and overhaul its processes.

Delays can upend the business models of renewable energy developers. As time ticks by, rising materials costs can erode a project's viability. Options to buy land expire. Potential customers lose interest.

Two years ago, Silicon Ranch, a solar power developer, applied to PJM for permission to connect three 100-megawatt solar projects in Kentucky and Virginia, enough to power tens of thousands of homes. The company, which often pairs its solar arrays with sheep grazing, had negotiated purchase options with local landowners for thousands of acres of farmland.

Today, that land is sitting empty. Silicon Ranch hasn't received feedback from PJM and now estimates it may not be able to bring those solar farms online until 2028 or 2029. That creates headaches: The company may have to decide whether to buy the land before it even knows whether its solar arrays will be approved.

"It's frustrating," said Reagan Farr, the chief executive of Silicon Ranch. "We always talk about how important it is for our industry to establish trust and credibility with local communities. But if you come in and say you're going to invest, and then nothing happens for years, it's not an optimal situation."

PJM soon plans to speed up its queues—for instance, by studying projects in clusters rather than one at a time—but needs to clear its backlog first.

'Imagine if we paid for highways this way'

A potentially bigger problem for solar and wind is that, in many places around the country, the local grid is clogged, unable to absorb more power.

That means if a developer wants to build a new wind farm, it might have to pay not just for a simple connecting line, but also for deeper grid upgrades elsewhere. One planned wind farm in North Dakota, for example, was asked to pay for multi-million-dollar upgrades to transmission lines hundreds of miles away in Nebraska and Missouri.

These costs can be unpredictable. In 2018, EDP North America, a renewable energy developer, proposed a 100-megawatt wind farm in southwestern Minnesota, estimating it would have to spend $10 million connecting to the grid. But after the grid operator completed its analysis, EDP learned the upgrades would cost $80 million. It canceled the project.

A solar battery energy storage site in the Bronx, part of a test program to support New York's transition to renewable energy sources. Credit—Hiroko Masuike/The New York Times

That creates a new problem: When a proposed energy project drops out of the queue, the grid operator often has to redo studies for other pending projects and shift costs to other developers, which can trigger more cancellations and delays.

It also creates perverse incentives, experts said. Some developers will submit multiple proposals for wind and solar farms at different locations without intending to build them all. Instead, they hope that one of their proposals will come after another developer who has to pay for major network upgrades. The rise of this sort of speculative bidding has further jammed up the queue.

"Imagine if we paid for highways this way," said Rob Gramlich, president of the consulting group Grid Strategies. "If a highway is fully congested, the next car that gets on has to pay for a whole lane expansion. When that driver sees the bill, they drop off. Or, if they do pay for it themselves, everyone else gets to use that infrastructure. It doesn't make any sense."

A better approach, Mr. Gramlich said, would be for grid operators to plan transmission upgrades that are broadly beneficial and spread the costs among a wider set of energy providers and users, rather than having individual developers fix the grid bit by bit, through a chaotic process.

There is precedent for that idea. In the 2000s, Texas officials saw that existing power lines wouldn't be able to handle the growing number of wind turbines being built in the blustery plains of West Texas and planned billions of dollars in upgrades. Texas now leads the nation in wind power. Similarly, MISO, a grid spanning 15 states in the Midwest, recently approved $10.3 billion in new power lines, partly because officials could see that many of its states had set ambitious renewable energy goals and would need more transmission.

But this sort of proactive planning is rare, since utilities, state officials and businesses often argue fiercely over whether new lines are necessary—and who should bear the cost.

"The hardest part isn't the engineering, it's figuring out who's going to pay for it," said Aubrey Johnson, vice president of system planning at MISO.

Wind turbines in North Dakota, where some developers have canceled projects after facing rising costs to connect to the grid. Credit—Brandon Thibodeaux for The New York Times

Climate goals at risk

As grid delays pile up, regulators have taken notice. Last year, the Federal Energy Regulatory Commission proposed two major reforms to streamline interconnection queues and encourage grid operators to do more long-term planning.

The fate of these rules is unclear, however. In December, Richard Glick, the former regulatory commission chairman who spearheaded both reforms, stepped down after clashing with Senator Joe Manchin III, Democrat of West Virginia, over unrelated policies around natural gas pipelines. The commission is now split between two Democrats and two Republicans; any new reforms need majority approval.

If the United States can't fix its grid problems, it could struggle to tackle climate change. Researchers at the Princeton-led REPEAT project recently estimated that new federal subsidies for clean energy could cut electricity emissions in half by 2030. But that assumes transmission capacity expands twice as fast over the next decade. If that doesn't happen, the researchers found, emissions could actually increase as solar and wind get stymied and existing gas and coal plants run more often to power electric cars.

Massachusetts and Maine offer a warning, said David Gahl, executive director of the Solar and Storage Industries Institute. In both states, lawmakers offered hefty incentives for small-scale solar installations. Investors poured money in, but within months, grid managers were overwhelmed, delaying hundreds of projects.

"There's a lesson there," Mr. Gahl said. "You can pass big, ambitious climate laws, but if you don't pay attention to details like interconnection rules, you can quickly run into trouble."

Mr. HUFFMAN. Thank you. Similarly, there is a study recently done here in *The Environmental Law Reporter* that takes a deep dive into major projects that required EISs, and looks at what held them up in terms of speeding the process along. It recommends that insufficient agency capacity to do NEPA work is the No. 1 culprit, recommends we solve that, which we have done by putting $1 billion into it.

So, I would like to enter this study into the record, as well.

The CHAIRMAN. Without objection.

[The information follows:]

PLAYING THE LONG GAME: EXPEDITING PERMITTING WITHOUT COMPROMISING PROTECTIONS

Environmental Law Reporter, November 2022 by Jamie Pleune

We are going to take the most aggressive action ever, ever, ever to confront the climate crisis and increase our energy security, ever in the whole world . . . and that is not hyperbole, that's a fact," President Joe Biden told a crowd of solar industry players gathered on the White House lawn to celebrate the one-month anniversary of the Inflation Reduction Act (IRA).[1] Earlier that week, he issued an Executive Order reaffirming the national climate goal to achieve a carbon pollution-free energy sector by 2035.[2]

These lofty goals have material implications (pun intended). Clean energy technologies utilize more minerals than their fossil fuel-based counterparts.[3] According to a recent report from the International Energy Association, "[a] typical electric car requires six times the mineral inputs of a conventional car, and an onshore wind plant requires nine times more mineral resources than a gas-fired power plant."[4] Under a two-degree scenario, production of graphite, lithium, and cobalt will need to be increased by more than 450% by 2050 from 2018 levels to meet demand from energy storage technologies.[5]

Other base materials, like aluminum and copper, have a smaller percentage increase, but the absolute production figures are significant.[6] For example, over the past 5,000 years, an estimated 550 million tons of copper have been produced. The world will need approximately the same amount in the next 25 years to meet global demand.[7] This demand has led to the unavoidable conclusion that clean energy means more mineral production, which will involve new mines, mine expansions, innovative recycling techniques, and imaginative reuse technologies.

The haste to build new domestic mines in response to these demands has stoked calls for permit reform.[8] Sen. Joe Manchin (D-W. Va.) made "permitting reform" a condition of his support of the IRA,[9] and President Biden recently affirmed his commitment to the deal.[10] As these efforts progress, some fear that permit reform means quick approval of each permit application and a loosening of environmental standards in the name of expediting mineral production.[11]

Society faces an unavoidable conundrum.[12] Green energy demands more minerals, which ultimately means building new mines and expanding existing mines throughout the world. But not every mine permit should be approved as submitted. Basic environmental, health, and safety standards should still be enforced. The permit process necessarily involves multiple authorities, each enforcing their applicable standards. Rigorous permit review identifies opportunities to eliminate, reduce, or mitigate risk—whether that risk threatens workers, communities, or the environment (often all three). The increased demand for minerals should not overshadow the productive purposes served by permitting.

Accepting unfettered environmental degradation in exchange for clean energy would achieve short-term gains in exchange for long-term pain. The unrelenting challenges caused by climate change provide an almost daily reminder that downplaying environmental risks does not make them go away.

There are opportunities to improve permitting efficiency without compromising important health and safety standards. This Article makes three recommendations, each of which can be implemented without new regulations or legislation. To begin, Part I provides brief background on the federal government's recent focus on critical mineral supply and production issues. Part II distinguishes between productive and unproductive causes of delay in the permitting process. Part III identifies causes of unproductive delay in the existing hard-rock mine permitting process, by relying upon investigative studies and empirical evidence.

Part IV lays out my three practical recommendations to reduce or eliminate unproductive delay. Although these recommendations do not rely on regulatory or statutory changes, they do require funding and support from the U.S. Congress, as well as cooperation from state, tribal, and local governments. Each of these levels of government should work together to strengthen and improve the government's execution of the critical mineral permitting process by focusing on the real causes of delay. This approach is one way to expedite the transition to clean energy without sacrificing the long game.

I. Recent Federal Attention on Critical Minerals and Permitting Reform

Whether the objective is national security or transitioning to green energy, securing a stable supply of critical minerals has received focused attention from the White House during the past several years.[13] President Donald Trump focused on

expanding domestic mineral production. In December 2017, he issued Executive Order No. 13817, A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals.[14] This Order blamed "permitting delays" and "the potential for protracted litigation regarding permits" as limitations to developing mineral deposits across the United States.[15]

The Order committed to "streamlining leasing and permitting processes to expedite exploration, production, processing, reprocessing, recycling, and domestic refining of critical minerals."[16] A report drafted in response to this Order explicitly blamed federal permitting for reduced mineral production in the United States: "Unfortunately, federal permitting and land management policies have inhibited access to and the development of domestic critical minerals, which has contributed to increased reliance on foreign sources of minerals."[17]

A few years later, President Trump issued Executive Order No. 13953, declaring a national emergency caused by "undue reliance on critical minerals . . . from foreign adversaries."[18] That Order also announced that the United States "must broadly enhance its mining and processing capacity, including for minerals not identified as critical minerals and not included within the national emergency" declaration.[19] It instructed the Secretaries of the Interior, Agriculture, Commerce, and Army and the Administrator of the U.S. Environmental Protection Agency (EPA) to "use all available authorities to accelerate the issuance of permits and the completion of projects in connection with expanding and protecting the domestic supply chain for minerals."[20]

When President Biden took office, he shifted the focus from domestic production to ensuring a secure supply chain for a clean energy economy. For example, he issued Executive Order No. 14017 on strengthening America's supply chains.[21] With respect to critical minerals, the Order instructed the Secretary of Defense to issue a report identifying risks in the supply chain for critical minerals, strategic materials,[22] and rare earth elements and to describe and update work done pursuant to Executive Order No. 13953.[23]

The report, issued on June 6, 2021,[24] recognized that the transition to green technology would intensify the need for strategic and critical minerals.[25] It also provided a more nuanced view of permit reform. It acknowledged the historic environmental, safety, and health risks in the mining industry. "Given the environmental and labor legacy of mining, increased mineral production and reclamation activities must be held to modern environmental standards, require best practice labor conditions, and consultation with affected communities, including Tribal Nations in government-to-government consultation."[26]

One does not have to look far to find the legacy of past mining practices. According to the U.S. Government Accountability Office (GAO), federal agency databases contain at least 140,652 identified abandoned hard-rock mine features, of which 60% pose a physical or environmental threat.[27] Additionally, officials within 13 western states identified 246,000 abandoned hard-rock mine features, of which 115,000 pose a physical threat and 11,000 pose an environmental threat.[28] In 2019, the Associated Press examined public records related to mining sites under federal oversight, some of which contained multiple individual mines.[29]

The records showed that, on average, more than 50 million gallons of contaminated wastewater streams daily from these sites, often running untreated into nearby groundwater, rivers, or ponds.[30] In addition to this relentless drip of water pollution, some mines also pose threats of catastrophic failure, like the accidental release of three million gallons of mustard-colored mine sludge from the Gold King Mine in Colorado.[31] According to GAO, between 2008 and 2017, the federal government spent an average of $287 million annually to address physical safety and environmental hazards at abandoned hard-rock mines.[32] Federal officials estimated that it would cost billions more to address these mines in the future.[33]

On November 15, 2021, Congress passed the Infrastructure Investment and Jobs Act (IIJA).[34] The Act included several provisions focused on critical minerals and investments to jump-start a domestic clean energy supply.[35] Section 40206, Critical Minerals Supply Chains and Reliability, directs the Secretaries of the Interior and Agriculture to submit a report to Congress identifying "additional measures, including regulatory and legislative proposals, if appropriate, that would increase the timeliness of permitting activities for the exploration and development of domestic critical minerals."[36] In preparation for this report, the U.S. Department of the Interior issued a request for information seeking, among other things, recommendations on "opportunities to reduce time, cost, and risk of permitting without compromising . . . strong environmental and consultation benchmarks."[37]

Some analysts have suggested that there is an inherent tension between stringent environmental standards and efficient permitting. For example, David Blackmon, a *Forbes* columnist, wryly opined, "the central feature in any bill designed to speed

up federal permitting for energy projects will come down to a proposition to lessen environmental protections in order to . . . save the environment?"[38]

This *schadenfreude*-laced summary conflates two separate issues that permit reform proposals must address. The first is obvious. Can we improve efficiency, eliminate redundancy, and decrease the cost and time spent navigating the permit process? The answer to that question is yes. Moreover, achieving this result is feasible. Recent research shows that many NEPA analyses are completed efficiently.[39] Part III of this Article focuses on recommendations to make the existing permit system more efficient.

The second issue is more nuanced. Should some mine permit proposals be modified or denied because the risks (health, safety, or environmental) exceed the rewards? The answer to this question should also be yes. Permit reform should not eliminate the ability to say "no." This suggests that some delays may be productive. The next section explores this concept.

II. Distinguishing Between Productive and Unproductive Delays

Mining is dangerous. Permitting ensures that mines are built safely and that risks to mine workers, society, and the environment are reduced or mitigated as much as possible. Hard-rock mining involves enormous risk. Whether the ore deposit is accessed by surface (open pit) or underground mining, most mines require drilling, blasting, mucking (loading), and transporting (hauling).[40] As mining progresses, open pits are excavated on the surface and voids are created where the in-place ore was removed. Continued mining results in larger mines, along with growing waste dumps, heap leach piles, tailings ponds, and so on.[41] The ore removed from the earth must be crushed or ground into smaller particles, which are then subjected to various physical or chemical processes to separate the valuable minerals from the unwanted waste ore.[42]

Alternatively, metals may be extracted through a leaching process, such as a cyanide solution.[43] The waste minerals are routinely disposed of in a tailings pond. Although tailings dams, ponds, and leach pads should be carefully designed to high standards, the potential impacts resulting from release or discharge of tailings or leached rock can be devastating. For example, defective tailings ponds at the Buenavista del Cobre copper mine in Sonora, Mexico, released more than 10 million gallons of toxic chemicals into the Bacanuchi River, a tributary of the Sonora River. This 2014 event left approximately 25,000 people without clean water, ruining crops and contaminating the aquatic ecosystem with heavy metals.[44]

"A review of 14 copper porphyry mines in the U.S. (accounting for nearly 90% of U.S. production) found the mines were often associated with water pollution from acid mine drainage and accidental releases of toxic materials."[45] Tailings failures are "the most common source of mining accidents."[46] Additionally, some mining companies go out of business without reclaiming their sites. In 2012, there were 156 hard-rock mining Superfund sites in the United States.[47] The permitting process is designed to mitigate the safety, health, and environmental risks that are inherent to hard-rock mining.

Many critics of the permitting process cite controversial projects or permit denials as proof that the permitting system is broken.[48] Large projects with irreversible environmental consequences, like Pebble Mine, Twin Metals, PolyMet, and Resolution Copper, often face fierce opposition from people who will be affected by the project's negative consequences.[49] The delays faced by these projects are caused by a conflict in values. Pebble Mine in southwest Alaska presents an irreversible choice between copper and commercial fishing.[50] It is opposed by more than 80% of the Native Alaska population, as well as many commercial fishermen, because acid mine drainage threatens Bristol Bay, the world's largest sockeye salmon fishery.[51]

Twin Metals, outside of Ely, Minnesota, presents an irreversible choice between copper and drinking water protected by the Boundary Waters Canoe Area Wilderness.[52] It also threatens culturally important and treaty-protected wild rice waters, wetlands, and aquatic life.[53] These competing values have inspired dueling legislative overrides.[54] Nearby, the PolyMet mine faces opposition in part because the earthen upstream design it proposed for its tailings is the same design used for the Brumadinho dam in Brazil that failed in 2019, killing 270 people and spilling 11.7 million cubic meters of toxic mud downstream.[55]

In Arizona, the Resolution Copper project proposes to build the largest and deepest mine in the United States using a mining technique called block caving.[56] This proposal threatens lands considered sacred by local tribes.[57]

The permitting delays faced by each of these projects are not caused by inefficiency. They are caused by legitimate disagreements, value judgments, the enforcement of environmental standards, the democratic process of public comment, and

the right of communities to protect themselves against being forced to shoulder undue environmental degradation for the benefit of others.

Although frustrating for mine proponents and investors, some delays in permitting may be evidence that the process is working. The environmental analysis required during the permitting process may identify potential issues that would have otherwise escaped consideration, and drive a reassessment of options and impacts before an irretrievable commitment of resources occurs. Slower projects may reflect iterative changes to improve the proposed action or minimize impacts. Delays that mitigate safety and environmental risks or stop socially unacceptable projects may be inconvenient for investors, but they are ultimately productive for society.

To understand this concept, it is helpful to think about a different regulated activity that is inherently risky—aviation. Before departing the planet, every pilot—both commercial and recreational—must conduct a preflight inspection to ensure the safety of the aircraft.[58] This involves looking carefully for tiny hints that could portend a structural failure. Careful fulfillment of this duty may result in delay, while a dilatory attitude could be catastrophic. Consider the pilot who failed to notice missing cowling fasteners during his preflight inspection.[59] Careful observation would have resulted in brief delay to fix the problem. Instead, the cowling detached from the aircraft during flight, forcing an emergency landing that resulted in a brushfire that consumed the plane.

Thus, diligent fulfillment of the duty to notice safety risks or structural anomalies may be a productive source of delay. Permitting authorities are also tasked with the duty of diligently ensuring that the proposed mining operations are well-designed and safe. Noticing safety risks or structural anomalies is a productive source of delay that could avoid catastrophic accidents.

Pilots must also mitigate risks through preflight planning, which includes consideration of the proposed route, anticipated weather, fuel requirements, runway lengths, known traffic delays, and performance limitations.[60] Changing conditions with any one of these factors may delay, cancel, or reroute a proposed flight. Although inconvenient, these delays are ultimately productive, because they eliminate, reduce, or mitigate risk. Often a decision to delay or reroute a flight may be based on incomplete information. It is impossible to accurately forecast the future. Moreover, new or changing conditions may require reconsideration of an earlier decision.

These possibilities must be weighed against the all-too-human desire to reach the final destination without delay. As the Kobe Bryant accident tragically illustrated, failure to appreciate the gravity of these risks, or to respond to changing conditions, can be fatal.[61] One board member of the National Transportation Safety Board investigation committee investigating the Bryant flight observed that the pilots should not only be measured by whether they complete a flight. "Perhaps a better way to look at it is that professional pilots aren't paid to fly—they're paid to say no when conditions warrant. If . . . [pilots] look at it this way, perhaps we will have fewer crashes."[62]

The same principles apply to permitting decisions. Permitting authorities are tasked with the responsibility of mitigating risks. New information may intensify to an unacceptable level the potential risk associated with a project. In these cases, the permitting authority should have confidence to say "no." When operated effectively, this process avoids unacceptable environmental degradation and catastrophic accidents. Permit reform should not create a system of rubber-stamping. It must include the ability to say "no" when conditions warrant. Saying "no" to unacceptably risky proposals creates delay, but in the long run, that delay is socially productive.

III. Identifying Unproductive Causes of Delay in the Permitting Process

Hard-rock mining operations consist of four primary stages: (1) exploration (locating and defining the extent and value of mineral deposits); (2) development (completing the mine plan approval process, including obtaining necessary permits); (3) production (extracting the minerals); and (4) reclamation (reshaping disturbed areas and controlling for any toxic materials).[63] The Bureau of Land Management (BLM) and U.S. Forest Service oversee hardrock mining operations on public lands and national forests and grasslands, respectively.

Many federal, state, and local statutes affect mining operations, and a proposed mine must obtain several different permits from multiple different agencies. For example, when studying 68 proposed mine plans submitted between 2010 and 2014, GAO identified six different categories of federal permits and authorizations and seven categories of state and local permits and authorizations.[64] These range from air quality, hazardous waste management, and workplace safety operations to dam structures and the use of explosives.[65]

As part of the permitting process, federal agencies must conduct an analysis under the National Environmental Policy Act (NEPA)[66] of potential impacts to the

environment, human health, and cultural and historical resources. NEPA is a far-reaching procedural statute that applies to all "major Federal actions significantly affecting the quality of the human environment."[67] NEPA's implementing regulations utilize a tiered decisionmaking framework. Decisions that will have a significant impact on the environment undergo searching review through an environmental impact statement (EIS).[68] The EIS discloses adverse environmental impacts and considers alternatives to the proposed project.[69]

GAO estimated that EISs constitute about 1% of all NEPA decisions.[70] More benign projects with uncertain environmental impacts undergo a less thorough analysis referred to as an environmental assessment (EA).[71] GAO estimates that less than 5% of decisions government-wide are analyzed in an EA.[72] Projects with a presumptively insignificant effect on the environment undergo a truncated analysis through a categorical exclusion (CE).[73] According to GAO's estimates, these truncated analyses constitute 95% of NEPA analyses.[74]

NEPA does not operate in a vacuum. Since its passage 51 years ago, it has been incorporated into the fabric of the administrative state and often provides the analytical structure justifying decisions made by federal agencies, including permit approvals or denials. As the Congressional Research Service explains, "[m]ost agencies used NEPA as an umbrella statute—that is, a framework to coordinate or demonstrate compliance with any studies, reviews, or consultations required by any other environmental laws."[75] For this reason, even though the requirements of NEPA are only one part of a much larger, amorphous system of permits, the NEPA process and the permitting process are often conflated.

Despite its importance, little is known about how NEPA operates. When asked to review various NEPA compliance issues, including (1) the number and type of NEPA analyses conducted by agencies, (2) costs and benefits of completing the analyses, and (3) the frequency and outcomes of litigation, GAO concluded that very little information exists regarding these issues.[76] Absent information, most recommendations for NEPA reform have historically been loosely moored to empirical data and focused primarily on the most complex decisions that undergo the most rigorous review, even though these decisions constitute only a small fraction of NEPA decisions. Because of its central role in the permitting process, understanding how NEPA is implemented and identifying sources of delay within the NEPA process is critical to designing effective permit reform.

Reviews of the permitting process indicate that only a small percentage of projects encounter extensive delays. GAO issued a report in 2016 studying hard-rock mine permit processing times.[77] Between 2010 and 2014, BLM and the Forest Service approved 68 mine plans of operations. The majority (55%) were processed in less than 18 months, and 63% were processed in under two years.[78] This appears to indicate that permit applications can be processed efficiently. The remaining 37% were spread out over a wide time frame, with six applications taking longer than four years.

GAO's findings regarding hard-rock mine permit processing times are consistent with the results of empirical research conducted by a team from the Wallace Stegner Center in Utah, including this author. They investigated NEPA decisionmaking times within the Forest Service, analyzing more than 41,000 Forest Service projects that required NEPA analysis between 2004 and 2020.[79] Their research revealed that the majority of decisions were made within a reasonable time frame for the complexity of the project; however, a small percentage of projects consistently took much longer, regardless of the complexity of the project.[80] They sought to identify what causes some projects to drag on, while others are completed efficiently. Because NEPA is a part of the permitting process, the details of their empirical research provide valuable insight into potential causes of delay in hard-rock mine permitting.

The Stegner team also observed that most NEPA analyses are completed within a predictable time frame, consistent with the level of analysis required. However, a small percentage of projects get bogged down at every level of review. For example, between 2004 and 2020, the mean time to complete an EIS was 2.8 years.[81] Turning to EAs, the mean time for completion was 1.2 years, and the mean time to complete a CE was slightly under four months.[82] These average time frames predictably correlate to the rigor of the analysis required by NEPA's analytical structure.

However, the Stegner team also observed that some projects take extraordinarily long, regardless of the level of analysis. Table 1 below compares the median time for completion at every level of review with the average time for projects in the slowest 10%. Notably, at each level of review, the slowest 10% of decisions take longer than the median time to complete a more rigorous level of analysis. For example, the slowest 10% of CEs take 1.3 years, while the median time to complete

an EA is 1.2 years. This demonstrates that a less rigorous level of analysis does not automatically generate a faster decision.

Table 1. Comparison of Median Completion Times for Select Percentiles by Level of Analysis

	Median Time for the Fastest 25%	Median Time for Completion	Median Time for the Slowest 10%
EIS	1.6 years	2.8 years	6.6 years
EA	8 months (235 days)	1.2 years	3.6 years
CE	2 months (54 days)	4 months (112 days)	1.3 years

The Stegner team also observed that a large percentage of decisions are made efficiently at each level of review. Table 2 below compares the average time for the fastest 25% of decisions against the median time for completion at each level of review. The degree of achievable efficiency is even more apparent when considering the average times for the fastest 10% of decisions (also depicted below). On average, the fastest 25% of decisions are completed twice as quickly as the median time for completion at every level of review. The fastest 10% of decisions show even greater efficiency. This empirical evidence demonstrates that analytical rigor can be accomplished efficiently, even at the most searching level of analysis.

Table 2. Comparison of Fastest 10% and 25% of Completion Times With the Standard Median Completion Time for Each Level of Analysis

	Median Time for the Fastest 10%	Median Time for the Fastest 25%	Median Time for Completion
EIS	1.1 years	1.6 years	2.8 years
EA	4 months (133 days)	8 months (235 days)	1.2 years
CE	1 month (30 days)	2 months (54 days)	4 months (112 days)

These observations are important for designing permit reform for two reasons. First, they demonstrate that it is not necessary to sacrifice analytical rigor in order to achieve efficiency.[83] The fastest 25% of EISs are completed more quickly than the slowest 25% of EAs, and the fastest 25% of EAs are completed more quickly than the slowest 25% of CEs.[84] Second, decisions subject to a truncated analysis are not immune to delay. The slowest 10% of CEs took longer to complete than the fastest 10% of EISs.[85]

This result begs the question, why are some decisions completed quickly, while others get bogged down? Despite developing a multivariate regression analysis that analyzed four different factors, including the complexity of each project,[86] the

Stegner team could not accurately predict which projects would proceed efficiently and which ones would encounter delays using NEPA-specific information.[87] This led them to conclude that factors outside the analytical requirements of NEPA contribute significantly to project delays.[88] Causes of delay included inadequate agency budgets, a lack of qualified staff, staff turnover, delays receiving information from permit applicants, and compliance with other laws.[89]

The GAO report on hardrock mine permitting made similar observations, identifying 13 causes of delay and the amount of time associated with each factor.[90] The second most common source of delay was insufficient allocation of resources (e.g., number of staff, staff expertise, funding, infrastructure, training, and/or computer technology).[91] Another prominent source of delay was waiting for information from an applicant following a permit application that was incomplete or vague or responding to a changed mine plan.[92] Other sources of delay were compliance with other legal requirements and/or ineffective agency coordination or collaboration during the mine plan review process.[93]

IV. Recommendations to Reduce Unproductive Causes of Delay

The observations described above suggest that policy changes or regulatory reforms will not address many of the root causes of delay. Instead, permit reform should be designed to address identifiable, unproductive causes of delay. The following subsections provide three practical recommendations.

A. Recommendation 1: Avoid Delay Caused by Insufficient Agency Capacity

One persistent and overarching cause of delay is insufficient or inconsistent staff availability.[94] According to the GAO, nsufficient agency staff in certain critical positions caused a bottleneck in the NEPA review process and increased the length of time to review the mine permit application.[95] This problem is not new. In 1999, the National Research Council found that "[s]taff shortages are likely to be at least partially responsible for the excessive delays experienced in NEPA reviews and issuance of permits."[96] The Council went on to note:

> Some land management offices report that they have too few people to conduct inspections, review proposed operating plans, process appeals, and conduct other required activities. This concern extends beyond the numbers of people. . . . Offices responsible for regulating mining projects may not always have access to the trained and experienced personnel required.[97]

In other words, there are two distinct elements to agency capacity: (1) staff availability and (2) expertise or institutional knowledge. Both elements affect permitting times. In order to improve permitting efficiency without compromising environmental protection, agencies must have both elements—sufficient staff and the necessary expertise.

The long-standing problem of agency capacity has been exacerbated in recent years. Between 2016 and 2020, BLM reported losing almost 300 senior Washington D.C. office staff who chose to retire or seek other employment rather than relocate to Colorado." The U.S. Fish and Wildlife Service lost 231 staff scientists. EPA lost almost 750 senior scientists—one in four environmental specialists—between 2016 and 2020.[99] The departure of senior staff resulted in a loss of expertise and institutional knowledge that cannot be addressed with entry-level hires. Left unaddressed, the problem of insufficient staff capacity will affect regulatory efficiency and environmental protection in the context of hard-rock mining for the foreseeable future.

Accelerating efforts to restore agency capacity, develop expertise, and restore institutional knowledge are among the fastest ways to improve permitting efficacy and promote supply chain resiliency. Some efforts are already underway. For example, to address workforce challenges within EPA, Congress boosted the Agency's budget by 11.3% and called upon EPA to "prioritize efforts to streamline hiring, support retention, and manage the erosion of expertise stemming from retirement of senior staff."[100] In order to expedite mine permitting, similar efforts must be undertaken to ensure that other agencies, like BLM and the Forest Service, have sufficient knowledgeable and experienced staff members capable of processing technical and complex applications for a mine permit.

Agency capacity does not only involve people and expertise. It also includes confidence to make a decision—even if it results in litigation. The Stegner team observed that litigation risk aversion causes delay and unwieldy documents.[101] Perceived professional risk associated with litigation caused Forest Service staff to avoid making controversial decisions for fear of affecting opportunities for promotion.[102]

Litigation aversion also caused delay by encouraging staff to "bulletproof" NEPA documents by addressing every possible issue, rather than focusing the analysis on issues that are truly significant and tailoring the level of analysis to the magnitude

of the issue.[103] This overanalysis produces unwieldy, bulky, time-consuming documents that unnecessarily consume time and scarce agency resources. GAO made a similar finding regarding delays in the hard-rock mine permitting process. "Both BLM and Forest Service officials said that concerns regarding possible litigation or the implications of case law have prompted them to conduct additional or more extensive NEPA analyses during the mine plan review process." [104]

Other agencies have also recognized that encouraging confident decisionmaking can produce more efficient decisionmaking. As one NEPA practitioner in the U.S. Department of Transportation observed, "perhaps the most effective action agencies can take to increase efficiencies in the NEPA review process is to get back to the basics with NEPA and halt efforts to make NEPA documents litigation-proof." [105] With this in mind, she suggested that agencies avoid wasteful encyclopedic documents by using their discretion to focus the analysis, methodology, and depth of discussion as necessary to make an informed decision.

This can be achieved through transparent analysis, incorporation of documents by reference, tiering to prior environmental reviews where appropriate, and exercising discretion in how to best gather and assess information.[106] Although these tools are available, agency officials must also feel confident using them. An informal culture that prioritizes litigation avoidance will continue to eschew these available strategies in favor of bulky, time-consuming bullet-proof documents.

While decisions should rigorously comply with substantive and procedural requirements, the fear of litigation should not delay action. Litigation is rare. Only 0.22% of decisions made under NEPA are challenged in court.[107] An investigation by GAO on the impact of litigation on Forest Service fuel reduction projects between 2006 and 2008 revealed that only 29 out of 1,415 decisions were litigated, and litigation only impacted 1% of the lands slated for fuel reduction.[108]

In conclusion, responsible critical mineral permitting can be expedited by increasing agency capacity. This can be done by providing agencies with the qualified staff and resources they need to complete environmental analyses and permitting documents, to retain those staff members throughout the entire permitting process, and to structure performance incentives that reward prompt deliberation, even where the project is unpopular and may result in litigation.

B. Recommendation 2: Create Tools That Make the Legal Structure, Permitting Requirements, and Available Information More Transparent and Publicly Available

The legal and regulatory structure for hard-rock mining is complex, multifaceted, and lacks uniformity. Navigating the intricate and complex array of laws applying to mining operations takes time. Without clear guidance, this legal structure causes delay. This delay is evident in the number of vague and incomplete permit applications, instances of limited or ineffective interagency coordination, and delays caused by balancing competing legal priorities.[109] Simply figuring out what law applies, how to apply the regulatory standard, and who has authority to issue the relevant permits can be a daunting task for both agency officials and permit applicants.

Regarding the regulatory structure of hard-rock mine permitting, the National Research Council observed:

> [T]he complexity of various programs can make the system difficult to understand, approach, and implement efficiently. As a result, mining regulation, permitting, monitoring, reclamation, closure, and post-closure becomes a series of negotiations carried on against a background of regulatory requirements and programs. This means that governmental regulators at all levels need a significant degree of sophistication and training in order to make these programs efficient and effective. The programs do not—and cannot—operate in cookbook fashion.[110]

In other words, implementing a complex regulatory structure requires institutional knowledge and expertise. Regulators require "sophistication and training" to make the programs efficient and effective. This includes understanding how the overall permitting process works, the standard to apply to a particular decision, and who is responsible for making that decision.

Uncertainty about this regulatory backdrop causes two types of delay. First, conducting research to confirm the permitting process with each application adds time and creates inefficiencies in the preparation and review of each application. Second, hard problems without obvious answers tend to sit on the back of the desk, especially when there is a fear of repercussion for making the wrong decision. Reducing procedural and legal uncertainty within this complex labyrinth will improve efficiency and assist both regulators and applicants.

The current legal and regulatory structure varies by mineral category, surface/subsurface estate ownership, and with the agency owning or entity charged with managing surface and subsurface resources.[111] In general, minerals fall within three categories: saleable, leasable, and locatable (hard-rock). Each category has different statutory frameworks and regulatory standards.[112] Distinct regulatory standards by mineral category can cause permitting challenges because the exact same mineral on federal land may be characterized as locatable or leasable, depending on whether the land is public or acquired.[13] Similarly, otherwise locatable minerals may be leasable when found on some tribal lands.[114]

A consequence of this fragmented legal structure is that the same mineral could be subject to a leasing system or a claim system depending on whether the lands were acquired, tribal, or public.[115] More complexities arise with private landownership or where surface and subsurface ownership involves multiple parties, including states, tribal governments, and private individuals, and these complexities only increase when split-estate issues are involved.[116]

The difference between locatable and leasable minerals has consequences for land use management. The Federal Land Policy and Management Act (FLPMA)[117] guides BLM's management of lands that are subject to both mineral leases and claims as well as nearby public lands that may be necessary to access or develop minerals. Management requirements are imposed through its land use planning requirements, and subject to the duty to administer public lands on the basis of multiple use and sustained yield.[118] Similarly, the National Forest Management Act (NFMA) informs the Forest Service's surface management of lands that are subject to mineral leases and claims as well as lands that must be crossed to access and develop minerals.[119]

In contrast, mining operations for locatable minerals are primarily governed by the General Mining Law of 1872. Land management plans developed pursuant to FLPMA and the NFMA may directly and severely restrict a mining claimant's ability to access newly staked claims, to conduct exploration-phase activities on those claims, and to use adjacent lands for other mining-related purposes. New management plan requirements are, however, likely to have less impact on existing claims. With a few exceptions, such as lands that have been withdrawn[120] and wilderness study areas, BLM's authority to regulate surface management of locatable mineral operations derives primarily from its authority to prevent unnecessary or undue degradation of public lands.[121]

Once a claim or lease has been obtained, access to the minerals secured, and exploration has demonstrated the viability of the operation, the miner will still need to obtain mining plan approval as well as numerous other environmental and land use approvals. Many states exercise delegated statutory authority over aspects of mine permitting.[122] Some federal statutes, like the Clean Water Act (CWA),[123] contain provisions allowing the federal agency to delegate its permitting authority to the state. In addition to these federal statutes, state or local laws may also impose additional permitting requirements, including state environmental review requirements, like the California Environmental Quality Act. When reviewing the hard-rock mining permit application process, GAO identified six categories of federal permits and authorizations and seven categories of state and local permits and authorizations that mine operators may need to obtain from entities other than BLM and the Forest Service.[124]

This complexity may contribute to the number one source of delay identified by GAO in the hard-rock mine permitting process—low quality of information provided in a mine plan.[125] According to officials interviewed for the study, the low quality of information provided in a mine plan created a challenge in 21 of the 23 locations studied, and added from one month to seven years to the length of time to review plans.[126] Delays associated with this factor can be reduced through simple efforts to make permitting information and requirements more accessible.

1. Create a Mine Permitting Hub With Flow Charts and Environmental Checklists to Make the Legal Structure More Transparent, Predictable, and Manageable

In the absence of statutory reforms to simplify and update mining laws, one way to expedite the permitting process would be to create a public, geographically organized database of regulations and permitting requirements ("mine permitting hub").

A similar resource was created by the U.S. Department of Energy for renewable energy and bulk transmission project development. The web-based Regulatory and Permitting Information Desktop (RAPID) Toolkit collects permitting information, best practices, and reference material.[127] As the RAPID website recognizes, "[u]ncertainty about the duration and outcome of the permitting process has been a deterrent to project investment and project construction."[128] The website aims to provide easy access, in one location, to permitting and regulatory information for

project development in order to optimize the regulatory process, lower project costs, and ease investor risk.[129]

The same challenges face prospective mine permittees. Uncertainty about the duration and outcome of the permitting process deters project investment. This is even more true for entities that are exploring innovative ways to re-mine or reprocess previously mined lands or mine and mill tailings.[130] A publicly available, geographically organized database of regulatory standards and required permits would help mineral developers as well as federal, state, and tribal officials navigate overlapping and interrelated permitting programs.

As part of the mine permitting hub, an analytical flow chart should be included to help regulatory officials and permit applicants determine which legal standards apply to a proposed mine, and how multiple permitting requirements fit together. The Washington State Governor's Office for Regulatory Innovation and Assistance has developed multiple, very useful flow charts to assist regulators, permit applicants, and the public to understand the steps involved in obtaining common permits.[131] Simply creating the flow chart to identify the various permits that are required, the sequence of permits, and opportunities for permit coordination may improve permitting efficiency.

A flow chart may also help identify circumstances where legal ambiguity exists and where agency guidance or solicitor opinions would be useful in reducing uncertainty. For example, in the mineral development context, an individual seeking to mine cobalt from the tailings of an abandoned copper mine located on federal public lands would need to know whether his or her proposal is subject to the General Mining Law of 1872 or the Mineral Leasing Act. (Presumably the General Mining Law would apply, though this may not be the case if the tailings occur on acquired lands.) If the mining proposal is covered by the General Mining Law, is it necessary to submit a plan of operations for exploratory activity due to the cumulative effects of prior use?[132]

Legal guidance would reduce delay caused by research and analysis. Uniform guidance and a clear permitting path also would promote collaboration and communication across multiple jurisdictions. These procedural efficiencies may also decrease litigation aversion and the fear of making an incorrect decision in a complex regulatory arena.

A mine permitting flow chart could also be used to develop location-specific environmental checklists. A checklist could be created proactively for specific regions. Alternatively, a checklist could be developed at the initiation of the mine permitting process on a case-by-case basis. Either option would create transparency and predictability, likely translating into faster and more durable permitting decisions. Mine permitting checklists could identify each potentially relevant permit to be obtained during the mine permitting process, the environmental standards to meet, the lead agency and personnel to be contacted regarding that permit, and appropriate contact information. Such a checklist would be particularly useful where federal, tribal, and state permitting programs or requirements overlap.[133]

Creating the mine permitting checklist would help regulatory officials across agencies (state and federal) proactively develop cooperative agreements aimed at coordinating and harmonizing requisite environmental and engineering studies. It would also help identify specific requirements associated with land designations.[134] Further, it would help identify circumstances where a more stringent state law may require a higher level of protection than required under federal regulations.[135] Consolidating this information at the outset of the permitting process would reduce delays attributable to uncertainty, duplication, and conflicting standards that exist in the current legal and regulatory regime.

A flow chart and environmental checklist would also ensure that mine permit applications are properly prepared and appropriately thorough. According to the U.S. Department of Commerce, incomplete permit applications are one source of delay in the permitting process. Further:

> [M]ining permit applications often lack sufficient quality or key information needed for regulators to make a decision on an application. Insufficient information in the mining application can significantly delay the permitting process as it may require multiple application iterations until the application is of sufficient quality to allow the permitting agencies to make a decision.[136]

This observation is not surprising given the ambiguity involved in federal regulations,[137] as well as the vast variety in mining operations governed by these regulations. Notably, the Federal Permitting Improvement Steering Council identified flow charts and checklists as best practices that promote efficiency and help ensure that applicants provide necessary information in a timely manner.[138]

Checklists can serve additional purposes. As discussed in more detail below, a checklist could be refined during the scoping process once environmental review of a permit application begins. This early scoping analysis would ensure the thoroughness of the checklist and avoid surprises later in the permitting process. Checklists and flow charts can also be used to facilitate pre-submittal meetings with operators and other stakeholders, and to clarify expectations, thereby improving the quality of mine permitting applications.[139]

Once permitting review begins, the same checklist could be used to create agreed-upon deadlines for decisionmaking, and those deadlines could be posted on a permitting dashboard. Similar practices, particularly the use of the permitting dashboard, have been effectively implemented for infrastructure projects covered by the FAST Act.[140] As one commentator observed, these types of streamlining practices are most likely to benefit "novel or unusually complex projects, or familiar projects in novel or unusually complex contexts . . . because those projects tend to require agencies to confront unfamiliar facts, make new choices, resolve untested legal issues, and otherwise take risks."[141] Although the comment was made with reference to infrastructure permitting, it seems equally applicable to mine permitting.

In summary, flow charts and environmental checklists are two tools that can immediately improve efficiency in the permitting process. These tools support agency capacity by developing institutional knowledge and reducing legal uncertainty. They can also help avoid delays caused by incomplete or vague permit applications. These tools do not require regulatory reform, and can be implemented immediately.

2. Create a Geographically Organized, Searchable Database of Previously Drafted NEPA Documents

The RAPID website[142] has another helpful feature that could be included in the mine permitting hub: it provides a link to previously drafted NEPA documents.[143] This feature facilitates tiering,[144] and minimizes the risk of duplicative environmental analyses. NEPA regulations encourage using program, policy, or plan EISs, as well as tiering statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issue.[145] NEPA documents can also incorporate information by reference.[146]

While mining interests and agency staff presumably have ready access to prior permitting documents for the sites in question, obtaining access to documents or studies at far-flung locations that addressed similar issues could expedite environmental analyses. The NEPA database provided on the RAPID website may help overcome this challenge. The website allows a user to search for a document by analysis type, lead agency, and 17 state jurisdictions. The same information should be provided on the mine permitting hub.

This database would be more useful if it also provided a map with links to the available documents. An applicant or an agency official could then use a geographic search for relevant environmental documents. Improving access to prior and related environmental documents would help agency officials and permittees identify and avoid repetitive analyses and discussions of the same issues.

Creating a mine permitting hub that includes analytical flow charts, environmental checklists, and a NEPA database would help reduce delay caused by the complexity of the legal system governing hard-rock mining. Additionally, these actions would expand agency capacity by developing expertise and creating a system of institutional knowledge to offset the loss of senior staff members who may not be available to provide guidance or mentoring to new staff members. Finally, the hub would help stakeholders better understand the mine permitting process, engage more effectively, and appreciate how their input will be addressed through the permitting process. Although these actions are simple, they cannot be accomplished without adequate funding. Agency budgets must be adjusted with enough resources to achieve these objectives.

C. Recommendation 3: Use the NEPA Process as a Tool to Avoid Delay Caused by Uncoordinated Interagency Permitting Requirements

The NEPA process can be used to avoid delay by coordinating permitting and planning requirements. As one senior agency official in the transportation sector observed, "The NEPA process itself is inherently efficient because it provides the platform for agencies to coordinate permitting and planning activities at all levels of the government, thereby avoiding duplicate or sequential reviews and providing the opportunity for potential issues to be identified and resolved early in the process.[147] In a system of overlapping (and at times conflicting) jurisdictional authority, gaps or duplication of effort are likely to occur without strong coordination between authorities.[148]

Done properly, the NEPA process functions as an umbrella statute, facilitating compliance with a host of other laws such as the CWA, the NFMA, or the National Historic Preservation Act. Indeed, there is some evidence that permitting decisions undergoing a NEPA review are often completed faster than those that are exempted from NEPA.[149] This likely reflects improved communication and coordination that results through interagency coordination as part of the NEPA process.

Delays are likely to increase where interagency coordination is lacking.[150] The National Research Council found:

> Timing of environmental review and permitting is affected by agencies' ability to coordinate with one another, as well as by the availability of sufficient agency staff and technical resources. Where coordination among state and federal regulatory agencies is high, environmental review and permitting appears to be faster . . . where separate agencies engage in serial permitting, rather than coordinating their review efforts, the process—including data gathering—can take longer.[151]

Early consultation is essential to ensure coordination.[152] Early consultation should include all stakeholders, including the relevant federal, state, and county agencies, tribes, citizen groups, and the applicant.[153] NEPA's analytical process can provide a structure for ensuring that a proposed plan of operation "complies with all pertinent Federal and state laws."[154] NEPA's scoping process could be used to identify all relevant state, federal, and local permits that would be necessary, as well as the individual officer responsible for approving or denying a permit.

Because the statutory and regulatory regime governing hard-rock mining is so complex, simply identifying the applicable legal standards and the responsible official would bring clarity for all regulatory authorities, the public, and the permittee. The scoping process could also define the sequence of permitting, and appropriate timelines for permitting decisions within that sequence. This approach, which has been successfully used for transportation projects, would significantly reduce delays caused by ambiguity, confusion, and reluctance to act.[155]

Proactively requiring all stakeholders to engage in NEPA's scoping process can expedite permitting by identifying issues of contention early and clarifying information that must be gathered. "Agreement might not be reached among all of the stakeholders. However, the issues would be better understood by the public and defined to the benefit of the public, the agencies, and the applicant if early consultation occurred under the NEPA and permitting processes."[156] Additionally, without providing opportunity to raise concerns during the scoping process, stakeholders may raise concerns late in the process or through litigation. Some of those concerns may require collecting additional baseline data that may have been easily collected at the beginning of the permitting process.[157] Thus, a thorough and inclusive scoping process avoids disruptions late in the permitting process.

Including critical stakeholders at the beginning of the NEPA process also provides an opportunity to initiate consultation requirements early.[158] This approach would provide three benefits. First, engaging stakeholders in consultation early maximizes the opportunity to identify problems that can be avoided or mitigated at the design phase of the project. Second, identifying problems at the design phase of a project minimizes the cost of impact reduction and avoids delays later in the analysis or at the implementation phase.[159] Third, early collaboration ensures shared mapping and database development, which facilitates decisionmaking.

In summary, the NEPA process can promote, rather than hinder, efficiency. At the site level, the NEPA process can be used to coordinate permitting requirements and improve communication between permitting officials at the federal, state, tribal, and local levels. The NEPA process can also be used to initiate consultation requirements early enough in the process to be meaningful and effective, which can avoid delays in the long run. These procedures can improve timeliness, predictability, and transparency in the permitting process. Achieving these outcomes, however, depends upon sufficient agency capacity and expertise to utilize these tools effectively.

V. Conclusion

Transitioning to a renewable energy economy demands an increase in mineral production. But not every permit should be approved as it was submitted. The permit process necessarily involves multiple authorities enforcing different environmental, health, and safety standards. Along the way, opportunities to eliminate, reduce, or mitigate risk may be identified. These opportunities can only be identified through rigorous application of the relevant standards. The increased demand for minerals should not overshadow the productive purposes served by permitting.

At the same time, there are opportunities to improve permitting efficiency without compromising rigorous health and safety standards. This requires identifying and addressing unproductive causes of delay within the permit process.

Analytical rigor does not appear to cause delay in the permitting process. Empirical evidence reveals that the majority of permitting decisions are made within a reasonable time frame for the complexity of the project. Some decisions encounter excessive delays, but this occurs even where analytical rigor is not required. The disparity in decisionmaking times suggests that factors other than regulatory requirements contribute significantly to project delays. Causes of delay include inadequate agency budgets, a lack of qualified staff, staff turnover, delays receiving information from permit applicants, and compliance with other laws.

Based upon this information, three simple actions can be taken to expedite mine permit processing times without sacrificing analytical rigor. First, avoid delay caused by insufficient agency capacity. This can be achieved by increasing agency staff. stabilizing budgets, rebuilding expertise, and encouraging confident decisionmaking even where it results in litigation.

Second, reduce delay by creating tools that make the legal structure, permitting requirements, and available information more transparent and publicly available. This can be achieved by creating a mine permitting hub with flow charts clarifying the permitting process and identifying permit authorities. Environmental checklists would help permit applicants submit high-quality applications that do not require supplementation. Additionally, a geographically organized database of previous environmental studies would encourage tiering and avoid unnecessarily repetitive studies.

Third, use the NEPA process as a tool to avoid delay caused by uncoordinated interagency permitting requirements.

These tools can promote efficiency without eliminating analytical rigor and without waiting for statutory or regulatory reforms. Implementing these recommendations could help the Biden administration dispel the myth that permit reform requires loosening environmental standards or analytical rigor in order to respond to the challenges of climate change.

Mr. HUFFMAN. And then, finally, I would enter into the record a September Executive Order by President Biden, which broadens the National Climate Task Force to specifically require all major agency heads to coordinate and to accelerate clean energy projects, something we have never seen before—again, a very recent Executive Order that should make a tremendous difference in this space.

The CHAIRMAN. Without objection.

[The information follows:]

Executive Order on the Implementation of the Energy and Infrastructure Provisions of the Inflation Reduction Act of 2022 — The White House

whitehouse.gov — September 12, 2022

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to effectively implement the historic energy and infrastructure provisions in Public Law 117-169, commonly referred to as the Inflation Reduction Act of 2022 (the "Act"), and to accelerate United States global leadership in clean energy innovation, manufacturing, and deployment in a way that cuts consumer energy costs, creates well-paying union jobs and sustainable and equitable economic opportunity, advances environmental justice, and addresses the climate crisis, it is hereby ordered as follows:

Section 1. Background. The Act is the single largest and most ambitious investment in the ability of the United States to advance clean energy, cut consumer energy costs, confront the climate crisis, promote environmental justice, and strengthen energy security, among other vital provisions that will lower costs for families, reduce the deficit, and grow and strengthen the economy. The Act will:

(a) build on the once-in-a-generation investment in the infrastructure and competitiveness of the United States set forth in the Infrastructure Investment and Jobs Act (Public Law 117-58) by accelerating the deployment of clean energy

technologies, making home energy efficiency and clean energy installations more affordable, and incentivizing the purchase of electric vehicles;

(b) boost energy security and lower energy costs for families, businesses, and government;

(c) revitalize American manufacturing by investing in domestic clean energy supply chains and creating well-paying union jobs, including in traditional energy communities;

(d) improve public health and advance environmental justice and economic opportunity for frontline communities who disproportionately bear the brunt of cumulative exposure to industrial and energy pollution;

(e) promote climate justice by reducing harmful greenhouse gas emissions in line with the goal of realizing net-zero emissions by no later than 2050;

(f) harness nature-based solutions—including climate-smart agriculture and forestry—that deliver economic benefits for rural communities, Tribes, farmers, ranchers, and forest landowners;

(g) expand research and accelerate innovation in the development of clean energy, climate, and related technologies; and

(h) increase the resilience of our communities in the face of a changing climate.

Achieving these goals will require effective implementation of the Act by my Administration, as well as by State, local, Tribal, and territorial governments.

Sec. 2. Implementation Priorities. In implementing the Act, all agencies (as described in section 3502(1) of title 44, United States Code, except for the agencies described in section 3502(5) of title 44) shall, as appropriate and to the extent consistent with law, prioritize:

(a) investing public dollars effectively and efficiently, working to avoid waste, and achieving measurable, demonstrable outcomes for the American people;

(b) driving progress to achieve the climate goals of the United States to reduce greenhouse gas emissions 50–52 percent below 2005 levels in 2030, achieve a carbon pollution-free electricity sector by 2035, and achieve net-zero emissions by no later than 2050;

(c) advancing environmental and climate justice through an all-of-government approach, including through the Justice40 Initiative set forth in Executive Order 14008 of January 27, 2021 (Tackling the Climate Crisis at Home and Abroad), to protect and improve the health and well-being of fence-line and frontline communities in the United States;

(d) promoting construction of clean energy generation, storage, and transmission, and enabling technologies through efficient, effective mechanisms that incorporate community engagement;

(e) increasing the competitiveness of the United States economy and investment in critical supply chains, including through the Act's incentives and measures to strengthen domestic manufacturing and supply chains;

(f) increasing high-quality job opportunities for American workers and improving equitable access to these jobs, including in traditional energy communities, through the timely implementation of the Act's requirements for prevailing wages and registered apprenticeships and by focusing on high labor standards and the free and fair chance to join a union;

(g) reducing energy costs for working families, businesses, and governments at all levels while increasing energy security for the benefit of United States economic competitiveness and national security;

(h) accelerating innovation by directing the scientific and technical expertise of America's researchers, businesses, and workers toward achieving breakthroughs in clean energy and climate technologies; and

(i) effectively coordinating with State, local, Tribal, and territorial governments, as well as with private-sector stakeholders and nongovernmental organizations, in implementing the critical investments outlined in this section to build sustainable, resilient communities.

Sec. 3. White House Office on Clean Energy Innovation and Implementation. There is hereby established the White House Office on Clean Energy Innovation and

Implementation within the Executive Office of the President, which shall coordinate the policymaking process with respect to implementing the energy and infrastructure provisions of the Act and other essential initiatives.

The White House Office on Clean Energy Innovation and Implementation shall have a staff headed by the Senior Advisor for Clean Energy Innovation and Implementation; shall have such staff and other assistance as may be necessary to carry out the provisions of this order, subject to the availability of appropriations; and may work with established or ad hoc committees and interagency groups.

Sec. 4. Interagency Coordination. (a) To further the robust implementation of the energy and infrastructure provisions of the Act, Executive Order 14008 is amended as follows:

(i) The introductory text following the heading for section 203 is revised to read as follows: "There is hereby established a National Climate Task Force (Task Force). The Task Force shall be chaired by the Senior Advisor for Clean Energy Innovation and Implementation. The National Climate Advisor shall serve as Vice Chair.".

(ii) Section 203(a) is revised to read as follows:

"(a) Membership. The Task Force shall consist of the following additional members:

(i) the Secretary of the Treasury;

(ii) the Secretary of Defense;

(iii) the Attorney General;

(iv) the Secretary of the Interior;

(v) the Secretary of Agriculture;

(vi) the Secretary of Commerce;

(vii) the Secretary of Labor;

(viii) the Secretary of Health and Human Services;

(ix) the Secretary of Housing and Urban Development;

(x) the Secretary of Transportation;

(xi) the Secretary of Energy;

(xii) the Secretary of Education;

(xiii) the Secretary of Homeland Security;

(xiv) the Administrator of the Environmental Protection Agency;

(xv) the Director of the Office of Management and Budget;

(xvi) the Director of the Office of Science and Technology Policy;

(xvii) the Administrator of the Small Business Administration;

(xviii) the Chair of the Council on Environmental Quality;

(xix) the Assistant to the President for National Security Affairs;

(xx) the Assistant to the President for Domestic Policy;

(xxi) the Assistant to the President for Homeland Security and Counterterrorism;

(xxii) the Assistant to the President for Economic Policy;

(xxiii) the Administrator of the National Aeronautics and Space Administration;

(xxiv) the Chief Executive Officer of the Corporation for National and Community Service;

(xxv) the Administrator of General Services;

(xxvi) the White House Infrastructure Coordinator; and

(xxvii) the heads of such other departments, agencies, and offices as the Chair or Vice Chair may from time to time invite to participate.".

(iii) To expand the mission of the National Climate Task Force to include coordinating effective implementation of the Act, as outlined in section 2 of this order, the second sentence of section 203(b) is revised to read as follows: "This Task Force shall facilitate planning and implementation of key Federal actions to reduce climate pollution; increase resilience to the impacts of climate change; protect public health; conserve our lands, waters, oceans, and biodiversity; deliver environmental justice; spur well-paying union jobs and economic growth; coordinate effective implementation of Public Law 117-169, commonly referred to as the Inflation Reduction

Act of 2022, in coordination with the Infrastructure Implementation Task Force established in Executive Order 14052 of November 15, 2021 (Implementation of the Infrastructure Investment and Jobs Act), as appropriate; and accelerate clean energy innovation and deployment.".

(iv) The introductory text following the heading for section 218 is revised to read as follows: "There is hereby established an Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization (Interagency Working Group). The National Climate Advisor, the Assistant to the President for Economic Policy, and the Senior Advisor for Clean Energy Innovation and Implementation shall serve as Co-Chairs of the Interagency Working Group.".

(b) Section 1-102(b) of Executive Order 12898 of February 1 , 1994 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), as amended by section 220(a) of Executive Order 14008, is further amended by revising subsection (xvii) and (xviii) and adding subsection (xix) to read as follows: "(xvii) the Assistant to the President for Domestic Policy; (xviii) the Assistant to the President for Economic Policy; and (xix) the Senior Advisor for Clean Energy Innovation and Implementation.".

(c) To further support implementation of the energy and infrastructure provisions of the Act, section 3(d) of Executive Order 14052 of November 15, 2021 (Implementation of the Infrastructure Investment and Jobs Act), is amended by striking "and" at the end of subsection (xi), striking subsection (xii), and adding in lieu thereof the following: "(xii) the Senior Advisor for Clean Energy Innovation and Implementation; and (xiii) the heads of such other executive departments, agencies, and offices as the Co-Chairs may from time to time invite to participate.".

Sec. 5. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN JR.
THE WHITE HOUSE

Mr. HUFFMAN. Thank you.

The CHAIRMAN. The gentleman's time has expired.

And while we are entering into the record, Mr. Huffman, so you won't have to use your imagination any more, I am going to enter into the record the invitation on Valentine's Day to the Honorable Brenda Mallory, Chair of the CEQ——

Mr. HUFFMAN. How about the legislative text, as required?

The CHAIRMAN [continuing]. To testify before our Committee——

Mr. HUFFMAN. We don't send Valentines. We send legislative text, Mr. Chairman.

The CHAIRMAN. And we submitted that on time, as well.

We will now go to the author of the BUILDER Act for 5 minutes. I recognize Mr. Graves from Louisiana.

Mr. GRAVES. Thank you.

Mr. Huffman, I have to tell you, I am somewhat disappointed. I know that you normally hang on every word that I say and write, and this bill was actually introduced on March 21, 2021, so I am not sure why you haven't had time to read it yet. I thought that

it would be on your nightstand. But the bill has been around for nearly 2 years.

And we did introduce it as a discussion draft, which was intentional, because we wanted to have practitioners, we wanted to have experts, we wanted to have people that were on the receiving end of NEPA to come share input, as well, Mr. Huffman, as other Members of the Congress, to share input. That way, we could shape the bill to reflect that input.

But it was interesting hearing your quote about justification, and what the real holdup is for projects, and things along those lines. I want to quote again White House National Economic Advisor Brian Deese when he said, "I think, certainly, it is going to require as a country that we do things differently, do business differently. It is one of the reasons why the President has been so supportive of"—wait for it—"permitting reform."

Mr. HUFFMAN. You want to know what that means?

Mr. GRAVES. I will again go back to my conversations. I do appreciate your willingness to interpret it for me, but I am going to go back to the meeting where, from the horse's mouth, I had a meeting with Mr. Deese and Secretary Kerry, where they explicitly discussed litigation reform, they explicitly discussed NEPA reform. We talked about Senator Manchin's bill, as well as deficiencies in that legislation. So, I think that we can sit here and try to reinterpret and try to point or deflect, but the reality is that they have discussed this head-on as being a key issue.

Mr. Beard brought up issues about environmental racism in his community of Port Arthur, Texas. Mr. Chairman, we have projects that I have talked about in this Committee that have been delayed and dragged through the mud as a result of NEPA reviews and other bureaucratic challenges, and that has resulted my hometown—my hometown, with a population of approximately 53 percent African American, where I go home every week, where I live—to experience flooding that could have been prevented by carrying out projects to prevent floods. Just absolutely remarkable, the projects that have been stymied or delayed as a result of NEPA taking way too much time.

In regard to the environment, what this legislation does, rather than—as Mr. Grijalva, the Ranking Member, put up in his poster—giving the agencies $1 billion, what this legislation does is it actually tries to refine, to focus, to concentrate the resources, the people, and the attention on the environment, on actually focusing on the environment, not all of these other ancillary things, not all of this desk-jockeying that has gone on.

There was a president years ago that issued guidance on NEPA. And what the president said in his NEPA guidance is he said that NEPA documents needed to be 150 pages, needed to be 150 pages, which is largely consistent with what we have done in this bill. And even in the cases of complex environmental impact statements—I remind you, you have categorical exclusions, you have environmental assessments, and you have EISs, environmental impact statements, the third of which being the most complicated. Even those should take 1 year, 1 year. You know who that president was? That would have been Jimmy Carter.

So, this legislation does not—and I want to be crystal clear, Mr. Beard and others—this legislation does not take away the right for judicial action. It doesn't. It absolutely does not. And if the true objective of somebody who has concerns about a proposed project is actually getting resolution, then I would argue that this bill will actually help, because what it does is it forces earlier interaction. It forces people who have concerns to bring those concerns to the table earlier in the robust public participation process that this legislation preserves.

So, Mr. Chairman, I am going to say it again. Yes, I want this bill, and it is going to advance important projects for resiliency in my hometown. It is going to allow for projects related to energy development, including renewable energy projects, to move forward in a more streamlined manner with focus on the environment, not all of these ancillary things. But it is consistent with what this White House has requested, and it actually provides even more time and pages than President Jimmy Carter did.

So, yes Mr. Chairman, I yield back, but I also think it is very important that we stay focused on facts.

The CHAIRMAN. The gentleman's time has expired. The Chair recognizes the gentlelady from New Mexico, Ms. Leger Fernández, for 5 minutes.

Ms. LEGER FERNÁNDEZ. Thank you so much, Chair Westerman. Thank you, Ranking Member Grijalva. And, of course, as always, thank you to our witnesses for bringing your perspectives to the hearing today.

I go home and I hear a lot from my constituents who are concerned about a range of Federal projects that go through, and they want to make sure that there is a good NEPA process, that it considers the consequences, because in the end, that is what NEPA is supposed to do, right? What are the consequences from the actions, the Federal actions that are being proposed, so we do not create a mess, right? It is kind of simple. And they understand it, and they want to know that that is done so that they feel good and feel confident about what has happened before.

We also know that it needs to be efficient, it needs to be timely. We agree on those things, which is why we sent more resources to agencies to help with that. We are going to be having a hearing tomorrow in Indian Affairs about the importance of moving through the permitting quickly, having the resources that our agencies need.

But I need to say that, in New Mexico, the NEPA process has been very useful in those rare cases that we have discussed today. It is not all the cases, it is only about one in, what was it, that actually focus on the full NEPA process. One was the Fence Lake Coal Mine, and that NEPA process was appropriately reviewed. And because of it, a coal mine that would have destroyed the Zuni Salt Lake didn't happen. And, therefore, the environmental and the cultural damage that would have come from that particular mine were averted. So, we like that a lot.

We have another proposed project in the Pecos, up in the wilderness, close to the wilderness, and it is on a place where there weren't the proper safeguards before. So, there was major contamination that the State and the Federal Government ended up

holding the bag on, and had to clean up, right? So, my constituents there want to make sure that, as a new mining project is considered by, I will point out, a foreign company—too often these are—these mining companies are actually subsidiaries of foreign companies.

Last Congress, we heard about the mine in Arizona, the Resolution Copper mine that many of my colleagues across the aisle were really championing. Well, that has ties to the Chinese Communist Party, and yet they were championing that. We don't want to let foreign companies end up sort of exploiting our resources in a way that causes long-term damage. And that is, I think, the concern that my community has raised with me.

The Pecos River having a 10-year limit is a bit concerning, right, because these last a lot longer than 10 years. And it took us longer than 10 years to clean up what happened in the Pecos before from that mining project.

Mr. Beard, what do you think is the impact of limiting analysis to just 10 years?

Mr. BEARD. Thank you, Congresswoman. My thoughts on that is this, that by restricting them to simply 10 years, you don't take into consideration the damage that has already been done in that area before that project came along. If you can't look forward to see what is going to happen, and you don't consider the cumulative impacts that were there when you came to that site, then you have no idea what is going to happen in the future. Some of that is carryover.

I will say it like this for my particular case, with the high rates of cancer and all of that. We have people right now that are dying, right as I am sitting here that are dying, some who have cancer and don't know it, some who have respiratory illnesses and don't know it. But they think it is normal, but it has become so normalized that they don't see it.

So, by extending it out that far, they are going to have effects way before you see it. And the best way I can say this to you—and for those of you who have not been to that part of Texas, that part of the world—come to Port Arthur. Come and see what we are doing. Come and breathe the air. I have had people come on a tour that I give. I call it the Toxic Tour. And in a matter of hours, they feel like they are coming down with something because of what they are breathing in the air.

And contrary to what has been said earlier, this whole permitting process is about permitting even more of this to come. I spoke of the LNG facilities. There is one that is proposing to come there now, in addition to the one that is currently in construction, and the one that is already doing business.

And then everything is constantly expanding, and everyone talks about, well, it is just going to add a little bit more. But when is a little bit too much, when you are an overburdened community who has, in our case for 12 decades, had to undergo and deal with environmental pollution and contamination from the petrochem industry?

Ms. LEGER FERNÁNDEZ. Thank you very much, Mr. Beard.

My time is up, and I yield back, Chairman.

The CHAIRMAN. The gentlelady's time has expired. The Chair now recognizes the gentleman from Arizona for 5 minutes, Mr. Gosar.

Dr. GOSAR. Yes, Mr. Veerkamp, I would first like to quote the first line from a *Bloomberg* article dated January 5, 2021: "California's 2020 wildfire season thwarted the state's fight against climate change, spewing enough carbon dioxide into the air to equal the emissions of millions of passenger vehicles driving over the course of a year." A hundred and 12 million metric tons of carbon dioxide were released in California in 2020, equal to the greenhouse gas emissions of 24.2 million passenger cars in a single year.

Can you speak to the contribution of NEPA to this catastrophe? Then I have some follow-up questions.

Mr. VEERKAMP. OK. Just to make sure I understand, speak to the time that NEPA has——

Dr. GOSAR. The contribution of NEPA to this problem.

Mr. VEERKAMP. Well, in my estimation as well as experience, it is from all of the lack of ability to do things in a timely manner that has made the forest accumulate all of this debris. And within minutes to hours to, as I stated, up to 100 days of continual fire burning up all that fuel provides all of this environmental contamination. And that is just to the atmosphere, let alone all the other consequences of a catastrophic wildfire.

Dr. GOSAR. That is what I would like to concentrate on.

I mean, in Arizona we have had a few nasty fires. And the consequences are so that they burn so hot that there is contamination of the soil. You actually see it sterilized, right? What are the consequences that are long acting along those lines?

Mr. VEERKAMP. In 1995, we were notorious as well in El Dorado County for the King Fire, and the Rubicon drainage under Hell Hole Reservoir. And there was obviously yellow-legged frogs, red-legged frogs, amphibians, and so forth. To this day, they have still not found any eggs from any of those that have survived the nuclear devastation of those intense burns. And that is all a watershed, as well, that supplies drinking water to Placer and El Dorado County.

So, it just obliterates the soil and its ability to regrow things, as well as our amphibians, reptiles, and so forth.

Dr. GOSAR. And usually it is decades, these consequences are, not half a century, right?

Mr. VEERKAMP. Yes.

Dr. GOSAR. Mr. Pugh, it takes the Federal Highway Administration 7.37 years and 742 pages, on average, to complete an environmental impact statement. How can the Federal Government prevent disasters like the recent train derailment in East Palestine, in Ohio, if it takes this long to approve projects that bring positive change?

Mr. PUGH. Great hypothetical question. Not entirely sure where to start with an answer on that. The train derailment, I am not overly familiar with the actual instances that caused that. If it were due to some project that was supposed to improve those tracks, then I imagine anything that would shorten the permitting and review process to allow those improvements to move forward

would certainly help. But I am not overly familiar with the actual instances behind that.

Dr. GOSAR. Well, just the near backdrop of how long it takes, definitely a problem in trying to get access to proper conditions, right?

Mr. PUGH. Obviously. And with escalating costs that we are seeing right now, dollars that we have appropriated for infrastructure projects today, certainly 7.3 years from now those dollars are not going to go as far, and we are not going to be able to do as many projects.

Dr. GOSAR. Got you.

Mr. Carr, the Department of Energy estimates that electricity transmission systems must be increased by 60 percent by the year 2030. Can this be achieved under the current NEPA requirements?

Mr. CARR. I want to make sure I understood the question. I believe your question was the DOE projection is transmission growth will have to be significant to accommodate——

Dr. GOSAR. Actually increase by 60 percent.

Mr. CARR. Sixty percent.

Dr. GOSAR. Yes.

Mr. CARR. Thank you. So, I have concerns as it relates to accommodating that kind of transmission growth.

When we think about growing electric vehicles, the demand that will increase and the timing to get these projects done where there is a Federal action, I would be concerned in that kind of growth scenario.

Dr. GOSAR. So, just go through the Interior, which is the biggest problem. Bureau of Reclamation takes 5.32 years, on average; National Park Service, 6.64 years; U.S. Fish and Wildlife Service, 4.75 years; Bureau of Land Management, 4.36 years; U.S. Forest Service 3.31 years. So, I think we have problems.

I yield back.

The CHAIRMAN. The gentleman yields back. The Chair now recognizes Ms. Kamlager-Dove for 5 minutes.

Ms. KAMLAGER-DOVE. Thank you, Mr. Chair, and thank you, Ranking Member.

In California's 37th Congressional District, which I represent, we are witnessing a public health crisis. According to the American Lung Association's recent report entitled, "State of the Air," the Los Angeles-Long Beach region ranked highest for ozone pollution, 5th for annual particle pollution, and 8th for daily fine particle pollution.

This means that every single day my constituents are breathing in air that is toxic. It has significant rates of pollution known to cause adverse health effects, asthma, cardiovascular disease, lung cancer, and reproductive harm. I can't tell you how many toxic tours I have been on, and how many town halls I have gone to, where I have seen little girls under the age of 10 with metal stents in their chest because they have lived next to a Superfund site. Yet, today, I feel like we are meeting to consider legislation that would fast-track the process for polluting and extractive multi-billion dollar industries, and treat them as if they are the victims.

So, currently, when the government wants to greenlight a project, it is NEPA that guarantees that the public is informed, and

that they have a say in what goes into their communities. And, currently, the NEPA process directs lead agencies to prepare an environmental assessment or an environmental impact statement.

Section B of this legislation adds a section that would allow for sponsor preparation, which, in layman's terms, to me means self supervision, on top of barring legal challenges to categorical exclusions, limiting judicial review, prohibiting injunctive relief, just in case you didn't have enough chits. So, for me, it is almost like an ironclad death knell for anyone who cares about the environment.

Mr. Beard, from your experience working in the oil and gas industry, do you believe that the industry can, has, and will effectively self-supervise and act in the best interest of public health if this bill becomes law?

Mr. BEARD. Ms. Kamlager-Dove, I would like to put it like this. You can't leave the fox in charge of the henhouse and expect that you are going to have eggs and chickens.

They can't self-police. They have proven it too many times. They don't even self-report as efficiently as they should. We have been able to, through my organization and monitoring and having eyes out there, have seen these things and reported them, only to be told that, well, nothing was wrong. But we can't trust the self-police. It just simply won't work because their interest is not in protecting the environment, it is in protecting stock and shareholders and protecting profits. And if it is done at the forsaking of the community, then so be it. We will pay the fine, pay the fee, and go on about our business. And I have seen it too many times.

Let me illustrate a case. I think Mr. Veerkamp, or one of the gentlemen here with me, talked about a fire that burned. We had one, too, in Port Arthur, a wood pellet silo that was used to export wood pellets to Europe, and calling that renewable energy. But yet, that silo spontaneously caught fire and burned in my community for 102 days, and impacted all of those people. Yet, our state regulatory agency, which takes promulgation and guidance from the Federal, only fined them $12,000. Yet, our legal team did the estimation it should have been well in excess of $1 million.

So, we can't expect them to self-police. We have to have rules and guidances in place to protect and have the contingencies available so that communities of color or any community is not hurt or harmed. The job should be to do no harm. But when you put these things in those areas—and they only come to areas like you mentioned—then you are going to have what you get. And that is simply not acceptable.

Ms. KAMLAGER-DOVE. Thank you, Mr. Beard. I was thinking the exact same thing. It is like having a fox in the hen house. And after the slaughter, the little fox comes out and says it wasn't a slaughter, it was a negotiation. Makes no sense to me.

Thank you, Mr. Chair, and I yield back my time.

The CHAIRMAN. The gentlelady yields back. The Chair recognizes the gentleman from California, Mr. LaMalfa, for 5 minutes.

Mr. LAMALFA. Thank you, Mr. Chairman, and thanks for bringing up the Sites Reservoir issue that is going on in my district, one I used to share with Mr. Garamendi, until his district changed, and that he supported as well. It has been an extremely

important project for California. It would create 1.5 million new acre-feet of water storage.

The interesting thing about that, it had been a larger project. It was up to 1.9 million, but the people planning it have to dodge bullets coming from government on what it takes to get the permits done. For example, they didn't like that there might be three sources of water to pump into it from the Sacramento River during high flows at 6,000 CFS. It was seen as too much. So, one of those had to be downsized. Then there are two sources that would total 4,000 CFS because they were worried about 6,000 being too much. So, with that they had to downsize the reservoir a little bit in order to do that.

And also, interestingly, the only public benefits of a storage project like that is described as water for fish. It wouldn't be stored water for people or making hydroelectric power. So, that is the fun background on that. So, I hope we can continue to move forward on that faster than the glacial pace, as California is desperately in need of water storage.

I want to shift to Mr. Veerkamp. And, indeed, my part of Northern California has suffered from massive amounts of wildfire over many years, even more recently being more acutely big numbers, the Dixie Fire being right at a million acres, the Camp Fire wiping out Paradise, the North Complex, also known as the Bear Fire, wiping out a couple of small—I have had several communities disappear due to this. Greenville is part of the Dixie Fire, 75 percent of that town is gone. Nearby is a town called Canyon Dam, completely gone. Paradise, as you remember, 90 percent gone. Small towns out of Orville, Fetter Falls, and Berry Creek, almost completely gone.

So, indeed, the permitting process to do the type of thing with good people, like the fire safe councils, sometimes in concert with private timber, as well. An example, the Bear Fire, also known as North Complex, there was grant funding set aside for, I think, approximately 18 months that they could not get over the hurdle for the fire safe folks to do good work around. Finally, it caught fire and just wiped out a lot of people there.

There was a great story written by a cattleman named David Daly you may have seen. It kind of made national news. You could read up about that, Dave Daly.

So, could you touch on a little more for us, please, the aspect of a NEPA, as well as CEQA, which is the California version of this, more or less, sometimes being required at the same time to do any kind of project?

Mr. VEERKAMP. Yes. And, unfortunately, again, as the consequences of our best intentions, and especially when it comes to wildfire, as you just stated, some of those major incidents, Lightning Complex was one of them up there also that was for weeks on end, total devastation.

But the landscape has changed. You mentioned fire safe councils. You mentioned, or I will mention, conservation districts. There are tools in place now, and we just need to remove that handcuff of the restrictions so we can get in and do this work.

Again, there are great intentions and great pieces of NEPA and CEQA, but the ability for lawsuits and the environmental

challenges that strangle it in a timely manner, and then Mother Nature takes over. And we all know Mother Nature, and Mother Nature in California right now is pounding us. When they said it was never going to happen again, well, guess what? The tunnels are back in Lake Tahoe, and that is snow tunnels.

So, we need to just get, in my opinion, back to common sense. We can be surgical, we can be strategic, we can prioritize, and we can protect.

Mr. LAMALFA. So, shift to, we talk about Mother Nature. There is more board feed of timber growing than we are harvesting by a tremendous amount. It is growing every day, whether we do something or not. Talk to us a little bit about recovery after fire, when we are supposed to be doing salvage and replanting of these devastated landscapes.

Mr. VEERKAMP. Well, unfortunately, we have lost the infrastructure to do a lot of that. And that is something, also, which——

Mr. LAMALFA. Which infrastructure?

Mr. VEERKAMP. For industry, logging, and sawmills, and so forth, so we have——

Mr. LAMALFA. How long does it take a NEPA to do a post-fire salvage? How long does that take, and how successful are you even getting a NEPA?

Mr. VEERKAMP. Well, again, salvage——

Mr. LAMALFA. After a fire.

Mr. VEERKAMP. Under the categorical exemption on the Caldor Fire for the Sierra Tahoe ski resort, we were able to accomplish that within a 4-month period of time, because you only have so much time before that timber lumber is non-salvageable. Besides, we had a public ski resort that public safety would be in jeopardy.

So, there was some ability, again, through categorical exemptions to expedite that process, but it is getting the backing to get that categorical exemption, and stating what we have stated here today, of the need to be able to do that is what it takes, rather than, again, infrastructure or a large burn should be exempt from getting those things done, because a lot of those also have a major infrastructure——

Mr. LAMALFA. And, typically, they run a year and a half. This one was probably a little more politically loaded, due to the area it is. It is around communities especially in a high-dollar Tahoe area.

Mr. VEERKAMP. That is correct.

Mr. LAMALFA. When you try to talk about it like over on—well, when I am in Mendocino, for example, they wanted a 7,000-acre project——

The CHAIRMAN. I hate to cut off a good discussion, but the gentleman's time has expired.

I now recognize the——

Mr. LAMALFA. Yes, I know. I could go all day, Mr. Chairman, but—yes, thank you. And, indeed, it can take a year and a half, pretty easily, on a lot of these, and still get tossed by a judge. I yield back. Thank you, sir.

The CHAIRMAN. I recognize the gentleman from California, Mr. Levin, for 5 minutes.

Mr. LEVIN. Well, I thank my friend, the Chairman. And as I spoke about at our last hearing, I hope that this Committee is going to focus on finding areas of common ground. I really mean that. And while I know we are not going to agree on everything, I do know there are many things within this Committee's jurisdiction that we can agree on.

And one such item is the importance of promoting an efficient permitting process, and advancing the buildout of infrastructure. Doing so is absolutely critical if we want to proceed on large-scale energy infrastructure projects and deliver for our communities. And as we embark on this important work, I think we need to consider all dimensions and interests in responsible energy development, including expanding high-capacity transmission, reforming the interconnection process, and ensuring Federal agencies have the resources and the expertise they need to conduct efficient environmental reviews.

There was some research recently from Princeton. And they said, in order to achieve the full emissions reductions potential from the Inflation Reduction Act, the United States has to more than double our historic rate of transmission expansion, while also investing in new renewable energy generation to meet the demand from increased electrification of various sectors.

And I know we can develop permitting reform policies that do that, that support clean energy projects, but also fully consider the interests and the perspectives of environmental justice communities. And I am hopeful we can get there. I look forward to working with the Chairman, with my colleagues on this Committee to get there.

And I think that Democrats and Republicans also share the goal of timely reviews of projects, and there are actually elements of the bill before us today that I think could be beneficial in this regard, such as requiring designation of a lead Federal agency, establishing a clearer process for cooperations between agencies on NEPA reviews. And I think there is a foundation there, and hopefully a continued dialogue we can have.

But I also have concerns, and I understand this is an opening salvo, if you will, but let me just share a few. For example, any proposal to limit the scope of NEPA review, I think, requires a pretty serious discussion. Proposals to restrict the ability to assess the potential climate impacts of projects that is problematic. Impeding opportunities for judicial review, I think, is problematic, and hindering the ability for community input, which I will talk about in a second.

In addition, I think the current legislation we are looking at doesn't address the Government Accountability Office's findings, which they say the main reason for NEPA delays are lack of Federal agency capacity and funding for NEPA reviews.

Again, I will say that one more time: the GAO found the main reason for NEPA delays to be lack of Federal agency capacity and funding for NEPA reviews.

So, as we think about this discussion, I think it is also important we consider what we just did, what Congress just did through the Inflation Reduction Act to increase that exact thing, that agency capacity for NEPA reviews. We know that a trained, equipped

workforce is essential to processing NEPA reviews in a timely fashion in cases where there are delays.

As the GAO said, increasing funding and staff for Federal agencies' permitting offices and agency workforce training can make permitting processes significantly more effective and efficient. And we had $1 billion—$1 billion—to help agencies, and it was all split up among the various agencies in the IRA to help them conduct timely environmental review and permitting.

So, with that as background, I will turn to Mr. Carr.

How important is a well-trained and knowledgeable Federal workforce to an efficient NEPA process, and how can the funding, the $1 billion included in the IRA, help those agencies conduct more expedient project reviews?

Mr. CARR. I appreciate the question and the background information.

Certainly, when we are talking about a NEPA review, absolutely, knowledgeable, well-trained staff to conduct an efficient review is absolutely important. I am not absolutely certain on the IRA impact as it relates to that, I am not certain.

Mr. LEVIN. OK.

Mr. CARR. But when we talk about our own experience at Dairyland, again, in our case, the delays here—again, we mentioned earlier the Cardinal Hickory Creek project actually went through the NEPA review relatively quick. It was the litigation piece where we are hung up and stuck.

In the terms of the Nemadji Trail Energy Center, it was the decision to——

Mr. LEVIN. Mr. Carr, I am sorry, I am going to cut you there, because I want to make sure I get to this other point.

I just want to address the myth that community input necessarily slows down projects. I used to do this for a living, and my own experience—it is not always the case, but often the case that the opposite is often true, and early engagement with impacted communities actually facilitates more efficient completion of projects by providing a way to address potential concerns early, heading off issues that may otherwise lead to time-consuming lawsuits. I used to try to avoid lawsuits whenever humanly possible.

Can—and I am actually out of time. I was going to ask if you all agree. I hope that at least a few of you do. But I mean, as sincere as I can be, this is a huge set of issues. Let's work together. Let's focus on what we agree on, that part of the Venn diagram, and let's actually get something done we can be proud of.

With that, I will yield back.

The CHAIRMAN. I appreciate the gentleman's offer, and now recognize the gentleman from Minnesota for 5 minutes, Mr. Stauber.

Mr. STAUBER. Thank you very much, Mr. Chair.

Mr. Levin, I appreciate your comments. You agree on almost every part of my Permit for Mining Needs Act, and I do appreciate your concern and your comments.

Mr. Graves, I appreciate all the work that you have done on this. We have had some conversations with our witnesses and my colleagues across the aisle that talk about the project sponsor doing

their own EA and EIS. Doesn't the Federal agency have to sign off on it at the end of the process?

Mr. GRAVES. That is correct. And as a matter of fact, if you go back, Mr. Stauber, and look at the placards that the Ranking Member put up, he talked about the inability of agencies to process all of this and having the bandwidth. So, this actually provides a relief mechanism for them by using additional capacity. It would be required to be reviewed, edited, and approved in accordance with Federal standards before it could be publicly released. And, lastly, this is entirely compatible with other Federal practices, where similar types of activities are done, where an applicant prepares the data and information only to be modified, approved, or rejected by the agency.

Mr. STAUBER. Thank you for clearing that up, Mr. Graves.

Mr. Carr, thank you for joining us today. It is great to see a Midwest cooperative joining us as a witness. Mr. Tiffany, from the other side of the Port of Duluth, and I led a letter to the Administration supporting finalization of the 6½ years and counting Nemadji Trail Energy Center, or NTEC.

I would like to enter that letter into the record, Mr. Chair.

The CHAIRMAN. Without objection.

[The information follows:]

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
Washington, DC

February 10, 2023

Honorable Andrew Berke, Administrator
Rural Utilities Service
U.S. Department of Agriculture
1400 Independence Ave. SW
Washington, DC 20250

Dear Administrator Berke:

We write today urging you to reissue the Finding of No Significant Impact (FONSI) for the Nemadji Trail Energy Center (NTEC) located in Superior, Wisconsin. NTEC would provide dispatchable natural gas-generated baseload power desperately needed throughout the vast service territories of Dairyland Power Cooperative, Minnesota Power, and Basin Electric Power Cooperative. The proposal is supported by local building trade unions, including the International Union of Operating Engineers (IUOE) who specialize in building energy generation and distribution.[1] Years of public comment have resulted in a strong, defensible Environmental Assessment (EA). It's high time to provide our communities with the reliable power they deserve by issuing a FONSI for NTEC.

Initial scoping of the NTEC project commenced in 2017, resulting in the Rural Utilities Service (RUS) issuing a FONSI in June 2021. After receiving a petition from an anti-energy activist legal organization based in the Twin Cities the following July, RUS and project sponsors consented to a supplemental EA. Originally scheduled to be operating in 2025, the commercial operation date has been pushed back to 2027 due to the extended analysis. With significant, documented communication between your agency, project sponsors, and outside stakeholders, a year and a half has passed. Eighteen months to simply update an EA and reissue a FONSI for a project is unacceptable, let alone five and a half years of total project development.

[1] International Union of Operating Engineers President Michael Callahan to U.S. Department of Agriculture Secretary Thomas J. Vilsack, November 23, 2022.

We need reliable baseload power across the Upper Midwest. By not issuing this FONSI, RUS is denying ratepayers access to power and the peace of mind of knowing they can turn the heat up when temperatures plummet well below zero. The Midcontinent Independent Systems Operator (MISO) makes clear in its comment on the project that additional, dispatchable baseload generation like NTEC are needed, even with increased solar and wind energy on the grid:

> "As RUS considers the need for electrical power in its decisions, MISO fully supports not only the resource development of new energy projects, but the orderly transition of existing resources to ensure short- and long-term grid reliability and prevent future resource inadequacies in the MISO region." [2]

NTEC enjoys robust community support, including from building trades unions. The project will boost local budgets with tax revenues for schools, police, fire, public safety, and more. Along with providing high-wage, union protected jobs to local building trade unions, NTEC will provide a strong influx of economic activity for a region that desperately needs it. Meanwhile, the service territories NTEC will supply feature a significant, industrial base that desperately needs reliable power. Our mining, forestry, and manufacturing sectors are desperate for reliable, affordable power.

MISO argues that we need reliable baseload power to supplement a growing wind and solar fleet. The building trades support the high-quality, family-supporting wages NTEC will provide. Instead of listening to radical environmental groups, I urge you to listen to MISO, the building trades, and our communities and reissue the FONSI for NTEC.

Sincerely,

Pete Stauber,
Member of Congress

Tom Tiffany,
Member of Congress

Brad Finstad,
Member of Congress

Michelle Fischbach,
Member of Congress

Ashley Hinson,
Member of Congress

Kelly Armstrong,
Member of Congress

Randy Feenstra,
Member of Congress

Mariannette Miller-Meeks,
Member of Congress

Zach Nunn,
Member of Congress

Tom Emmer,
Member of Congress

Dusty Johnson,
Member of Congress

Derrick Van Orden,
Member of Congress

Mr. STAUBER. Thank you.

NTEC has met or exceeded all requirements, and even agreed to do a supplemental EIS. Yet, 6 years in, the project is still delayed. Can you discuss briefly the importance of NTEC to emissions reductions in our region?

Mr. CARR. Certainly. When we think about Nemadji Trail Energy Center, it is actually a very efficient design unit. It is a combined cycle natural gas facility. And when you think about how the MISO grid works, in the case of MISO, the electric demand won't increase because Nemadji Trail is built. They are two separate things. Nemadji Trail Energy Center comes into the mix, and it is a very efficient unit that, when it operates, it will displace coal generation

[2] MISO Deputy General Counsel—Regulatory Kristina Tridico to RUS Environmental Protection Specialist Peter Steinour, July 25, 2022.

or less efficient natural gas. So, CO_2 emissions from that sector actually go down because of the efficiency of that plan.

Mr. STAUBER. Then my question would be, would you say that the onerous NEPA process is actually slowing emissions reductions because we are unable to get online a clean-burning, dispatchable gas plant?

Mr. CARR. I absolutely would. We have seen coal plants in the upper Midwest announce intentions that they need to stay on because of the capacity shortfalls identified by the North American Reliability Corporation and MISO.

Mr. STAUBER. Thank you.

Mr. Pugh, we heard a lot from our colleagues across the aisle at another hearing about how NEPA is not a problem, and nothing needs to be fixed. However, just this morning they discussed how they spent over $1 billion in the so-called Inflation Reduction Act to make NEPA more efficient. Mr. Pugh, if Democrats say NEPA is not really a problem, why are we spending so much money on it at CEQ and other agencies?

Mr. PUGH. OK. What I have already heard this morning, or this afternoon, is that a well-trained, educated, knowledgeable staff is required to take us through the NEPA process. I agree with that. Representing local government agencies, we expect our Federal reviewers to know what they are doing and to be able to handle our plans efficiently. The fact that $1 billion is going to be spent to help improve this, that is wonderful. I hope it works.

From the American Public Works Association perspective, we have an accreditation process that our communities can go through that shows that they are doing the right things at the right time for the right reasons, and they do it efficiently. That accreditation process requires that you go back and look at your processes on a regular basis. It is a process of continuous improvement. We would expect the same from our Federal Government. Hopefully, we are continuously looking at our processes to make sure that we are doing them and delivering our services as effectively and efficiently as possible.

Mr. STAUBER. Thank you very much, and my time has expired.

Back to you, Mr. Chair.

The CHAIRMAN. The gentleman's time has expired. The Chair recognizes the gentlelady from Nevada, Ms. Lee, for 5 minutes.

Mrs. LEE. Thank you, Chair Westerman, Ranking Member Grijalva, it is an honor to be serving with all of you and my colleagues on both sides of the aisle on this critical Committee during the 118th.

I am so proud to be the voice of Nevada on this Committee, a voice for public lands conservation, responsible energy development, and continued timely action to combat the mega-drought in the Southwest. And as you know, no state south of Alaska has more public lands than Nevada. And our public lands belong in public hands, and depend on a Congress that will preserve and protect them. As the West faces the worst climate crisis with the most severe drought in 12 centuries, I hope to continue to fight for smart water policy and urgent solutions.

Now, to turn to our discussion on the energy front, if we have learned one thing about permitting reform over the last year, it is

that there is bicameral, bipartisan interest in getting it done. In fact, Secretary Jennifer Granholm emphasized she is very excited about the potential for streamlined permitting. And with Nevada at the epicenter of Americans' transition to clean energy economy, I share that excitement and am committed to working with Democrats and Republicans to get the job done.

But unfortunately, the BUILDER Act is not it. And, in fact, the former General Counsel for the Council on Environmental Quality under three Republican presidents recently wrote to this Committee to say that, in 42 years of working with NEPA and reviewing numerous bills that would affect the NEPA process, this is, by far, the most damaging of those bills, and it would obliterate the benefits of the NEPA process for both decision makers and the American public at large, as well as for states, tribes, and local governments.

And not only that, a senior House Republican leadership aide described the party's approach in this bill in no uncertain terms, stating, "House Republicans have the majority, we have 218 votes, and that is what we are interested in doing."

So, we understand that permitting reform is too important across this country. We understand the need for it. And it is too urgent for this Congress to spend time on partisan bills and one-sided legislative packages that will go nowhere. So, for the sake of the taxpayers who have sent us here, let us cut the politicking, and let's cut the posturing, and let's get to work on finding an approach that will allow us to get the permitting reform done to the benefit of the American people and a climate in crisis.

Mr. Beard, thank you and thank all of the witnesses for being here and for your work.

And Mr. Veerkamp, your experience with wildfires in the West completely underscores the climate crisis that we are in.

Mr. Beard, I am just going to ask your opinion. Do you think there is any chance of the BUILDER Act being signed into law? Yes or no.

Mr. BEARD. In its present form, no.

Mrs. LEE. So, where do you believe there are genuine opportunities for this Congress and this Administration to work together in a bipartisan way to make sure we have a more reliable, affordable, sustainable, made-in-the-USA energy policy that the Inflation Reduction Act had made possible?

Mr. BEARD. Well, I think, first of all, even though I am not probably the most qualified person to say this, but we have to begin at the beginning. And the beginning of this is that when we say reform, that is a bit of a misnomer to me.

We need changes, but we don't need wholesale change. In other words, we don't need to throw the baby out with the bathwater. There has to be protections in there for those communities that are actually real and that are workable. Taking away the tools of litigation from communities, that may be all they have next to their own voices, and restricting that to any degree is simply not good. They have a First Amendment right to be able to speak to those things that affect their homes and their lives.

So, that is something that has to be looked at, and there are many others. But I am hoping, as this goes forward, that both

parties try to address that, and to address those concerns and issues so there can be progress. You are quite right. That is why all of you were sent here. But we have to find a way to work together. You have to, rather, not we. You have to find a way to work together and address those issues and those concerns, so that there can be progress and these things happen.

You have to have, as Mr. Pugh said, the people in the right places with the capacity to do it, and you have to build the capacity of those agencies. And we have to also say, and I must say, that part of the problem is that a lot of that capacity was taken away in previous administrations. So, it has to be built back up, and that takes time, unless you just want to plug anyone into it. But it takes time to get them the training and get them the tools they need; $1 billion, that is a lot of money. May not be enough to do what you want to do. It may cost more. What will you say then?

It is not simply just signing a check and letting it go out the window, and let these projects happen. Due diligence needs to be respected. Environmental justice must be respected, because what happens if we don't do it, it is going to affect us all. What happens in Nevada is going to affect me in Texas. It is going to affect all of us.

Mrs. LEE. Thank you. I yield.

The CHAIRMAN. The gentlelady's time has expired, and appreciate the gentlelady's attention to this matter, and we look forward to seeing your amendments to make the bill better when we go to mark up on it. I now recognize the gentleman from Wisconsin for 5 minutes, Mr. Tiffany.

Mr. TIFFANY. Yes, I appreciate the comments from the gentlelady from Nevada. Obviously, she wasn't on the Committee last session. And when she talks about bicameral approach, and everybody agrees that there needs to be a bipartisan approach to this, we tried. We tried last session to advance this stuff on a bipartisan basis. It didn't go anywhere. And I know you weren't here to help that along, but that is what happened.

Representative Graves, what numeric environmental standards have changed in your bill?

Mr. GRAVES. None. We simply went back and tried to, Mr. Tiffany, I think, focus the resources and concentration and attention on the environment. So, if anything, I will say it again: none. But it also helps to focus the attention on environmental impacts and on true solutions, allowing projects to move forward faster, including environmental projects.

Mr. TIFFANY. So, you haven't changed any numeric environmental standards in this bill?

Mr. GRAVES. We have not.

Mr. TIFFANY. OK, thank you.

Mr. GRAVES. Other than, just want to be clear, page limits and time constraints, which is outside the confines of your question.

Mr. TIFFANY. So, the paper mills in Wisconsin will be disappointed about the page limits, just so you know.

[Laughter.]

Mr. TIFFANY. Mr. Carr, you mentioned some external groups, in your opening remarks, interceded in the Nemadji Trail project.

Who were those external groups that took action to delay this project?

Mr. CARR. And to clarify the question, specific to the Nemadji Trail Energy——

Mr. TIFFANY. Specifically to that.

Mr. CARR. Yes. My understanding, Sierra Club, Minnesota Center for Environmental Advocacy, those were the entities that petitioned RUS to rescind the FONSI and explore the greenhouse gas impacts of the project.

Mr. TIFFANY. Yes, and it seems to my recollection—this proposal is for Superior, Wisconsin, which is in my district. Didn't the EPA also play a role in interceding in this process, and could you explain that?

Mr. CARR. I can. So, once RUS agreed and rescinded the FONSI, went into the supplemental environmental assessment process, it went back out for public comments once we completed that greenhouse gas evaluation. So, EPA did submit public comments in that 30-day public comment period.

Mr. TIFFANY. And did the EPA intercede as a result of the intercession of those groups like the Sierra Club?

Mr. CARR. That is my understanding, yes.

Mr. TIFFANY. That was done at their behest. I am really glad you cited in regards to Dairyland's energy future and the assessment by the North American Electric Reliability Corporation highlights the critical need to maintain baseload generation. That is what it says in your testimony.

Isn't it correct in Wisconsin this last year they took an unusual step of saying that Wisconsin, you are headed to a place where you may be going toward blackouts with unusual conditions?

Mr. CARR. The Midcontinent Independent System Operator, MISO, that operates the grid in the central part of the country did, in fact, also submit public comments in that case. And it was unusual that they went out in support for this project, again, citing the concern that we can't operate the grid solely on wind and solar power. We need some dispatchable or baseload energy.

Mr. TIFFANY. Yes, just to be clear to everyone, Mr. Carr is being polite through this whole thing. And as a regulated utility, that is oftentimes what happens. But the message was sent very clearly for the first time in the state of Wisconsin by NERC. They said, "You are headed for blackouts if you continue in the direction that you are with the lack of baseload power that is being eliminated in the state of Wisconsin."

By the way, we have three coal-fired plants that are supposed to be closed here in the next year or two. They have been delayed temporarily. If those plants are closed, you can count on us probably heading for blackouts in Wisconsin, becoming like Western Europe and California.

I am really glad you brought up what you did, Mr. Pugh, in regards to the expense to this whole permitting process. I have a county in my district that they are trying to get a grant from the infrastructure bill that was passed last session, $1.5 million to fix about 3 miles of road. I talked to a local contractor. If they could do this without the Federal requirements, they will do it for half,

$750,000. We are not going to get much bang for the buck out of the infrastructure bill.

I will just close by this. Last week, I was down on the border in Yuma, and no Judiciary Dems showed up. No Democrats showed up at all. Lots of people showed up in Yuma, though. The President does not show up in East Palestine, Ohio, where there is a major environmental problem that is going on. And, today, his Administration via the CEQ does not show up. When are Democrats going to show up for business of the American people?

I yield back.

Mr. GRAVES [presiding]. The gentleman yields back. The gentleman from Rhode Island, Mr. Magaziner, is recognized for 5 minutes.

Mr. MAGAZINER. Thank you. Listen, we need to rebuild infrastructure across this country. But at the same time, the American people are counting on us to keep them safe in the process, to make sure that, as we build out our infrastructure, particularly in extractive industries, that they are going to be safe, their kids are going to be safe, their kids aren't going to have birth defects, their kids aren't going to have cancer. That is why NEPA exists. This process exists to make sure that people living in or near areas where projects are being done are kept safe. That is a very basic thing that people ought to expect of us.

And, unfortunately, while there are things that we can agree on on this Committee about the need to make permitting more efficient, we should not be cutting corners in environmental reviews and in community input in the process. If we want to speed up the permitting process, the way to do it is to give agencies the resources that they need to do their jobs. That is what Democrats did in the last session by putting $1 billion for this purpose into the Inflation Reduction Act, which every Republican Member opposed.

What I am hoping to hear is that, if our colleagues on the other side make good on their promise to repeal the Inflation Reduction Act, that the $1 billion to speed up permitting will be protected, and that shouldn't be too much to ask. But what we should not be doing is cutting corners. We should not be cutting corners on environmental standards, on community input, and review.

This legislation, unfortunately, impacts the rights of Americans to protect themselves by restricting their legal avenues to seek justice, and by allowing the industries to perform their own environmental reviews, putting, unfortunately, oil industry profits and other extractive industry profits ahead of the health and safety of Americans.

Mr. Beard, can you just walk us through what would it look like if we reduce the statute of limitations for lawsuits challenging these permits from 6 years, which it is currently, to 120 days, as this bill would do?

Mr. BEARD. Thank you. What would happen, in my mind, is—first of all, you have to understand that those communities don't have a lot of power and income to be able to mount a successful legal defense. It is hard for them to get the legal help and assistance they need. They don't have a lot of money. And in some cases, because of the economic disadvantages in those communities, they

don't have the educational resources to know precisely all of what they are dealing with. Sometimes even we don't know all of what you need to know about that. So, by reducing that time, you don't give them sufficient time to be able to get on top of these things and know about them, and try to get the assistance they need.

And then there are so few organizations out there, Legal Aid and others, that work in this space, that they are not going to be able to, they won't have the manpower to do it, either. A lot of them are existing on donations and monies that they get, you know, grants, and all of that. But that is no way to really operate. And if you go to a law firm that has it, the cost is astronomically high.

So, they have to have the resources, and they have to have someone look out for them, and that is the job that you guys have, is to speak up and defend those who can't defend themselves, to act in their behalf. But by shortening that time, you are making it just that much harder for them to be heard once again. And it begs the question: What is the purpose?

Mr. MAGAZINER. And as I understand it, this legislation not only shortens the time frame significantly, but also says that individuals and organizations who did not raise a challenge during the permitting process would then be excluded from legal redress after the fact, regardless of how legitimate their claims may be.

And could you walk us through again why that is problematic?

Mr. BEARD. Once again, it is a thing of timing. They have their lives to lead and things to do, and sometimes you may not be able to get the information on time.

There is also the aspect of not having access to that information. A lot of these agencies say it is there, but it is never in plain view. It is never put where they can find it. You would have to almost, you would have to really actually know where it is at. It is not put there and made easy and accessible to people. It requires some expertise sometimes, and some guidance just to know where they put it.

So, if you don't have access to the information, and you don't know that the information therein is for you that can tell what could happen, then how are you going to be able to address it? And, meanwhile, the clock is ticking.

A perfect case in point, we had a similar thing happen in my city with our—as a matter of fact, the state of Texas now, if you file more than three of those complaints, that you could receive a fine for it. Why should you be fined for speaking up about something that is hurting you and your community and your children?

That is all very draconian in my mind. It is cruel to do that to people who have very limited resources because, once again, they don't put these things in Beverly Hills, or River Oaks, or Madison Avenue. They put them in communities where there is the least resistance.

Mr. MAGAZINER. Thank you for your advocacy, Mr. Beard.

Mr. GRAVES. Thank you. Of course, I want to make note that the gentleman wasn't in any way suggesting that anyone on our side of the aisle would do anything to promote or allow for our constituents that we represent to be subjected to increased rates of cancer.

I also want to make note that under the legislation that, while an applicant may be the one who actually prepares documents,

that actually provides additional capacity to an agency that then would be responsible for simply reviewing the document.

And I am going to say this again: This is entirely compatible with other practices that both Republicans and Democrats have endorsed in the past.

I recognize the gentleman from Oregon, Mr. Bentz, for 5 minutes.

Mr. BENTZ. Thank you, Mr. Chair. I want it to be very clear that I support your bill, and I truly hope that something like it passes. It seems to me there is a failure of understanding when it comes to my friends across the aisle in wanting to recognize that there is a real problem that needs to be addressed; and two, to kind of call that out a little more clearly.

And let me just refer to a study that was done by the Congressional Research Service and DOE several years ago, when what follows are the problems that we are facing for long compliance periods under NEPA.

The first one mentioned is litigation brought against the environmental assessment, or the Environmental Impact Statement associated with the project. Let me say that again. It is litigation brought against the EA or the EIS, and the reasons for litigation are the EIS failing to acknowledge all reasonable alternatives and the requirement for being waived improperly.

And then it goes on to call out about eight more problems: the Endangered Species Act, the growing list of protected species; coordination with State Historic Preservation; the cooperating agencies not adhering to agreed schedules; disagreements on EA structure and content, and so forth; elimination of climate change impacts, which requires further coordination with agencies.

I call this out because on Judiciary, I have suggested to Chairman Jim Jordan that we look carefully at doing something about tightening up, shall we say, the Federal procedures that apply to litigation, which, as you all know, once a lawsuit is filed, you are thrown into the space of never-ending discovery, never-ending motion practice. So, to say that the $1 billion thrown at these agencies is going to solve this, no, it is not. It is not going to. They didn't say one word about the litigation, which is the No. 1 problem called out in this study.

And something that just astounds me, and based on the testimony from you that I have heard, is the amazing self-deception on the other side of the aisle regarding the damage being done while we wait, and whether your towns are burning down, or whether you are spending so much money you can't believe it on using old, antiquated infrastructure. I am reminded with my work with the Oregon Department of Transportation for years trying to put together bridge projects that were delayed for many reasons, but not the least of which is exactly the type of problem that we are debating today on NEPA.

So, with that, Mr. Carr, do you agree that litigation prompted by the smorgasbord of litigation opportunities under NEPA is a problem?

Mr. CARR. I absolutely do. As we think about litigation risk, in particular for our business as a cooperative, those costs come right back to the members we serve. They are borne by end-use electric consumers.

The other piece here is, as we go through the process, our system here, we actually are governed by the communities, the members, and the people we serve. So, they were involved on the front end. Certainly, these interveners had the opportunity. And yes, I am greatly concerned by the litigation costs and those aspects.

Mr. BENTZ. And I am a lawyer, I know exactly how all of this process works, and I will just assure you that we will be, I hope, working in other committees to try to address that exact issue, because it is not right, and it needs to be addressed.

Mr. Vanderkamp, sorry, I think I mispronounced your name.

Mr. VEERKAMP. Veerkamp.

Mr. BENTZ. Mr. Veerkamp, the situation with forests, borderline criminal that we would delay in doing something about it. I mean it.

But there seems to be this underlying thought, on the Forest Service side, that the only way to get into the forest is to let a massive fire start, the only way to manage the forest is through burning down half of California. Now, do I have that right, or do you, have you seen something different?

Mr. VEERKAMP. Well, it certainly seems that way. Again, I don't think it is their absolute intention.

Mr. BENTZ. Oh, you know what? I know it is not their intention, at least certainly not the one they would share. But when you can go put a fire out quickly and don't, and let it blow up into something huge, there are suspicions.

Mr. VEERKAMP. No, you are absolutely——

Mr. BENTZ. I know you want to be careful here, but——

Mr. VEERKAMP. Yes. Now, you are absolutely correct——

Mr. BENTZ. The optics are not good for the Forest Service.

Mr. VEERKAMP. Yes, and there are many, many great employees of the Forest Service that are doing their best, but it is just not enough. And we have gotten so far behind that the only tool that they know is hundreds of days of burning at forest.

But then you have the rehabilitation that the money is not there for, either. Now the money is starting to flow, and that is how Sierra Tahoe got cleaned up under rehabilitation orders. But absent that, it just can't get done.

Mr. BENTZ. Right. Well, I appreciate all of your efforts, and thank you, panel, for being here.

I yield back.

Mr. GRAVES. The gentleman yields back. The gentleman from Arizona, Ranking Member Grijalva, is recognized for 5 minutes.

Mr. GRIJALVA. Thank you, Mr. Chairman. NEPA is, from most of the testimony and the discussion—the drought in the Southwest and other parts of the country, that is the fault of too much regulation and NEPA. The cumulation of the warming of our planet, NEPA. The rising sea levels, NEPA. The heating of our water, NEPA. So, it becomes a mechanism to say we can deal with all these other problems if we get rid of some fundamental protections that have existed generally for the good of the public and for the good of the American people. The right to redress judicially is an American right, and this bill and others is an effort to limit that right. And I think that that is going to raise concern more than just relative to the issue of NEPA.

But let me ask Mr. Beard. One of the points that was made earlier is that industry for decades knew that one of the leading drivers of climate change was, in fact, the fossil fuel industry, yet they kept that hidden away from and spent countless sums trying to make sure the public didn't know about that.

This bill allows those same oil companies to prepare their own environmental reviews. Your reaction to that, and in terms of the overall question about communities that you represent.

Mr. BEARD. Well, the problem I found with that is, when they do file them, they file them incompletely. They don't give proper credence to environmental justice communities, or even acknowledge they exist.

Case in point with something that has been discussed here, permitting for a power plant, an expansion to do a combined cycle gas turbine. They were not aware that they were less than a mile from one of the largest refineries in Port Arthur, which is Total. Total happens to be in the city's corporate limits. And if you know anything about cities, they also have an extra territorial limit that extends 3 miles further. They were not even aware of that when I brought it up to them. And they were even less aware of the fact that they pay taxes to the city of Port Arthur because they are in those corporate limits.

So, if they don't know the very basic things of their business in that way, how are they going to know and understand the community and what affected peoples are there, people of color, that, by them putting these projects in place, they are going to be affected? It just doesn't stand to reason that it is acceptable.

Mr. GRIJALVA. Mr. Beard, the public health question that—this bill also says Federal agencies are not allowed to consider public health impacts of proposed projects if they are expected to occur 10 years out and later.

Again, the impact and effect on your community and other communities like yours?

Mr. BEARD. Because they are putting them in communities that have already been overburdened and impacted, they are just simply adding more misery to what those people are suffering, what they have to breathe. And it won't take 10 years. It will take even less time. But if we don't do anything, it goes back to what I said previously: people are dying every day, and you are going to have more people die, and you are going to see more health effects that are chronic and serious illnesses. And, unfortunately, nobody is even trying to find out what the source of it is.

But we believe that it is coming from the environmental pollution that is very toxic in my community and others across the country.

Mr. GRIJALVA. Thank you, sir. As we move in a transition, it is either going to be a transition that holds harmless people and communities as much as possible, or it is going to be a very painful transition. And I think NEPA plays a huge role in this transition. It assures that communities that have been overburdened and unrepresented in this process, indeed can have that opportunity.

The other issue for NEPA is, I think, the question of enforcement and compliance with the law. If we are not doing our due diligence in terms of agencies—and that is why the $1 billion is so

important—you can't keep talking about how slow they are when you are not making a commitment to invest in those agencies that you have decimated over the last 4 or 5 years.

Mr. BEARD. That is right.

Mr. GRIJALVA. And I would think that compliance and enforcement, two issues that happen to EJ communities countless—first to get compliance to the law, and then, when it doesn't happen, to get enforcement, I think those are losses that are implicit and explicit in this legislation, and I think losses that the American people cannot afford.

I yield back, Mr. Chairman.

Mr. GRAVES. Thank you, Mr. Grijalva. Next we have the gentlelady from Puerto Rico, Miss JGO, González-Colón.

Mrs. GONZÁLEZ-COLÓN. Thank you.

Mr. GRAVES. You are recognized for 5 minutes.

Mrs. GONZÁLEZ-COLÓN. Thank you, Mr. Chairman, and I thank you, all of you, for being here.

And one of the issues that—this issue is so important back to Puerto Rico is actually because of the reconstruction of the island after Hurricanes Irma and Maria, after earthquakes in the south part of the island. And we are getting knowledge how to work with Federal funding, but we are trapped into the permit to do that reconstruction. That is one of the biggest issues. So, I am glad that actually we are doing this kind of hearing.

Mr. Pugh, one of the issues that I saw in your written testimony was that you mentioned that, in your professional experience, any time there is Federal funding we are introducing into a project, you immediately added 25 percent increase to the project budget cost due to the old burdens associated with the permitting framework. And I understand why, right?

And my question will be, how the current NEPA increases the cost of any Federal infrastructure project, and how this permitting reform may help not just American taxpayers, but local communities to achieve the rebuilding of those projects if we do the reform permit.

Mr. PUGH. Yes, thank you for the opportunity to speak about that.

Again, I did mention in my comments that, right off the bat, any time we had Federal dollars introduced into one of our projects, we would add at least 25 percent to that project, simply because we know that with local funds we can build projects faster and cheaper than we can using state or federal funds, simply because at the local level we don't have all the strings attached and all the documentation requirements that we have when you introduce state or federal funds. We still have to go through the environmental review process. We still go through Department of Water Quality. We still go through historic preservation, if there are things along those lines within our projects. But the documentation burden is the general issue there.

Plus, most of your local government agencies don't fully understand the NEPA process, and we wind up having to go outside and retain an outside engineering firm to help foster us through the process of going through the funding requirements.

Mrs. GONZÁLEZ-COLÓN. You are talking about my own experience back home. I mean, we do have that specific problem. Even the local government is requiring many things that are included already in NEPA.

So, to that end, you also mention in your testimony that the average time to conduct a NEPA review for Federal highway projects was 7.3 years. And I understand that a review conducted by the Trump administration found that, on average, an Environmental Impact Statement took 4.5 years to complete, and that one-fourth of all Environmental Impact Statements took over 6 years to complete.

So, to that end, the BUILDER Act will establish a time limit of 2 years for completion of Environmental Impact Statements and 1 year for Environmental Assessments. And based on your professional experience, will this be a reasonable amount of time to conduct comprehensive environmental reviews?

Mr. PUGH. I would certainly think so. Again, we are not suggesting that we reduce any level of public input. We are not suggesting that we reduce or change any of the environmental policies that are currently out there, or the reviews that are required to make this happen.

From a local government standpoint, again, we want to make sure that the reviews are coordinated, that they are handled efficiently, that when we submit a project for review, that we get our comments back in a timely manner, so that we can address all the comments we receive, and not do it in a piecemeal kind of manner. And right now, I don't think there is a standard time frame at the Federal level for the review process. A lot of times it just gets turned in, it gets put in line, and we don't know when we are going to get comments back.

It is compounded when you get comments back, and then you have to address those again, and it gets thrown back into the same review process.

Mrs. GONZÁLEZ-COLÓN. I totally agree with you. And how do you respond to those who argue that enacting permitting reform to expedite a project approval will weaken or undermine any of our environmental standards? Are those mutually exclusive?

Mr. PUGH. I don't think they are. We would like to advocate on behalf of an efficient and thorough review, period. But we would like to have a time frame put on that so that we know what to expect.

Again, that gets back to the dollar amounts added to our project costs. When we expect the project to take us 2 years to get through the start, design, through permitting, and ready to go to construction, and it actually takes us 5, 6, 7 years—we still have that outside engineer, that outside firm on retainer, and we are still paying them. So, that cost even escalates further.

Mrs. GONZÁLEZ-COLÓN. Thank you. I agree, and I yield back.

Mr. PUGH. Thank you.

Mr. GRAVES. The gentlelady yields back. The gentleman from Georgia, Mr. Collins, is recognized for 5 minutes.

Mr. COLLINS. Thank you, Mr. Chairman. Earlier this morning—I will make the same comment. I am a freshman here, haven't been here but about 8 weeks, but I am going to tell you something. I

have spent 30-plus years as small businessman, and I have been dealing with the overly burdensome regulations that the Federal Government has placed on our industry. And I can talk specifically about what I felt and what that has done to our company.

Mr. Carr, earlier today I was in a meeting with some electric co-ops that are in my district, and they were telling me about an energy project that has almost doubled in cost. Now, that cost is going to be passed along to the consumers, people that use electricity. Have you had similar experiences with projects that are costing more due to Federal regulations?

Mr. CARR. I appreciate your question. Yes, absolutely. As an electric cooperative, the costs we have incurred and the end costs—in the case of the Cardinal Hickory Creek, we are talking 10 to 15 percent, in that range. We have submitted documents. In the Nemadji Trail, we haven't defined the actual costs, but we are very concerned about it. It is back to we serve the members who govern us. Our end-use consumers own our cooperative, and we are very concerned about the cost impacts that this regulation is having on our consumer members.

Mr. COLLINS. Thank you. As a businessman, when I see a problem I want to know what the solution is and how to fix it.

And we know that the Federal Government is over-regulating. We know they love to make regulations, and they like to make things more complicated than what they need to be.

Mr. Pugh, what can Congress do to simplify the NEPA process and make it easier for individuals to just navigate? If you can just shoot bullet points, I would love to just make some notes and write it down, please.

Mr. PUGH. Right. I believe in our written testimony that we submitted, we had those bullet points highlighted, and that is basically establishing a lead Federal agency to develop a joint review schedule. That gets back to the schedule being known up front. That also eliminates a lot of the concern with conflicting comments we may receive from Federal agencies to where we have to play referee on who wins.

We ask that we establish time and page limits for completion of those documents. We ask that we extend the completion period with approval of the applicant, when necessary, to allow for further consultation with local agencies.

We ask that we bring the statute of limitations for NEPA cases in line with other environmental statutes.

We ask that you reduce duplicative reporting by allowing adherence to state or even local standards, because a lot of time on these projects we have to meet local, state, and federal requirements.

And, finally, examine a reasonable number of feasible alternatives for projects, because the definition of what is reasonable changes, depending on what individual and what agency you speak with.

Mr. COLLINS. Thank you.

Thank you, Mr. Veerkamp, I didn't want to leave out something. My grandpa had a saying, too. He always said the road to the poorhouse was paved with good intentions.

Mr. Chairman, that is all I have. I yield back.

The CHAIRMAN [presiding]. The gentleman yields back. The Chair now recognizes the gentlelady from Wyoming, Ms. Hageman, for 5 minutes.

Ms. HAGEMAN. Wonderful, thank you. I want to begin by touching on an important point that Mr. Pugh made in his testimony that, "Like any policy that has been in place for five decades, NEPA should be updated to address current societal needs."

One of the new circumstances that I think you are probably referring to that would warrant congressional review of NEPA is something that Mr. Carr and Veerkamp touched on, and that is the frivolous environmental lawsuits.

Just last year in Wyoming, a Federal judge required additional lengthy environmental reviews for new or pending coal, oil, and natural gas leases in the Powder River Basin. This basin produces more than 40 percent of the United States' coal, and coal is still the second largest source of United States' electricity, and will be for a long, long time.

The fact is that these lawsuits are intended to force energy poverty on Wyoming and the Americans that we serve. To exemplify the abuse in the current law, in 2022, the Bureau of Land Management approved 3,535 applications in Wyoming and New Mexico. But it wasn't very long before the lawsuits started pouring in.

Mr. Beard, you have indicated that one of the reasons why we need to have a 6-year statute of limitations is because so many of the people who would be affected by these projects don't have the knowledge or the money or the wherewithal to battle them. As a water and natural resource attorney in Wyoming, I can assure you that is the furthest thing from the truth. The reality is that the environmental groups are some of the most wealthy, non-profit organizations that are out there.

And I can also assure you that, in the state of Wyoming, we want these projects to go forward. We are proud of the fact that we serve and make the lives better of the American people. We are proud of the fact that we are responsible for providing affordable energy and affordable food. We are proud of the fact that, with our national forests and our private forests, we are able to provide affordable housing for the citizens of this country. We are proud of what we do as one of the very largest energy producers in the United States of America.

What we don't like, and what is troublesome, is that NEPA, which is simply a process statute that was created so that we can make sure that, as these projects go forward, the environmental impact is assessed, is that these turn into 5- and 10- and 15- and 20-year lawsuits that prevent us from being able to use our natural resources, the natural resources that belong to the citizens of this country.

The fact is, I am tired of sitting back and watching our forests burn to the ground. I am tired of sitting back and watching our watersheds be destroyed because of the catastrophic forest fires that are impacting the interior West. I am tired of watching as an administration like the Clinton administration adopts things like the roadless rule to deny access management and use to 58.5 million acres of National Forest Service lands at the same time

that we have a housing shortage. I am tired of the fact that there are regulatory agencies in this country that will adopt over 3,500 major regulations a year, while Congress will only deign to pass maybe 35 to 50 pieces of legislation.

The reality is that NEPA desperately needs to be reworked. The Endangered Species Act desperately need to be reworked. And they do, because we live in a different time than we did in the 1950s, 1960s, and 1970s.

We do an excellent job of protecting our environment. You gentlemen in the resource industry, I am proud of what you do. I am proud of your ability to provide affordable energy and do the things that you do for the folks of this country.

So, all I want to do is make the statement after all of my colleagues have been able to ask most of the questions that I think are important today: I just want to let you know that I stand with you. We stand with you. We recognize that there are changes that need to be made because our current environmental regulations are not protecting our environment, but they are breaking the great people of this country.

Thank you, and I yield back.

The CHAIRMAN. The gentlelady yields back. The Chair recognizes the gentleman from California, Mr. Duarte, for 5 minutes.

Mr. DUARTE. Hello, Mr. Veerkamp. Welcome to DC. I am an El Dorado County grape grower, among a few other things, and have a vineyard up in the Georgetown area I bought from Doug and Lori Veerkamp in 1999, a property that was forested at the time, and we converted the forest lands to a vineyard property. And since then, especially in the last 6 years, I think we have been smoked out and had some level of smoke damage or another on our wine grapes, as many, many growers, wine growers throughout California, have had due to forest fires.

I just pulled it up here, 20 of the largest forest fires in California's history have happened in the last 20 years, or at least since 2000. We talk about socially disadvantaged communities. El Dorado is no thriving megalopolis.

And if you look at the good work Congressman McClintock did on making sustainable forest practices viable and putting them into practice in the Tahoe Basin, that didn't do a lot for the citizens of Paradise in 2018, when 85 people were killed because an overgrown, unhealthy forest ripped through their city.

The fine homes around Lake Tahoe are preserved and enjoy sustainable forestry, but many, many lower-income rural communities are not only suffering the effects of an abandoned economy, of foresters, loggers. I have been up to Georgetown quite often. The hotel has been bought out by a couple of pot farmers. They look like they were doing pretty good a couple of years ago, but I think they are on their heels now.

But the entire community has lost a lot of its character, lost a lot of its economy, lost a lot of its vibrancy, and probably lost a lot of its young people in the same effect.

As a fifth generation El Dorado resident, I just invite you to give us a human side to the rural communities that you live in, and what the just absurd resource management practices over the last

couple of decades have brought, from your viewpoint, for rural communities.

Mr. VEERKAMP. Well, obviously, El Dorado County, El Dorado, land of gold, and it was framed from the gold rush era, and basically land of opportunity. And through processes of all of our faults it has become land of non-opportunity. And there are consequences of, again, regulation and so forth, put those handcuffs on, and then we have devastating consequences, whether it be our flumes for our irrigation district or, again, whether it be our education system when we have to shut our schools down, whether it be the costs—and I didn't mention them—to FEMA for the rehabilitation.

You are talking $1 billion that was put into this other bill. Suppression costs alone last year approached $5 million across the country, and then the cost to FEMA. I don't know, they are totally astronomical. And I know we are all out money trying to rebuild infrastructure for those catastrophic events. And for some of the reasons, FEMA should just write the check, absolutely. But we need to turn this around so we are not being reactive. We need to be proactive.

In our rural environments, it has degraded the ability for people to make a living, people to prosper. And we have to get back to that so all of us can be successful.

Mr. DUARTE. Thank you. I am on a few committees. We are looking at the water drought in California, the man-made drought in California. We are looking at the overgrown, and unsafe, and unhealthy forests of California.

And it always seems to come back—a good friend of mine up in Georgetown, up in El Dorado County actually defined it for me. It is single species management through the Endangered Species Act. We go to save the smelt at the cost of all else, and we parch our Earth. And we have children in the south of San Joaquin Valley with exceedingly high rates of respiratory illnesses. We have valley fever, we have severe asthma. We have epidemiological evidence that the Endangered Species Act biops, biological opinions being employed in the Delta, are killing children in the South Valley.

We have rural communities where we are trying to save the spotted owl up in the Sierras and through the coastal ranges, causing unhealthy forests and destroying habitat for all species, including human. And no one can argue the spotted owl are any better off under today's forest management schemes than they were when we had healthy, sustainable logging in the forest.

So, I thank you for coming from a rural community, because we have social equity issues, if that is what we want to call them, all over this country, and we can remedy them with more sensible regulatory policy.

The CHAIRMAN. The gentleman's time has expired. I now recognize the gentleman from Colorado, Mr. Lamborn, for 5 minutes.

Mr. LAMBORN. Thank you, Mr. Chairman. And I want to ask a question. It starts out with a Colorado-specific anecdote, or example, but it is a broader question because I am representing a district in Colorado.

In Colorado, Federal jurisdiction over public lands can change drastically, even over a short distance. Within an hour's drive of

my district it is possible to travel through the jurisdiction of several U.S. military bases, National Park Service land, national forest land, Bureau of Land Management, and state parks. While we are blessed to have such an abundance of public areas, it makes infrastructure permitting difficult to impossible.

Each of these jurisdictions is required to do a separate NEPA analysis for a single project. I know that has been discussed a lot here today. And it becomes especially burdensome, where companies end up paying extra to zigzag around public lands and go through the hassle of crossing them.

So, Mr. Carr—and excuse me if this has already been asked and answered—but can you explain how the NEPA litigation process shuts down access to all kinds of energy, including renewable energy?

Mr. CARR. Yes, certainly. In the case of the Cardinal Hickory Creek transmission line, this line is to bring wind energy from Iowa into Wisconsin. The load center, the demand for the energy is to the east, and the wind resource is to the west. So, we have over 100 projects awaiting interconnection and dependent on that line. These are renewable energy projects that are in Iowa waiting, again, to provide energy that can move—it would help lower CO_2 emissions and increase the amount of renewable energy coming into the mix. And the litigation is, in fact, delaying that and adding cost.

Mr. LAMBORN. Thank you.

And Mr. Pugh, I have a question for you, also. According to the Energy Information Agency, Colorado's renewable electricity net generation has more than tripled since 2010 and has accounted for 35 percent of our state's total generation in 2021. Likewise, Colorado ranked seventh among the states in total energy production, even though our per capita energy consumption is lower than two-thirds of all other states.

Despite this abundance of energy, much of it cannot be brought online. According to Lawrence Berkeley National Laboratory, over 1,400 gigawatts of total generation and storage capacity are now seeking connection to the grid, with backlogs extending multiple years. So, Mr. Pugh, can you recap for us, again if necessary, what role does environmental litigation play in keeping new energy sources from accessing the grid?

Mr. PUGH. I am not entirely sure that is a question directly for me. Public works industry, we cover transportation, we cover water, wastewater, emergency services, fleets, and solid waste. The electric industry is not really a huge part of our association.

However, our communities, some of them are electric cities. And the city of High Point, where I worked, is an electric city. And I know that they had to run through a lot of the same environmental processes that we did with our transportation and infrastructure projects.

Mr. LAMBORN. Would anyone else like to take a crack at that?

Mr. CARR. Again, in the case of renewable energy, and wind, and solar, we are going to see a massive transformation in the U.S. grid. It is underway. As we talk about decarbonizing the grid and moving ahead with cleaner energy sources, that will still require

dispatchable generation. And by dispatchable I mean energy that can be there when the intermittent wind or solar can't.

So, again, a transmission-related buildout that is going to be required, and permitting timelines and costs are concerning in particular to the electric consumer. That will raise the cost that electric consumers are paying, and it delays the transition to that cleaner energy future.

Mr. LAMBORN. All right. Thank you. And thank you all for being here today.

Mr. Chairman, thanks for having this hearing.

The CHAIRMAN. The gentleman yields back. The Chair recognizes the gentlelady from Colorado, Mrs. Boebert, for 5 minutes.

Mrs. BOEBERT. Thank you, Mr. Chairman. I appreciate you holding this hearing today.

With the average hardrock mining project taking 7 to 10 years, as we have heard today, to go through the NEPA permitting process, clearly we must do more to streamline the permitting process. Canada and Australia can safely get through their permitting processes in 2 years. No reason we can't do the same thing right here, while still protecting the environment in America.

We are very, very effective at this. We certainly produce the world's cleanest energy. Nobody does it better than our guys.

The International Energy Agency estimates that implementing the radical Green New Deal would require the production of lithium, cobalt, nickel, and other critical minerals to increase by 3,000 percent by 2040. Instead of supporting environmentally responsible and safe domestic mining, Democrats and not-in-my-backyard extremists would rather outsource our critical minerals to unsafe mines in the China and in the Congo. And I am going to return to that point later in my remarks.

Nearly 40,000 children are estimated to be mining for cobalt in the Congo with their bare hands. Working in such an unsafe environment in these conditions, they are no strangers to tragedy. I am personally sick of seeing woke corporations virtue signaling their lobbying for policies that destroy American jobs, and then turn around and purchase minerals that are stained with the blood of children working in unsafe conditions in third-world countries. That is not virtuous. It is not reasonable. It is something that we combat here on a regular basis, pushing Green New Deal energy policies, wind and solar.

Look, all-of-the-above energy, that is fantastic. But we don't need the Federal Government choosing winners and losers, making it near impossible to have good, safe mining here in America, drilling here in America by propping up wind and solar companies with these heavy subsidies. It is truly disgusting.

Now, Mr. Beard, the National Environmental Policy Act is over 50 years old. Average EISs take 4 to 5 years to complete, are over 600 pages long, and add $4.2 million to project costs. We have heard testimony today that this is delaying major projects in every sector, from transportation, to forestry, to transmission. Given the overwhelming evidence and consensus that this process is broken, can you name one legislative reform to streamline NEPA that you or your organization has previously supported?

Mr. BEARD. In terms of legislation that we have supported on the Federal level, no. But we have supported, or we do support a process that allows for hearing the environmental justice concerns and issues of communities.

Mrs. BOEBERT. Now, I am sorry, Mr. Beard, look, I am not asking what you would do to an already over-complicated process. I want to know what you would do to streamline this process. I am asking this so we could have a streamlined process that costs less and really moves quicker. Can you name one streamlining provision that you have previously supported? One streamlining provision.

Mr. BEARD. In this Act?

Mrs. BOEBERT. No, ever. You or your organization. To make this more cost effective, to streamline it, to make it more effective.

Sir, I heard you say that you come from a city that was a sacrifice city. Don't you think these children in the Congo—I think that is a sacrifice city. These children mining with their bare hands for cobalt in the Congo, child and slave labor? That, to me, sounds like a sacrifice city, not some flares that you took a picture of, and—do you support carbon capture?

Do you support the mechanisms that we have in place to capture what comes off of those flares? Because history has shown me that my colleagues on the other side of the aisle and in groups like yours, you prevent us from actually implementing that, that captures everything that is coming out of those flares, but then you want to bring pictures here and show us what the flares do.

Do you support that——

Mr. BEARD. Congresswoman, let me be clear, because we have run out of time. So, I do want to answer you while we have time.

Those pictures I brought are showing what the impact is on communities. You talk about what is happening in those other countries, but where is that same level of concern about the children in Port Arthur?

Mrs. BOEBERT. Let's capture it.

Mr. BEARD. About the children in Corpus Christi,

Mrs. BOEBERT. Let's work together to capture it.

Mr. BEARD. About the children in St. James Parish, Louisiana, Cancer Alley, who not only are being exposed there, but they are being exposed——

The CHAIRMAN. The gentlelady's time has expired. I will note that votes have been called. We are going to try to go one more Member round of questions, and I apologize to the panel, but we are going to have to recess and come back to wrap up the Committee.

Mrs. Luna from Florida, you are recognized for 5 minutes.

Mrs. LUNA. Thank you. It seems, and after this testimony, it is very obvious that, although NEPA was initially intended to strike a balance between environmental impact of all major Federal regulations and developing domestic natural resources, it has basically now been weaponized against, really, American energy producers, when the real enemy of the environment is China, as Mrs. Boebert had stated previously.

But in addition to this, we are finding many frivolous lawsuits being launched against some of these producers via activist groups that often have little to no meaningful participation in the NEPA

process, having tied up many projects in litigation, including over 2,200 onshore oil and gas leases. So, these lawsuits are not from members of the public, like many on the left have claimed. Instead, NEPA litigation surveys between 2001 and 2013 found that 59 percent of all the lawsuits came from public interest groups. So, I think we can all agree that, when that happens, it is usually not in the best interest of the general population.

Rather than maintaining these common-sense NEPA updates and streamlining the Federal Government's decision-making, reducing the cost, debt time, and also complexity of analysis that were hindering producers, the Biden administration rolled back these updates, reverting us back to NEPA's 1978 regulations.

So, my question is actually for you, Mr. Carr. How many projects depend on the construction of the Cardinal Hickory Transit transmission line that is currently tied up in litigation?

And in addition to that, how has the delay of the Cardinal Hickory transmission line impacted communities that rely on this project's completion?

Mr. CARR. Yes, thank you for your question. In the case of Cardinal Hickory Creek, at last count, as far as we are aware, there are over 100 renewable energy projects that are relying on that interconnection into the grid. So, very significant, in terms of renewable wind energy coming into the grid.

In terms of the community impact, in Dairyland's case the community is the consumers of electricity we serve. So, within that service territory those consumers aren't receiving the benefit of that lower-emitting wind energy, that lower CO_2 wind energy. The partners in the transmission line with us that serve other utilities in the state, that wind energy, that renewable energy that we are trying to deliver is being delayed, and the costs of doing so are going up.

Mrs. LUNA. I think it is clear that modernizing NEPA's provisions would have significant impacts on the efficiency of project reviews, decreasing project costs, and reducing the likelihood of frivolous lawsuits. Unfortunately, it appears that this Administration would rather increase red tape than streamline the process and bring relief to the American people.

Thank you for everyone who joined.

Chairman, I yield my time.

The CHAIRMAN. The gentlelady yields back. The Chair declares the Committee in recess, subject to the call of the Chair, which is anticipated to be approximately 5:15 p.m.

[Recess.]

The CHAIRMAN. The Committee will come to order. The Chair now recognizes the gentlelady from California, Ms. Porter, for 5 minutes.

Ms. PORTER. I had promised—I, as a parent, had promised them that if they scored a passing grade, they could get a new video game. Now, the child would be understandably upset. They might feel bad. They may feel guilty. But they would probably just deal with it, and deal with the bad grade. But what if the child's teacher said, "You can change your grade to whatever you want it to be"?

What grade do you think that child would give themselves with a video game on the line? Mr. Carr, start with you.

Mr. CARR. Boy, I don't know in that case. To speculate on what the child might say, I really don't know. I think at some level you are trying to suggest that he would grade himself very high.

Ms. PORTER. Yes, I think that is usually right. Having been a professor, that has usually been my experience.

Any of the rest of you want to guess what would happen if you could give yourself a grade? What grade would you give yourself on your performance today?

I think most people would give themselves an A. That was always my experience, as a professor, when I let my students grade themselves.

So, in changing your grade by yourself, not from your teacher, you are basically not getting an actual reflection, an adequate and accurate reflection, of what really happened. So, I want to be clear about why, given this example, project applicants should not be allowed to essentially grade themselves, to basically get around and manipulate our Federal laws that have protected our environmental and human health for decades. This bill does that. It allows natural gas, oil, mineral extraction, coal, even wind companies, for that matter, to have unilateral authority to prepare their own environmental review on their own without any legitimate oversight.

Now, Mr. Carr, in your testimony you listed promoting—and this is a quote—promoting greater applicant involvement in the NEPA process as a key area for NEPA modernization. On page 13 of the BUILDER Act, there is a section titled "Sponsor Preparation." Are you aware of that section?

Mr. CARR. I don't have it immediately in front of me, no.

Ms. PORTER. So, you are unable to tell us whether you agree with that section, Sponsor Preparation.

Mr. CARR. In terms of sponsor preparation, my general understanding of the intent is that it would be engagement between the applicant and the interested parties, stakeholders, and it is a broad outreach process. That is my understanding.

Ms. PORTER. So, the provision, as I understand it, says that the lead agency will independently evaluate the environmental document of the proposed project. And you cite this need in your testimony.

Do you really think a Federal agency will conduct sufficient oversight over a project that decides to do its own environmental review?

Mr. CARR. Was that question to me? I am sorry.

Ms. PORTER. Yes.

Mr. CARR. Could you ask the question one more time?

Ms. PORTER. Do you really think a Federal agency will do sufficient oversight over a project that decides to undergo its own environmental review process?

Mr. CARR. I believe that is the intent of what we are trying to accomplish here.

Ms. PORTER. I believe that is the intent. But do you think it will happen?

Mr. CARR. I do.

Ms. PORTER. You do. Let me give you an example of why I am concerned.

In 2015, the PennEast Pipeline Company filed an application with FERC, the Federal Energy Regulatory Commission, for the PennEast Pipeline Project, which is a natural gas project. During the environmental review process, PennEast failed to disclose to FERC multiple times—and they provided missing data, including a list of alternative routes to avoid wells that supply local drinking water and the destruction of state protected farmland, a wetlands and watershed survey, and a sufficient arsenic study. Despite these missing materials that are required under NEPA, FERC approved PennEast's Environmental Impact Statement.

So, let me ask you again, Mr. Carr, are you really confident that Federal lead agencies will conduct sufficient oversight of future environmental reviews?

Mr. CARR. So, certainly in the case of Dairyland Power, again, one of the interesting aspects is we are governed, as well, by the communities, the members, and the consumers we serve. They are the governance body. They are the communities, they are the stakeholders. They are on both sides of the aisle. They are involved in the process all the way along.

I am confident that, as we stand today, as we are seeing two projects that would actually reduce the environmental impact, the greenhouse gas impacts, that the process is blocking it. I think the time for reform is now.

Ms. PORTER. So, you are not worried, and I appreciate your diligence. I just want to say I am concerned that this process, this reform, would basically let the foxes run amok in an already porous, shall we say, chicken coop.

Thank you. I yield back.

The CHAIRMAN. The gentlelady yields back, and I don't mind giving her extra time for making the trek back over to fill in for Mr. Grijalva.

I now recognize myself for 5 minutes, and I want to thank the witnesses sincerely again for your testimony. The gentlelady from California had me thinking of, actually, when I was in elementary and middle school and even in high school, the teacher did let us grade her work sometimes. But it was usually multiple choice, so you would grade it, and then the teacher would take it up, and you never knew if the teacher was going to go back and look at how you graded your paper.

So, it actually taught you to, I think, a bit of integrity and honesty to not cheat on your work, because somebody was looking at it. And I think that applies to the permitting authorities, that somebody is looking at it. It is not like you fill out an application and grant yourself a permit.

Being a professional engineer and working in the consulting business, I actually filled out a lot of paperwork for clients on permits, and all we did is provide the information. And my understanding is today, even on oil and gas projects where BLM is granting the permit, a lot of third parties are hired to actually do the grunt work, if you will, on filling out all of the paperwork. And then that still gets submitted to the agency for approval of a permit.

So, when we talk about assisting, we are not talking about approving the permit. Mr. Carr, can you speak to that?

Mr. CARR. Yes. I think in the end, again, my understanding of the Act is that it would require the Federal agency to actually conduct the final determination and evaluation. They would have to ensure that the process met the standards, the work was thorough, and they have the ultimate say.

The CHAIRMAN. I believe the goal of that is to reduce the workload that we keep hearing about. The Federal agencies don't have enough funding, they can't find people.

And I found it interesting that it takes up to 2 years to hire somebody for one of these positions because of the Office of Personnel policy. So, a lot of this is self inflicted by the Federal Government. So, giving people a pathway to use competent outside third parties to make the process go smoother actually seems like a common-sense scenario to me.

Mr. Beard, again, I appreciate your testimony. I am just trying to understand. You actually worked in a refinery in Port Arthur. Is my understanding, correct?

Mr. BEARD. That is partially correct. I worked in ExxonMobil in Beaumont's refinery, not Port Arthur.

The CHAIRMAN. OK. So, you talked a lot about, or you showed pictures of flaring. You talked about FERC. And I just want to try to get some clarity here.

We are talking about NEPA reform, which is generally more upstream from the refinery. Energy and Commerce has jurisdiction over the Clean Air Act. They have jurisdiction over FERC. And we are talking about how do you actually get things permitted that deal with Federal lands, or the Federal Government, and those regulations. Now, if we can't get the permitting done through NEPA, and you can't get the pipelines built to those refineries, then you don't get oil or gas in those refineries, and you definitely don't see the flare.

So, is your position that we shouldn't have refineries, or we should just make the permitting process around the refineries better?

And how does that relate to NEPA, which is upstream of the refinery?

Mr. BEARD. Well, I am not saying that at all, Mr. Chairman. Maybe I was a little bit imprecise. Those pictures were there to show you what is the aftermath of permitting, not what violations of the Clean Air Act looks like. It is showing you that, when these plants are permitted and these emissions happen, this is the current status.

But now, when permitting allows more of those to come in, they are adding more pollution and contaminants into the atmosphere. My organization is currently dealing with some of those very same issues, where they are saying only it is just a little bit, it is not that much. But when it is something like benzene, which there is no known safe level, I am just saying——

The CHAIRMAN. But benzene and clean air and clean water, that is out of the jurisdiction of our Committee.

Mr. BEARD. Right, but what I am saying is—but it is permitted.

The CHAIRMAN. Right.

Mr. BEARD. It is permitted. And those projects——

The CHAIRMAN. But I just wanted to be clear that we are not talking about that kind of permitting.

Mr. BEARD. Yes, I am clear. I am clear. I understand where you are going with that.

The CHAIRMAN. So, reclaiming my time here——

Mr. BEARD. Go ahead.

The CHAIRMAN. Also, if we don't have the fossil fuels, if we don't have the oil and gas, then we need energy from somewhere, and we are talking about permitting that allows mining development. And these NEPA reforms would apply to being able to mine the minerals and elements, to build the electrical grid, to build electric vehicles. Are you opposed to that?

Mr. BEARD. I am not opposed to it. But what I am opposed to is a process that does not allow for the full understanding of the environmental and community and the environmental justice impacts. When you have a process that is so shortcut that it can't do that, then I have a problem with it.

The CHAIRMAN. And, again, I think that is the purpose of this hearing today, is to get input so that when we mark up the bill, we can take more of those things into account.

Mr. BEARD. Well, I think I was pretty clear on telling you that, if it is looking at shortening the amount of time for litigation, that is a deal-breaker.

The CHAIRMAN. But this language, again, has nothing to do with the kind of permitting that you referenced in your testimony. And I am going to talk briefly——

Mr. BEARD. And that is understood. But in reference to what——

The CHAIRMAN. Reclaiming my time——

Mr. BEARD [continuing]. You are talking about here——

The CHAIRMAN. Reclaiming my time——

Mr. BEARD. Go ahead.

The CHAIRMAN. When we talk about forestry, being a forester, I have seen some really nice forests. The very nicest forests have never been subject to a NEPA review. The best management out there is done by professionals who know what they are doing, and they never had a NEPA review on it.

So, I am way over time, and you have already asked questions——

Mr. BEARD. Well, I only have one thing to say on that, are those NEPA reviews the only type of reviews we are considering here, or are we considering a full gamut of them dealing with petrochem and others?

The CHAIRMAN. No, we are just talking about NEPA, NEPA reviews. And I am going to give you a second.

I want to allow every witness except for our vacant chair over there, I thought maybe they would watch and come over, and CEQ would have a little input, but apparently they don't want to. But if there is one thing you didn't get to tell the Committee today, I want to give you a chance to maybe bring that out. And maybe you are tired and ready to go home. But, Mr. Carr, we will start with you.

Mr. CARR. Again, from my perspective, from Dairyland Power Cooperative's perspective, what we have seen is projects that are enabling a CO_2 reduction going forward, bringing more clean

energy into the mix, and that those projects are being delayed by an outdated process. They are adding costs that are borne by electric cooperative consumer members, and we think it is time for a change.

Thank you very much for the opportunity to participate.

The CHAIRMAN. Mr. Veerkamp?

Mr. VEERKAMP. Yes, I would just echo that. And just on the basic premise that the consequences of the best intentions of the world have to be amended from time to time, and you have to see what you have caused, and then be willing to step up and do it.

And I should have answered Ms. Porter's question—it depends on how you raise your kid. Integrity, honesty. So, that would have been my answer to her question about the kid issue.

The CHAIRMAN. Mr. Beard?

Mr. BEARD. If the process that you are talking about in this bill reduces the amount of time that people have to voice objections, and puts unnecessary burden on them to do them in a very subjective way, if it also impacts them in terms of public participation and also legal redress, where it takes from them a very basic principle of American life and government and American law even, if it puts them in a position where their environmental justice and health concerns are not paramount because they are already in over-burdened, over-oppressed communities, then this is not reform. It is just what I said earlier, it is a death knell to those communities. You are heaping more suffering on those who are already over-burdened. And as such, I would not want to see this bill go forward.

But if it can be refined to take those into not just consideration, but let them be a deciding factor because their lives should not have to be sacrificed, whether it is in a mine or whether it is in an oil field, or whether it is just basically on the street. The pollution and contamination is real, and it affects those communities, and they deserve to be heard, and they deserve to be considered because their life is just as valuable as the lives of any of the others that we are mentioning here. Thank you.

The CHAIRMAN. Thank you, Mr. Beard.

Mr. Pugh?

Mr. PUGH. Thank you very much. I heard a couple of folks talk about what their parents taught them and instilled in them. My father was very big on community service, and being active in his community, and making it a better place to live, raise your kids. His motto was always leave things better than you found them. And I have tried to do that in every aspect of my public life and my career.

APWA embodies that in everything we do. We try to improve the quality of life in our communities, whether it is through our transportation, our water, our wastewater, stormwater, our emergency management, our fleets, our buildings and grounds, parks, everything we do impacts the quality of life of our community.

A lot of our projects are intended to improve the quality of life inside our communities. Shortening the time frame on NEPA review, consolidating those comments, making sure that we know what to expect when we get into the process, that would greatly benefit each and every community that we serve.

And we appreciate the opportunity to make comments on this. Thank you.

The CHAIRMAN. Thank you, Mr. Pugh.

And, again, thank you all for your valuable testimony. It has been informative, and it will help us as we move into a markup on this legislation and then, hopefully, consideration of the Full House of Representatives.

The members of this Committee may have some additional questions for you, and we will ask you to respond to those in writing.

Under Committee Rule 3, members of the Committee must submit questions to the Committee Clerk by 5 p.m. on Friday, March 3, 2023. The hearing record will be held open for 10 business days for these responses.

If there are no further business, without objection, the Committee stands adjourned.

[Whereupon, at 5:36 p.m., the Committee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

Submission for the Record by Rep. Westerman

National Association of Manufacturers

February 22, 2023

Hon. Bruce Westerman
Chairman
Committee on Natural Resources
Washington, DC 20515

Hon. Raul Grijalva
Ranking Member
Committee on Natural Resources
Washington, DC 20515

Hon. Sam Graves
Chairman
Committee on Transportation and Infrastructure
Washington, DC 20515

Hon. Rick Larsen
Ranking Member
Committee on Transportation and Infrastructure
Washington, DC 20515

Hon. Cathy McMorris Rodgers
Chair
Committee on Energy and Commerce
Washington, DC 20515

Hon. Frank Pallone
Ranking Member
Committee on Energy and Commerce
Washington, DC 20515

Dear Chairman Westerman, Chairman Graves, Chair McMorris Rodgers, Ranking Member Grijalva, Ranking Member Larsen and Ranking Member Pallone:

America's success and leadership depend on a strong, competitive manufacturing industry. Some of the biggest obstacles preventing manufacturers—and therefore the entire American economy—from reaching our full potential are the permitting delays, red tape and complicated bureaucracy that have plagued us for decades. Today, though, as we work to modernize our infrastructure and shore up our supply chains, the need for reform is more urgent than ever. Manufacturers in the United States employ 13 million people and add more than $2.8 trillion to the U.S. economy, but the industry can do even more if the permitting process is run more efficiently. That is why manufacturers are grateful that you have prioritized modernizing the broken process to minimize delays that stand in the way of manufacturing projects and job-creating investments.

As you proceed with this critical work, we want to help identify some of the most pressing areas that need attention.

Energy Infrastructure

Permitting hurdles are delaying projects across the energy landscape, including oil and gas pipelines, electric transmission lines, rail facilities for energy transport, coal, nuclear and liquefied natural gas exports. Clean and emerging energy technologies face similar, steep permitting challenges. For example, the siting of and infrastructure for hydrogen power generation and transportation and for advanced, small modular and micro-nuclear reactors have progressed far too slowly. Manufacturers depend on access to reliable and affordable energy to expand, which is why we support reforms that would foster transparent, streamlined and timely federal regulatory processes for the siting, permitting and licensing of energy delivery infrastructure of all types.

Transportation Infrastructure

Manufacturers also rely on roads, rails, airports and ports for everything from employees' access to facilities to getting raw materials to shop floors and finished products to customers. Basic infrastructure must be developed before ground can ever be broken on a major facility. Yet obtaining permit approvals for these projects often takes years, especially when reviews are piecemeal and duplicative. We appreciate lawmakers' drive to have more products manufactured in America, but too many companies are waiting on the sidelines because transportation infrastructure construction moves too slowly—or not at all.

Passage of the bipartisan Infrastructure Investment and Jobs Act in 2021 heralded a new era in much-needed improvements to nationwide infrastructure systems. These upgrades, updates and new projects represent the generational investment needed to keep manufacturers in America competitive in a global marketplace. To ensure the broad and beneficial impact of these investments—and achieve the congressionally intended effects—it is critical to clear permit backlogs and ease processing timelines. The NAM was a strong supporter of this historic legislation and remains committed to seeing the promise shaped by this federal focus through to successful results and economic gains nationwide.

Resource Development

Manufacturers strongly believe that permitting, leasing, exploration and development of the nation's resources must be done in an environmentally sound and responsible manner. But unnecessarily restricting access to America's abundant natural resources hinders our ability to strengthen domestic supply chains. It also makes manufacturers more reliant on raw material imports. The inconsistent administration of critical mineral policies, for example, has limited our ability to use a wide range of resources that lie on and beneath federal lands—resources that are critical to producing everything from cars to medical devices. Streamlining resource permitting and leasing policies will help stabilize manufacturing supply chains, control costs for consumers, reduce our reliance on foreign countries and create jobs in the U.S.

Environmental Standards

Manufacturers are proud to have helped lead our country to the cleanest air in the modern world. It is important to protect these achievements by avoiding measures that give a competitive economic advantage to countries with less regard for the environment. Unfortunately, when federal agencies continually revise standards before current standards are met and before states have implemented prior mandates, they create unpredictability. That adds to inflationary pressures and can lead to the U.S. losing out on new projects and facilities to other countries, undermining the very goals of our environmental standards.

Overly burdensome, shifting regulatory policies inherently affect permitting, licensing and siting applications because they move the goalposts of compliance with federal regulations. If instead we make the process more predictable and consolidate the many complex layers of review, the U.S. can continue to build on its strong record of environmental stewardship by boosting domestic manufacturing, which is environmentally cleaner than international competitors.

Congressional Intent

The success of any legislative permitting reforms depends on proper implementation. Ensuring the administration follows congressional intent on recent and future statutory streamlining efforts such as One Federal Decision is key. Establishing strict permit review timelines and eliminating duplicative efforts across various federal agencies help in reducing unnecessary delays. Moreover, key permitting authorities are rife with ambiguity and inconsistent terminology and warrant congressional intervention.

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Permitting affects every aspect of our lives—from our economic security to our national security. If we fail to modernize existing processes, the U.S. is at risk of falling behind international competitors that are taking every possible step to incentivize manufacturing development. On the other hand, if we seize this opportunity to lead, there is no limit to what manufacturers in the United States can accomplish—for the good of our people and for the good of the world.

Sincerely,

JAY TIMMONS,
President and CEO

Submission for the Record by Rep. McClintock

Up in smoke: California's greenhouse gas reductions could be wiped out by 2020 wildfires,

Environmental Pollution 310 (2022) 119888, August 5, 2022
by Michael Jerrett, Amir S. Jina, Miriam E. Marlier
https://doi.org/10.1016/j.envpol.2022.119888

1. Introduction

Recent evidence suggests that climate change contributes to increased wildfire activity in the western United States (Abatzoglou and Williams, 2016). California's summer wildfire burned area increased eightfold from 1972 to 2018 (Williams et al., 2019), and statewide climate change projections predict an amplification of wildfire risk due to higher temperatures and drier conditions (Westerling, 2018). Climate change exacerbates fire risks already stoked by increasing development near the wildland-urban interface (WUI) that have made humans the main ignition source in California (Keeley and Syphard, 2018), as well as decades of fire suppression and underinvestment in preventive measures such as mechanical clearing or prescribed burns (Keeley and Syphard, 2021; Kolden, 2019; Radeloff et al., 2018). Wildfires, in turn, release GHG emissions that can contribute to climate change.

California experienced its most disastrous wildfire year on record in 2020. CalFire, the state agency responsible for leading California's wildfire prevention and suppression, reports that 1.7 million hectares burned in 2020 (CalFire, 2022). Many of the worst fire years in California's history have occurred in the past 20 years, with eighteen of the top 20 most destructive fires in terms of loss of life and property since 2000 and five in 2020 alone (CalFire, 2021). The 2020 fires have been followed by another extreme fire season with 1.0 million hectares burned in 2021.

In addition to the immediate loss of life and property, hospital admissions and premature deaths have likely happened because of the smoke exposure (Cascio, 2018; Fann et al., 2018; Reid et al., 2016; Wang et al., 2020), which blanketed large parts of the state with tens of millions of people with unhealthy air quality that persisted for months in some locations. Recent estimates put the economic costs of direct health costs at $32 billion for 2018 (Wang et al., 2020). Future climate projections suggest that wildfires will become an increasingly important source of air pollution in the western U.S. (Ford et al., 2018; Liu et al., 2016).

When forests burn and are not balanced by vegetation regrowth, they shift from a natural sink to a source of carbon (van der Werf et al., 2017). This can represent a positive climate feedback loop in which increased GHG emissions contribute to climate change and further increase wildfire risk. Although wildfires are a natural feature of many ecosystems in California, the increase in severe and frequent wildfire events has raised the possibility of transformed post-fire ecosystems as new plant communities regrow following fire events that alter carbon sequestration potential (Bowman et al., 2020). Regrowth relies on several factors including species burned, drought, and active replanting (Kibler, 2019). Even if long-term regrowth occurs, however, the carbon emissions occurring in the next 15–20 years will make it difficult to reach emission reduction targets needed to avert the 1.5 degree C increases in mean global temperature advocated by the Intergovernmental Panel on Climate Change (IPCC) (IPCC, 2018). Recent studies on the Australian wildfires have suggested that the magnitude of the fires in combination with the broadleaf

species being burned likely places fires somewhere in between carbon neutrality and complete emissions (van der Velde et al., 2021).

In this short communication, we quantify the likely carbon emissions that occurred in 2020 from wildfire activity in California. We then situate these emissions in the context of other leading GHG emissions sectors in California. We conclude with policy recommendations for reporting of routine wildfire emissions and for increased investment in preventive measures.

1.1. Data and methods

Given substantial uncertainties among fire emissions inventories (Liu et al., 2020), we obtained multiple sources of fire emissions data for 2003–2020. First, we accessed satellite-based fire CO_2 emissions from the Global Fire Emissions Database version 4 with small fires (GFED4s) (1997-present; considered preliminary since 2017) and Global Fire Assimilation System version 1.2 (GFAS) using FIRECAM (Liu et al., 2020). These inventories represent "bottom-up" and "top-down" approaches to fire emissions estimation, respectively, and have shown the best correspondence with aerosol observations in North America (Carter et al., 2020). Although GFED and GFAS do not distinguish between wildfires and other landscape fires such as agricultural or prescribed burns, we expect this contribution to be minor in California. We also obtained wildfire-specific emissions estimates from the California Air Resources Board (CARB) (2000–2020), which combines individual fire perimeters with a wildland fire emissions model (CARB, 2020). The average across inventories is 127 mmt CO_2e for 2020 (ranging from 101 to 171 mmt CO_2e) and 18 mmt CO_2e for 2003–2019 (ranging from 15 to 22 mmt CO_2e).

We next compared wildfire emissions to sectoral GHG emissions for 2003–2020 to maintain consistency with availability for all three wildfire emissions inventories (CARB, 2021). In 2019, the CARB reported 418 mmt CO_2e emissions for all sources with the top 3 being transportation (166 mmt CO_2e), electrical power generation (59 mmt CO_2e), and industry (88 mmt CO_2e). For 2020, we assume constant emissions from the year 2019, as this was the last year where the CARB estimated sector-specific contributions to CO_2e, although this may be an underestimate due to potential emissions reductions during the COVID-19 pandemic (Liu et al., 2021).

Finally, to assess the socioeconomics benefits of reducing these CO_2 emissions, without considering the co-benefits of air pollution reductions, we apply the social cost of carbon (SC-CO_2). The SC-CO_2 is an estimate of the marginal damage caused by the emissions of an extra ton of CO_2 today in net present value. This value, adopted by the Biden administration in February 2021, is $51 per ton with a 3% discount rate in 2020 USD (Interagency Working Group, 2016). We also apply a value of the SC-CO_2 where damages are restricted only to the United States. While this lower value of $7.1 per ton in 2020 (Governmental Accountability Office, 2020) does not capture the global nature of emissions, it does allow us to attribute the local component of global damages caused by the fires.

2. Results

We first compared sectoral emissions to wildfire emissions, which indicate an approximate release of 127 mmtCO_2e in 2020, nearly seven times the 2003–2019 mean. From 2003 to 2019, California's GHG emissions declined by 65 mmt CO_2e (-13%), largely driven by reductions from the electric power generation sector. The 2020 fire season alone is two times higher than California's total GHG emissions reductions and would comprise 49 percent of California's 2030 total greenhouse emissions target of 260 mmtCO_2e (Fig. 1) (CARB, 2017).

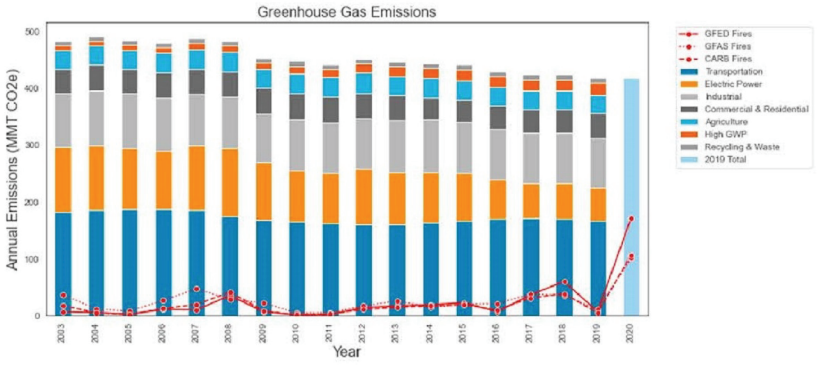

Fig. 1. Annual emissions from individual sectors and wildfire emissions. CARB, GFAS1.2, and GFED4s wildfire emissions shown as red lines (not considering vegetation regrowth). Note: Since data is not yet available, 2020 non-fire emissions are assumed to be equal to CARB 2019 estimates. (For interpretation of the references to colour in this figure legend, the reader is referred to the Web version of this article.)

Global monetized damages caused only by CO_2 from California's fire emissions in 2020 is approximately $7.09 billion in net present value when applying SC-CO_2 from the Biden administration with a constant 3% discount rate. This value is reduced to approximately $986.9 million in damage for the U.S. when considering only domestic damages. If we consider what this implies for California only, we calculate the median damages to California as a percent of U.S. damages in 2080–2099 implied by Hsiang et al. (2017). This gives values of 8.5%, 12.1%, 9.4% for Representative Concentration Pathways (RCPs) 2.6, 4.5, and 8.5 respectively. Scaling the previous U.S.-only value to the average of these percentages, this would imply that the carbon emissions-only damages for California would be approximately $98.7 million in net present value.

3. Conclusions

In this short communication, we analyzed the likely CO_2e emissions from wildfires in California during 2020. Averaging three fire emissions estimates, we find that approximately 127 mmt CO_2e were emitted in 2020. We emphasize that our wildfire emissions estimates do not consider subsequent vegetation regrowth following fires so this is considered an upper bound for net wildfire GHG contributions to the atmosphere. This regrowth, however, could take decades or longer depending on the type of ecosystem that burned.

If we compare fire GHG emissions to total GHG emissions of 418 mmt CO_2e total in 2019, this amounts to a 30% increase in total emissions by all sectors. This makes the GHG emissions from wildfires the second most important source in the state, after transportation (166 mmtCO_2e), but above either industry or electrical power generation (88 and 59 mmt CO_2e, respectively). Viewed from the perspective of what this means for wildfire emission reductions from all other sectors combined, if we compare to reductions from 2003 to 2019 from 483 to 418 mmt CO_2e, the likely amount of increase from the fires is close to double all the emission reductions achieved in the state from 2003 to 2019.

The economic damages are informative for two key reasons. First, they represent a currently unquantified aspect of damages due to fires that are incurred globally, in the U.S., and in California itself. These damages should be counted in addition to fire control costs, damages from air pollution, and direct loss of life and property. Second, they provide a benchmark against which to compare the costs of prevention measures, based purely on climate change mitigation, and not including co-benefits of reduced pollution, lower property risk and loss, and other damages associated with fire risk. The Federal government and California recently signed a memorandum of understanding to increase to 1 million acres per year forest treatment to prevent wildfires in the State (State of California, 2020); in 2021, California invested $1.5 billion in wildfire resilience programs, including prescribed burning (California Wildfire & Forest Resilience Task Force, 2022). If future treatments are moderately effective and reduce wildfire risk and subsequent CO_2e emissions by 20%, this would reduce 20% of the total $7.09 billion in externality costs that we

have calculated (i.e., $1.42 billion in benefits). Including the carbon mitigation benefits further justifies the wildfire prevention costs.

Our analysis suggests several notable bit findings. First, wildfires in California have become a major and growing source of GHG emissions. Over the long to very long term, regrowth could alleviate some of the emissions, but this is unlikely to occur on the time scale necessary to meet near and medium-term emission targets needed to avert passing the 1.5 degree C threshold. Second, the magnitude of the emissions makes wildfires the second most important source of emissions in 2020 behind transportation emissions, and one that appears likely to grow with future climate change. Average wildfire emissions from the past 5 years (~46 mmt CO_2e from 2016 to 2020) ranks above the most recent individual contributions from the Commercial & Residential, Agriculture, Recycling & Waste, and High Global Warming Potential sectors. The latter includes fluorine-containing gases that destroy stratospheric ozone; sources include electricity transmission and distribution and semiconductor manufacturing. Third, wildfire emissions in 2020 essentially negate 18 years of reductions in GHG emissions from other sectors by a factor of two. Fourth, the additional global damages due only to the contribution of these emissions to climate change can be valued at $7.09 billion.

The findings imply several research directions and policy actions. The externalities caused by fire emissions incurs damages globally and in California, and the economic value should be considered alongside other direct costs of fires (Feo et al., 2020), including prevention and suppression. Wildfire emissions are not routinely reported with other key emission sources such as transportation, industry, and power generation. While wildfire emissions tend to be more variable than other sectors, it is still important to track these emissions to ensure near and medium-term emission reduction targets are met. A likely consequence is that wildfire emissions have not received nearly the same level of societal investment or attention as emissions from other sectors. Although wildfires are to some extent natural occurrences, human activity contributes to making wildfires "unnatural disasters" through anthropogenic climate change and development at the WUI in fire prone areas. Moreover, forest management policies focused on fire suppression rather than on preventive measures such as mechanical clearing and prescribed burning activities also likely increases the risk of large, destructive wildfires. If fires are no longer in balance with ecosystem regrowth, we risk different vegetation communities regrowing with less potential for carbon sequestration. A need also exists to develop accessible quantitative tools for policymakers and the public to understand how wildfire risk can be reduced through better management, how much loss of life and property can be avoided, and how much it will cost to achieve these goals. This will allow for more accurate assessment of investments in improved forest management or prevention of development in fire prone areas at the wildland-urban interface.

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Submissions for the Record by Rep. Boebert

Boys mining with their bare hands in the Congo

Children carrying mineral sacks in a Congo mine

Bare-footed girls mine in the Congo

Boy carries materials out of Congo mine

Chemical explosion sickens teenage girl in East Palestine, Ohio

A chemical explosion occurs over East Palestine, Ohio

A young girl develops a rash on her hands after the explosion in East Palestine, Ohio

Submission for the Record by Rep. Grijalva

OUTDOOR ALLIANCE

March 6, 2023

Hon. Bruce Westerman, Chairman
Hon. Raúl Grijalva, Ranking Member
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Re: February 28th legislative hearing on H.R. ____, "Building United States Infrastructure through Limited Delays and Efficient Reviews Act of 2023"

Dear Chairman Westerman, Ranking Member Grijalva, and members of the Committee:

On behalf of the human-powered outdoor recreation community, we write to express our views on the discussion draft of the Building United States Infrastructure through Limited Delays and Efficient Reviews Act of 2023 (BUILDER Act), which was considered during February 28th's full committee legislative hearing. The discussion draft of the BUILDER Act proposes a sweeping set of changes to the National Environmental Policy Act (NEPA), which include limits on judicial review of agency decisions, expedited timelines, and significant limits on the types of information that agencies can consider during the NEPA process. While our community shares the Committee's interest in making NEPA more efficient and responsive to the challenges of our time, we find that the BUILDER Act would severely weaken agencies' ability to make reasoned, equitable, and science-based decisions through the NEPA process, and as a result we strongly oppose the bill.

Outdoor Alliance is a coalition of ten member-based organizations representing the human powered outdoor recreation community. The coalition includes Access Fund, American Canoe Association, American Whitewater, International Mountain Bicycling Association, Winter Wildlands Alliance, The Mountaineers, the American Alpine Club, the Mazamas, Colorado Mountain Club, and Surfrider Foundation and represents the interests of the millions of Americans who climb, paddle, mountain bike, backcountry ski and snowshoe, and enjoy coastal recreation on our nation's public lands, waters, and snowscapes.

Our community has extensive experience working in the NEPA process in the context of public lands management, from forest planning and BLM resource management plan development, to travel management, recreation management, and other natural resources decisions. We also at times work as proponents of recreation infrastructure projects—like trail networks—that require navigating the NEPA process, and we are familiar with the frustrations that can accompany NEPA from that perspective. We work at all levels of the NEPA process, from participating in collaborative groups, to submitting comments and meeting with agency decision makers, to participating on rare occasions as NEPA-related litigants. These experiences have provided us with an informed perspective on NEPA policies and practices.

Given this experience with the NEPA process, the outdoor recreation community is open to considering targeted science-based based reforms to NEPA, especially if it is shown that they are necessary to achieve recreation access, ecological restoration, and clean energy goals. These reforms, however, absolutely cannot come at the expense of frontline communities' ability to protect themselves from environmental hazards, or at the expense of agencies' ability to consider the best available scientific information to achieve the best outcome for a project.

Rather than taking a targeted approach to NEPA reform, the discussion draft of the BUILDER Act instead proposes broad changes to established policies that have served as critical tools in protecting America's environment for more than half a century. Many of these are similar or identical to the deeply damaging NEPA regulations adopted by the Council on Environmental Quality under the Trump administration in 2020, which have since been rescinded. The outdoor recreation community strongly opposed the 2020 NEPA rules when they were proposed, and generated more than 20,000 messages to the administration and lawmakers in defense of NEPA and its core values.

In many cases, the BUILDER Act goes even further than the 2020 regulations in weakening NEPA's integrity. The discussion draft proposes a long list of reforms that are problematic. However, the following proposals are particularly concerning for our community:

- Narrowing the application of NEPA—The bill redefines what constitutes a "major federal action," giving agencies discretion to determine whether an action falls under NEPA's scope. The bill also explicitly excludes federal financial assistance, such as federal loans and loan guarantees, from NEPA.
- Limiting the scope of reviews—The bill limits the scope of alternatives that agencies can consider and provides direction that alternatives can be designed to "meet the goals of the applicant." Furthermore, the bill specifies that agencies do not have to undergo new scientific or technical research during the NEPA process.
- Severely limiting judicial review—The bill reduces the statute of limitations from six years to just 120 days following a decision and would also bar legal challenges to categorical exclusions. The bill would also prohibit injunctive relief for projects that are subject to judicial review.
- Prioritizing goals of the project sponsor over the public interest—The bill would allow project sponsors to prepare environmental reviews for their own projects, rather than having agencies complete these reviews themselves. The bill also encourages agencies to prepare alternatives that meet the goals of the applicant.

Together, these changes, and others proposed in the BUILDER Act, would most likely lead to a federal decision-making process that is more contentious, less equitable, and less protective of the public's interest than the process that currently exists.

In addition to these substantive concerns with the legislation itself, we are also concerned that the BUILDER Act will not address the primary challenges that we experience as participants in the NEPA process. In our experience, the overwhelming obstacles to efficient NEPA implementation come from agency capacity constraints and issues of agency culture around NEPA implementation that are most appropriately addressed at the agency level and by providing staff and resources to management agencies. We were highly encouraged to see both the Infrastructure Investment and Jobs Act and the Inflation Reduction Act include significant funding to support environmental reviews, and we are eager to see these funds put into action. We encourage Congress to give agencies the opportunity to put these resources to work, and to consider where additional assistance, such as improving the federal hiring process, may be needed, before considering whether wide-reaching policy changes may be appropriate.

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Thank you for the opportunity to comment on the discussion draft of the BUILDER Act. The outdoor recreation community looks forward to working with you to support a NEPA process that promotes efficiency, government accountability, and public input.

Best regards,

LOUIS GELTMAN,
Policy Director