WMC
WOMEN'S MINING COALITION

March 8, 2023

Transmitted via Electronic/Email To:

Rebecca Konolige: rebecca.konolige@mail.house.gov

The Honorable Bruce Westerman
United States House of Representatives
Washington, D.C. 20515

RE: Support for the Transparency, Accountability, Permitting, and Production of American Resources Act or TAPP American Resources Act

Dear Chairman Westerman:

The Women's Mining Coalition (WMC) is submitting this letter to express our strong support for the "Transparency, Accountability, Permitting, and Production of American Resources Act, also known as the "TAPP American Resources Act," which will be marked up in the House Natural Resources Committee on March 9th. WMC understands that this markup will consolidate three bills that were heard last week: your TAP American Energy Act discussion draft, Chairman Stauber's Permitting for Mining Needs Act (H.R. 209), and Congressman Graves' Builder Act of 2023.

The TAPP American Resources Act addresses the significant barriers that the protracted, costly, and uncertain federal permitting process creates for the timely development of U.S. mineral, coal, oil, and gas resources and infrastructure projects. The permitting obstacles that stand in the way of exploring for and responsibly mining minerals, building new energy-related infrastructure like transmission lines, pipelines, constructing solar and wind energy farms, or upgrading existing infrastructure must be solved before the U.S. can truthfully say we have implemented effective climate change policies. Without solving the permitting problem, the country's aggressive goals and the 2030 and 2050 deadlines to reduce carbon dioxide (CO_2) emissions are unachievable.

Last week, WMC submitted a letter to Chairman Stauber stating our support for his bill, Permitting for Mining Needs (PERMIT MN) Act, H.R. 209, and for your discussion draft of the TAP American Energy Act. We are attaching our February 27, 2023 letter explaining why we support these two bills.

This letter focuses on Congressman Graves' Builder Act of 2023, which includes sensible and important provisions to update, clarify, and streamline the National Environmental Policy Act (NEPA). Many WMC members have worked on mineral exploration and mining projects that required a NEPA analysis from a federal agency. We thus have first-hand experience with the delays, costs, and uncertainties associated with the NEPA process. Our members who work directly for NEPA consulting companies that prepare Environmental Assessments (EAs) and Environmental Impact Statements (EISs) have considerable expertise with the Council on Environmental Quality's (CEQ's) regulations at 40 CFR Parts 1500 – 1508 that implement NEPA.

Congress enacted NEPA 54 years ago. There can be no question that updating and clarifying this law is long overdue given the substantial challenges it poses nationwide to any project that is considered "a major federal action," which triggers the requirement for the federal agency or agencies involved to prepare a NEPA document.

Proposed mineral exploration and mining projects on federal land require one or both of the federal land management agencies (the U.S. Bureau of Land Management and/or the U.S. Forest Service) to prepare a NEPA document. Some mineral projects also require approvals from the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, and the U.S. Army Corps of Engineers, who often participate as cooperating agencies in the NEPA process.

Regardless of the federal agency serving as the lead agency responsible for preparing the NEPA document, WMC members can attest that the NEPA process takes too long, costs too much, and is fraught with uncertainty given the frequency with which NEPA documents for mineral, energy, and infrastructure projects are appealed and litigated. The Builder Act includes provisions that would help streamline the NEPA process and reduce litigation while ensuring that the NEPA process will continue to seek public input and that future NEPA documents will still fully analyze and disclose the environmental impacts associated with proposed projects.

Based on our members' extensive NEPA expertise, WMC submitted comments to the CEQ during the 2018 and 2021 rulemaking processes. Our 2021 comments, which are attached to this letter, discussed our concerns that CEQ's October 7, 2021 notice of proposed rulemaking[1] would revoke several changes and improvements in the 2020 rule. We remain concerned that CEQ's April 2022 final rule (Federal Register Vol. 87, No. 6, pp. 23453 - 23470) largely ignored our comments and represents a significant step backwards in administering the NEPA process in an efficient and sensible manner. We thus applaud Mr. Graves for the common sense NEPA improvements proposed in the Builder Act that would help restore some of the improvements in the 2020 NEPA rule.

[1] Federal Register Vol. 86, Number 192, Pages 55757 – 55769

As explained in our 2021 comments on the CEQ's proposed rule, the 1978 CEQ regulations had the laudable goal to implement NEPA in a manner that reduced paperwork and delays and promoted better federal decisions. Since then, the NEPA process continues to be a time-consuming and costly process that substantially delays many types of projects. Consequently, there is currently no such thing as a shovel-ready project or jobs due to the lengthy NEPA process.

More than four decades of administrative practices and judicial decisions have transformed these well-meaning regulations into a significant barrier that thwarts responsible development and chills investment in all kinds of projects in the United States, including mineral exploration and mining projects and development of proposed infrastructure.

As they evolved from 1978 to 2022, the NEPA regulations have made the U.S. uncompetitive compared to countries like Canada that have more streamlined and predictable permitting processes. Additionally, countries with more efficient permitting processes typically provide fewer opportunities for project opponents to use litigation to obstruct and even stop projects.

WMC would like to comment on two aspects of the Builder Act that we feel are especially important. First, the Act requires a thorough evaluation of the No Action Alternative to analyze the environmental impacts that would occur if the proposed project were <u>not</u> developed. A detailed and complete analysis of the No Action Alternative is especially important for exploration and mining projects for lithium, copper, rare earths, cobalt, nickel, metallurgical coal, and other minerals needed for clean and renewable energy technologies and for infrastructure like transmission lines to transport electricity from wind, solar, and other clean energy projects. The No Action Alternative discussion in NEPA documents for mineral, energy, and infrastructure projects must not be a *pro forma* analysis that only focuses on the reduced number of surface disturbance acres or impacts to habitat if a project is not developed. The No Action Alternative should not only disclose how not developing a project(s) will foreclose opportunities to reduce our dependency on foreign minerals but must also highlight the inadequacy and instability problems with our electrical power distribution grid. Additionally, it should also emphasize that the denial of a specific project within a given area does not preclude the possibility of future energy development opportunities.

Secondly, we fully support the Builder Act's proposal to allow project sponsors to prepare NEPA documents. This is already commonplace for EAs but is not typical for EISs developed by the federal land management agencies. The discussion at the February 28, 2023 House Natural Resources Committee hearing on the Builder Act revealed that some committee members do not understand that federal agencies maintain complete and sole decision-making authority during the NEPA process for projects where the sponsor prepares the NEPA document.

Outsourcing the preparation of the document to either the project sponsor or to a third party does not in any way diminish a federal agency's detailed technical scrutiny of the document, including the environmental impacts analysis or their final approval authority. Moreover, federal agencies can send the sponsor "back to the drawing board" if the agency determines the environmental baseline studies are inadequate or if more environmental analysis is needed. Federal agencies remain in total control in deciding whether to approve the project, which project alternative is the Agency's Preferred Alternative, and the mitigation measures that will be required to reduce project impacts.

The Biden Administration's aggressive goals to reduce greenhouse gas emissions through policies advocating nationwide electrification are unachievable without the minerals needed to build EVs and energy storage batteries. The permitting obstacles that stand in the way of exploring for, developing, and responsibly mining domestic minerals like lithium, rare earths, copper, cobalt, and nickel must be solved before the U.S. can truthfully say we have implemented effective climate change policies. Without these minerals, the country's climate change policies are nothing more than hollow gestures. The proposed changes to the NEPA process in the Builder Act will make important improvements that will streamline federal permitting for mineral, energy, and infrastructure projects.

WMC believes it is critically important for the U.S. to strengthen the Nation's domestic minerals supply chains; to reduce our dependency on foreign adversaries for the minerals essential to our national defense, economy, infrastructure, manufacturing, energy, and technology sectors; and to build new infrastructure and upgrade existing infrastructure. WMC appreciates your efforts to solve the permitting problems that are currently hamstringing domestic mineral and energy fuels exploration and development and the country's ability to improve our infrastructure.

WMC is a grassroots organization whose mission is to advocate for today's modern domestic mining industry, which is essential to our Nation. Our membership includes over 200 women who work nationwide in hardrock, coal, and industrial minerals mining and in the energy, manufacturing, transportation, and service industry sectors.

We will be in Washington, D.C. from April 17 – 21 for our annual Fly-In and hope to have the opportunity to meet you and your staff to discuss the importance of strengthening the U.S. hardrock and coal mining sectors to supply the country with the mineral and energy resources needed for national security and our economic and social well-being. In the meantime, please contact us at (307) 281-0148 or wearewmc@wmc-us.org if you have any questions or would like additional information.

Thank you for your consideration and the opportunity to submit this letter for the record for the March 9, 2023 markup of the TAPP American Resources Act before the House Committee on Natural Resources.

Sincerely yours,

Emily Hendrickson
WMC President

Wanda Burget
WMC Manager

Attachments:

- WMC's February 27, 2023 letter to Chairman Pete Stauber in support of H.R. 209 and the TAP American Energy discussion draft

- WMC's November 22, 2021 letter to the CEQ, Docket ID: CEQ-2021-0002: Council on Environmental Quality's Proposed Phase I Revisions to the 2020 Regulation Changes Regarding the Procedural Provisions of the National Environmental Policy Act

WMC
WOMEN'S MINING COALITION

Transmitted via Electronic/Email

February 27, 2023

The Honorable Pete Stauber
United States House of Representatives
Washington, D.C. 20515

RE: Support for H.R. 209 and the TAP American Energy Act Discussion Draft

Dear Chairman Stauber:

The Women's Mining Coalition (WMC) is writing to voice our strong support for your bill, *Permitting for Mining Needs (PERMIT MN) Act*, H.R. 209, and for Chairman Westerman's Discussion Draft of the *TAP American Energy Act*. Both bills address the significant barriers that the protracted, costly, and uncertain permitting processes create for the timely development of U.S. oil, gas, coal, and mineral resources.

Recent events like the war in Ukraine clearly underscore the need to strengthen the Nation's critical minerals supply chains in order to reduce our dangerous reliance on foreign adversaries for the minerals essential to our national defense, economy, infrastructure, manufacturing and technology sectors, and our clean energy future. China's hegemony over many critical minerals constitutes a serious threat to the U.S.

The Biden Administration's aggressive goals to reduce greenhouse gas emissions to address climate change through policies advocating nationwide electrification are unachievable without the minerals that are the raw materials needed to build EVs and energy storage batteries to supplement fossil fuels. The permitting obstacles that stand in the way of exploring for, developing, and responsibly mining domestic minerals like lithium, rare earths, copper, cobalt, and nickel must be solved before the U.S. can truthfully say we have implemented effective climate change policies. Without these minerals, the country's climate change policies are nothing more than hollow gestures.

Similarly, the country urgently needs to increase the production of fossil fuels in order to provide sources of reliable energy during the transition to renewable energy sources. This transition is going to take longer than the 2030 and 2050 deadlines established in current policies. In fact, it is likely to take many decades. Once the renewable energy transition goals have been met in the future, the U.S. will still need long-term sources of domestically-produced fossil fuels for the petrochemical industry and other purposes. Chairman Westerman's TAP American Energy Act discussion draft addresses the permit streamlining that needs to occur to support the long-term and responsible development of the country's fossil fuel and mineral resources.

We applaud your proposal in H.R. 209 to amend Section 40206 of the Infrastructure Investment and Jobs Act of 2021 by extending its applicability to *all* minerals – not just those minerals on the U.S. Geological Survey's (USGS') list of critical minerals. There are no "unimportant" minerals. All minerals are needed to support our economy, national defense, clean and conventional energy infrastructure, and our manufacturing and technology sectors.

For example, the chart below from the World Bank Group's May 2020 report entitled *Minerals for Climate Action* emphasizes the importance of many minerals in our energy sector. Please note that copper, which is not currently in the USGS' critical minerals list, is needed for all types of energy infrastructure. Recognizing the critical need to increase domestic production of copper, Chairman Manchin along with five of his Senate colleagues recently sent a letter to Secretary of the Interior, Deb Haaland, requesting that she direct the U.S. Geological Survey to add copper to the critical minerals list.

	Wind	Solar photovoltaic	Concentrated solar power	Hydro	Geothermal	Energy Storage	Nuclear	Coal	Gas	Carbon capture and storage	Import Reliance	Exporting Countries
Aluminum*	■	■				■	■	■	■		> 75%	Jamaica, Brazil, Guinea, Guyana
Chromium	■			■	■	■	■	■	■	■	72%	Norway, Japan, China, Canada
Cobalt						■		■	■	■	78%	South Africa, Kazakhstan, Russia
Copper	■	■	■	■	■	■	■	■	■	■	35%	Chile, Canada, Mexico
Graphite						■					100%	China, Mexico, Canada, India
Indium		■					■				100%	China, Canada, Republic of Korea, Taiwan
Iron Ore	■					■					21%	Canada, Brazil, Republic of Korea
Lead	■	■		■		■	■				30%	Canada, Mexico, Republic of Korea, India
Lithium						■					>25%	Argentina, Chile, China
Manganese	■			■	■	■		■	■	■	100%	South Africa, Gabon, Australia, Georgia
Molybdenum	■	■		■	■		■	■	■	■	<20%	Peru, Chile, Canada, Mexico
Rare Earths**	■										100%	China, Estonia, Japan, Malaysia
Nickel	■	■		■	■	■	■	■	■	■	47%	Canada, Norway, Australia, Finland
Silver		■	■				■				68%	Mexico, Canada, Peru, Poland
Titanium			■	■			■	■	■		86%	Japan, Kazaksran, Ukraine, China, Russia
Vanadium						■	■	■			94%	Austria, Canada, Russia, Republic of Korea
Zinc	■	■		■		■	■				87%	Canada, Mexico, Australia, Peru
Total	10	8	2	8	6	11	11	9	8	6		

*** Bauxite, ** Neodymium**

Source: https://www.worldbank.org/en/topic/extractiveindustries/brief/climate-smart-mining-minerals-for-climate-action

The U.S. is fortunate to have a significant geologic endowment of many minerals and fossil fuels. Unfortunately, the Biden Administration has implemented policies that put significant mineral and fuel resources off-limits to exploration and development. For example, the recent pre-emptive vetoes of proposed copper projects in Alaska and Minnesota will categorically prevent the responsible development of two world-class copper deposits. WMC strongly supports Chairman Westerman's proposal in his discussion draft to put limits on the use of executive fiat to make mineral and fossil fuel resources unavailable for development.

WMC has focused for many years on the Nation's dangerous reliance on imports of critical minerals from foreign countries like China and Russia and the paucity of domestic mineral processing facilities. Today, the need to significantly increase the number of domestic mines, smelters, and refining facilities is more urgent than ever as the Biden Administration implements the Infrastructure Investment and Jobs Act of 2021 and the Inflation Reduction Act of 2022, which both require secure domestic sources of minerals.

We also believe that an "all-of-the-above" approach to meeting our energy needs is the only viable policy for the foreseeable future. It is inappropriate and unproductive to pit one form of energy against another. We need all forms of renewable and conventional energy to support our economy and keep our country safe. We have the technologies needed to produce these energy resources in a safe and environmentally responsible manner.

For these reasons, WMC supports both H.R. 209 and Chairman Westerman's TAP American Energy Act Discussion Draft. We urge this committee to advance both proposals.

WMC is a grassroots organization whose mission is to advocate for today's modern domestic mining industry, which is essential to our Nation. Our membership includes over 200 women who work nationwide in hardrock, coal, and industrial minerals mining and in the energy, manufacturing, transportation, and service industry sectors.

We will be in Washington, D.C. from April 17 – 21 for our annual Fly-In and hope to have the opportunity to meet you and your staff to discuss the importance of strengthening the U.S. hardrock and coal mining sectors to supply the country with the mineral and energy resources needed for national security and our economic and social wellbeing. In the meantime, please contact us at (307) 281-0148 or at wearewmc@wmc-us.org if you have any questions or would like additional information.

Thank you for your consideration and this opportunity to submit this letter for the record for the February 28, 2023 hearing before the House Subcommittee on Energy and Mineral Resources.

Sincerely yours,

Emily Hendrickson
WMC President

Wanda Burget
WMC Manager

cc: The Honorable Bruce Westerman

Submitted Electronically to Federal eRulemaking Portal at:

https://www.regulations.gov
Docket ID: CEQ-2021-0002

November 22, 2021

Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

ATTN: Ms. Brenda Mallory, Chairman
Ms. Amy B. Coyle, Deputy General Counsel

RE: **Docket ID: CEQ-2021-0002: Council on Environmental Quality's Proposed Phase I Revisions to the 2020 Regulation Changes Regarding the Procedural Provisions of the National Environmental Policy Act**

Dear Ms. Mallory and Ms. Coyle:

I. Introduction

The Women's Mining Coalition (WMC) strongly supports ongoing efforts by the Council on Environmental Quality (CEQ) to continue to update and streamline the regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) at 40 CFR Parts 1500 – 1508. In August 2018, WMC provided extensive comments on CEQ's Advance Notice of Proposed Rulemaking (ANPR)[1], seeking comments to update NEPA implementation procedures. In March of 2020, we also provided comments on CEQ's Proposed Update to the Regulations[2]. We are now disheartened to see that the October 7, 2021 notice of proposed rulemaking[3] seeks to undo several changes and improvements in the 2020 rule.

The comments offered herein are based on WMC members' extensive NEPA experience starting in the 1980s in conjunction with mineral exploration and development projects on public lands administered by the U.S. Bureau of Land Management (BLM) and the U.S. Forest Service (USFS). WMC members also have experience with NEPA documents prepared by the U.S. Army Corps of Engineers (Corps) to evaluate 404 permit applications under the Clean Water Act and for coal

1 Federal Register Vol. 83, Number 119, Pages 28591 – 28592
2 Federal Register, Vol. 85, Number 7, Pages 1684 - 1730
3 Federal Register Vol. 86, Number 192, Pages 55757 – 55769

mining operations in various locations on and off of public lands. Based on this broad experience WMC members have firsthand knowledge of the costs, complexities, delays, and uncertainties associated with the NEPA process and with preparing NEPA documents.

When it was signed into law in 1970, NEPA provided an important and unique opportunity for the public to review and comment on projects that had the potential to affect the environment. In the ensuing 51 years since its enactment, Congress and state legislatures have passed and amended numerous environmental protection statutes. This compilation of both federal and state laws and regulations have furthered the original intent of NEPA and serve to enhance the environmental protection envisioned by NEPA in 1969. Consequently, in 2017 when the CEQ began to engage in rulemaking that many in the regulated community thought would help provide clarification and streamline the NEPA process, WMC applauded the effort. Unfortunately, this current rulemaking would effectively reverse some of the 2020 revisions WMC viewed as much-needed and long overdue in light of the many post-NEPA federal and state environmental protection and review statutes.

Over the course of our experience with the NEPA process, WMC members have seen NEPA documents balloon in size and complexity, take much more time to complete, and cost much more to prepare. This is the exact opposite of the trend that should have occurred given the enactment of numerous federal and state environmental protection and review statutes since NEPA was passed.

When they were promulgated in 1978, the laudable goals of the CEQ regulations implementing NEPA were to reduce paperwork and delays and promote better federal decisions. Unfortunately, today, there is no such thing as a shovel-ready job due to the lengthy NEPA process. More than four decades of administrative practices and judicial decisions have transformed these well-meaning regulations into a significant barrier that thwarts responsible development and chills investment in all types of projects in the United States, including mining projects. Consequently, the 1978 regulations, among others, have made the U.S. uncompetitive compared to countries like Canada that have more streamlined and predictable permitting processes.

Over recent decades, WMC has become increasingly concerned about the way in which the NEPA process has become more unwieldy, creating a serious barrier to mineral exploration and development of the nation's domestic mineral resources. We have witnessed first-hand the delays, skyrocketing costs, and countless uncertainties associated with the NEPA process and believe they are a contributing factor to the country's problematic reliance on foreign sources of minerals.

WMC members, along with most in the regulated community, were encouraged by the 2020 rule and resulting regulatory changes. The changes in the 2020 rule will help minimize permitting delays and uncertainties, reduce permitting costs, and remove some of the investment deterrents that currently stand in the way of responsible and timely development of the domestic minerals that are essential to America's economy, technology, infrastructure, conventional and clean energy systems, and defense. However, we see CEQ's proposed changes to the NEPA implementing regulations described in the above-noted October 7, 2021 Federal Register rulemaking announcement as an unfortunate step backward that will largely eliminate the progress and

improvements made in the 2020 rule.

In light of the permitting improvement directives in the recently enacted Bipartisan Infrastructure Bill and in the 100 Day Report entitled "Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth" in response to President Biden's Executive Order No. 14017, streamlining the NEPA process is even more critical than before. In order to domestically produce minerals that are critical to a clean energy future, the permitting process, in which NEPA plays an outsized role, must not remain a barrier to mineral exploration and the development of mines that will supply the raw materials for the realization of that future. According to the International Energy Agency[4], mineral demand to build clean energy technologies is anticipated to soar in the next few decades; our existing mines will simply not be able to fulfill that demand. Even if permitting for a mine producing an important mineral like copper[5] begins today, the likelihood of it coming online in sufficient time to help supply copper products in a timely fashion is overshadowed by the length of time that the NEPA process currently takes. Navigating through the NEPA process is a very important part of the overall permitting process; but in anticipation of our future mineral needs it cannot become an even bigger deterrent that holds the nation back from reaching our clean energy goals.

Pursuant to the above background information, WMC provides the following comments on the three revisions proposed in the current Phase I rulemaking process to include: (1) elimination of language in the description of purpose and need for a proposed action and making a conforming edit to the definition of "reasonable alternatives", (2) removal of limitations on agency NEPA procedures for implementing CEQ's NEPA regulations, and (3) return to the 1978 definitions of "effects".

II. Purpose and Need Statements and Reasonable Alternatives

WMC agrees that development of the purpose and need statement is the foundation upon which a NEPA document is based and from which the determination of reasonable alternatives emanates. In the case of mining projects, as with other types of proponent-sponsored proposed projects, there would be no need for a purpose and need statement but for the proponent's project proposal. For that reason, the proponent's purpose and need for the project is of the utmost importance; omitting it would be confusing to the public. Clearly, an agency's purpose and need must also be incorporated into this statement, but not to the exclusion of the proponent's purpose and need for the project. Although the proposed language (*i.e*. the original 1978 language) could be interpreted to include the proponent's purpose and need[6], the language in the 2020 revisions makes it clear that "*…the agency shall base the purpose and need on the goals of the applicant* ***and*** *the agency's authority*." (emphasis added). The purpose and need statement for NEPA documents evaluating

[4] https://www.iea.org/reports/the-role-of-critical-minerals-in-clean-energy-transitions/executive-summary

[5] According to the World Bank, copper is used to build ten low-carbon energy technologies. http://pubdocs.worldbank.org/en/961711588875536384/Minerals-for-Climate-Action-The-Mineral-Intensity-of-the-Clean-Energy-Transition.pdf

[6] § 1502.13: The statement shall briefly specify the underlying *purpose and need to which the agency is responding* in proposing the alternatives including the proposed action. (emphasis added)

proponent-sponsored projects cannot be a "one or the other" statement. Both the proponent's and the agency's purposes and needs must comprise this statement; omitting either will lead to confusion.

The CEQ has also suggested that agencies should have discretion to base the purpose and need for their actions on various factors besides the proponent's goals, such as the public interest. As project alternatives are based on the purpose and need statement, this could result in a broad and potentially inapplicable array of alternatives that may not be reasonable, potentially leading to analyses of impractical alternatives that could never be built.

For any type of project, alternatives must be developed on a site-specific basis to reflect the environmental and social conditions at any proposed project site. Project proponents for most major projects, including mining projects, typically expend a great deal of effort evaluating engineering, operating, economic, social, and other factors when developing a project plan. Depending on the project type and location, there may be a limited number of feasible project configurations. This is especially true for mineral projects because geology dictates where mineral deposits are located. Once a mineral deposit has been discovered – an effort that typically costs tens to hundreds of millions of dollars – it can only be developed where it has been found; it cannot be moved. Site topography and land ownership factors surrounding the mineral deposit's fixed location may further constrain where mining project support facilities can be located.

It is therefore a mistake to assume a proponent's Proposed Action is tainted or biased because there may not be numerous viable project alternatives that merit detailed consideration. A small number of project alternatives evaluated in detail in a NEPA document does not signal an inadequate or short-sighted environmental analysis that tilts towards the proponent. Rather, such analyses represent a realistic evaluation based on site-specific parameters, while at the same time reflecting the proponent's goals and respecting the time and effort required for agencies to prepare the document and for the public to review and comment on the document.

Project alternatives, particularly for a mining proposal, are, by their nature, very limited and do not lend themselves to a wide range of alternatives. The public is afforded input during the public scoping and comment periods that often results in helpful suggestions to refine or improve a proposed project.

The lead agency's Preferred Alternative for a mineral project must comply with stringent environmental performance standards that prohibit proposed mineral projects from causing undue or unnecessary degradation on BLM-administered lands and require minimizing adverse environmental impacts on National Forest System lands.[7] Thus, even though a NEPA document may include a detailed analysis of only a few project alternatives, the agency can only select a Preferred Alternative that complies with that agency's surface management regulations to prohibit creating avoidable environmental impacts.

Based on the above discussion, WMC recommends that the definition of a purpose and need

[7] See BLM's surface management regulations at 43 CFR Subpart 3809 and the Forest Service's surface management regulations at 36 CFR Part 228 Subpart A

statement (§ 1502.13 of the 2020 revisions) be retained. Further, WMC urges CEQ to retain the definition of "reasonable alternatives" at § 1508.1 (z) to include the goals of the proponent.

III. Agency NEPA Procedures

Because the CEQ's NEPA regulations are so comprehensive, they provide adequate guidance for agencies to prepare NEPA documents. Consequently, there are few circumstances in which an agency needs to develop its own NEPA procedures. If agency-specific NEPA procedures are warranted, those procedures should be narrowly focused to address an agency's statutory authorities that demand an evaluation unique to that agency. Based on WMC members' experience, agency-specific procedures and interpretation of NEPA lead to inconsistencies in the scope of NEPA documents which sets the stage for litigation. Additionally, staff-level interpretation of an agency's specific NEPA requirements increases the probability of inconsistency as agency staff create their own versions of the agency's NEPA procedures.

In the current rulemaking effort, CEQ proposes to remove "ceiling provisions" in the language of § 1507.3 (a) and (b). The language in (a) specifies that where there are "inconsistencies" in an agency's NEPA procedures with the current regulations, the CEQ regulations will apply. The current regulations also make it clear, at § 1507.3 (b) (1), that an agency must confer with the CEQ when developing its own NEPA procedures. It seems perfectly logical that should there be an inconsistency in an agency's NEPA procedures, that the CEQ regulations would apply over the agency's procedural regulations. Additionally, § 1507.3 (b) (2) specifies that agencies must allow for "*…review by the Council* ***for conformity with the Act*** *and the regulations in this subchapter before adopting their final procedures*." (emphasis added). These two latter requirements existed in the 1978 regulations, and we believe they are indeed consistent with the 2020 language stating that inconsistencies must be resolved in accordance with the CEQ regulations.

IV. Effects Definitions

In our comments on the 2020 CEQ regulation revisions, WMC applauded the CEQ's practical change to the definition of "effects" that eliminated classifying impacts as "direct," "indirect," or "cumulative." WMC still strongly supports this practical approach, which will greatly improve the clarity and relevance of future NEPA documents by focusing on the actual project impacts that are most important to stakeholders and to federal decisionmakers' analyses. Most people are primarily interested in understanding a project's direct impact – those impacts that are near their communities or have a likelihood of occurring – meaning they are reasonably foreseeable. Detailed, lengthy discussions of spatially or temporally remote impacts add little value to NEPA documents for most stakeholders.

We want to emphasize that the 2020 rule did not eliminate the need to analyze these types of effects, but instead clarified and better defined the scope of the effects to be analyzed. The 2020 rule made the practical clarification that causal relationships between proposed actions and effects must be reasonably foreseeable as well as close in proximity and time. Likewise, the definition for

"reasonably foreseeable" in the 2020 regulations,[8] which includes a "prudent person" standard is both logical and practical and should be retained.

Under the 1978 CEQ regulations, recently prepared NEPA documents typically have included many pages of complex, confusing, and often duplicative text discussing indirect and cumulative impacts, which adds little if any meaningful information that federal decisionmakers need to make informed decisions or that the public finds useful. These discussions are one of the reasons that NEPA documents, especially Environmental Impact Statements (EISs), are hundreds and sometimes thousands of pages long. Cumulative impact analyses are also a common focus of NEPA litigation.

WMC has reviewed a couple of recent NEPA documents prepared under the 2020 rule. The reasonably foreseeable effects discussions in these documents are much easier to read and present more useful and pertinent information compared to the indirect and cumulative effects discussions in NEPA documents for similar types of projects prepared under the 1978 rule. We therefore strongly urge CEQ to retain the reasonably foreseeable effects definition in the 2020 rule and not reinstate the definitions of indirect and cumulative effects from the 1978 rule.

Discussions of cumulative impacts involving distal projects that are outside of the agency's jurisdiction add no value to NEPA documents. CEQ is therefore urged to retain the 2020 definition in Section 1508.1. (g)(2) to align the NEPA analysis with an agency's statutory authority. Analysis of potential effects that are outside of an agency's geographic jurisdiction or regulatory authority serve no purpose in the NEPA analysis and become merely an academic exercise that detracts from the primary focus of the agency with regard to the effects of a specific project.

V. Conclusions

When the previous administration started the NEPA rulemaking process, changes to the NEPA implementing regulations were long overdue. Many of the changes included in the 2020 rule made significant strides toward the goals of adding clarifying language, streamlining the NEPA process, and making NEPA documents more useful to the public and federal decisionmakers.

WMC urges CEQ to continue to strive to eliminate much of the unnecessary and counter-productive complexity and time required to complete NEPA documents and to achieve the important goal of making NEPA documents easier for the public to read and understand. As we have discussed, we continue to push for updated regulations that will help the public and federal decisionmakers focus on key project issues and not meaningless analysis. Most importantly, more focused and concise environmental impact analyses should become the standard for future NEPA documents, resulting in better federal decisions and better-informed stakeholders.

WMC is concerned that some of the proposed changes in the October 2021 rule will move the regulations in the wrong direction. We thus hope that CEQ will shift its current focus to evaluate

8 § 1508.1 (aa): Reasonably foreseeable means sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.

ways to make the NEPA process less burdensome, less time-consuming, and overall, more efficient for federal decision-makers, the public, and project proponents. We believe the permit improvement mandates in President Biden's Executive Order 14107 and in the Bipartisan Infrastructure Bill that President Biden just signed into law demand streamlining the NEPA process. Unfortunately, the changes proposed in the October 2021 rule will interfere with the President's clean energy objectives and thwart the timely development of the infrastructure projects included in the newly enacted infrastructure bill.

We appreciate the opportunity to comment on this important rulemaking process.

Respectfully submitted:

Teresa A. Conner
WMC Director
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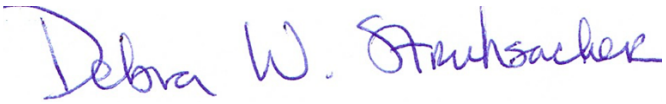

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About WMC

WMC's mission is to advocate for today's modern domestic mining industry which is essential to our Nation. WMC is a grassroots organization with members nationwide who work in all sectors of the mining industry including hardrock and industrial minerals, coal, energy generation, manufacturing, transportation, and service industries. WMC engages with members of Congress and their staff, federal land management and regulatory agencies, and state governments to discuss issues of importance to both the hardrock, coal, and industrial mining sectors. For more information about WMC, please contact Emily Arthun at Emily.arthun@wmc-usa.org or visit our website at: www.wmc-usa.org