

Committee on Natural Resources
Oversight Hearing
1324 Longworth House Office Building
June 22, 2023
10:00 AM

Oversight hearing titled *"Examining the Council on Environmental Quality Fiscal Year 2024 Budget Request and Related Policy Matters"*

Questions from Chairman Westerman for Chair Brenda Mallory, Council on Environmental Quality:

1. CEQ is responsible for overseeing the NEPA process across the government in all of the various agencies. Bipartisan NEPA Reforms were recently signed into law as part of the Fiscal Responsibility Act (FRA), Public Law 118-5. As you know, these changes were effective immediately and all agencies must implement the new provisions immediately.
 - a. What has CEQ done to ensure U.S. government agencies are immediately implementing the reforms to NEPA and permitting?

CEQ Response: CEQ supports Federal agencies in their implementation of NEPA by establishing government-wide regulations that implement the procedural provisions of NEPA; reviewing agency NEPA procedures, which implement and supplement these regulations; developing and issuing guidance interpreting the statute and regulations; overseeing initiatives that promote efficiency and consistency across the Federal Government; and providing technical assistance to agencies on a case-by-case basis. Recognizing that the amendments to the FRA are effective immediately, CEQ incorporated the FRA's amendments into its proposed revisions to its NEPA regulations and is providing technical assistance to help agencies incorporate the amendments into their ongoing NEPA reviews. CEQ is also proactively reaching out to agencies to identify their questions regarding the immediate implementation of the FRA and to develop answers, which CEQ will continue to post on NEPA.gov (<https://ceq.doe.gov/laws-regulations/fra.html>). Finally, CEQ is convening agencies to implement the new process in section 109 that allows agencies to use other agencies' categorical exclusions.

- b. Has CEQ, or have you in your role as Chair, issued a guidance and/or a memo to U.S. government agencies on how to comply with the new requirements in the FRA?
 - i. [If no]: Why not? And will you commit to issuing a guidance and/or a memo as soon as possible to U.S. government agencies on how ensure they are complying with the law?

CEQ Response: CEQ has identified a multi-pronged strategy to ensure that Federal agencies comply with NEPA, including the amendments to NEPA in the FRA. CEQ is providing real-time technical assistance to agencies, particularly in connection with NEPA reviews that were ongoing at the time of the FRA's passage into law. Additionally, CEQ is working with Federal agencies to implement the FRA's provisions that create new NEPA processes, such as section 109, which allows agencies to adopt and use other agencies' categorical exclusions. In order to provide more systematic assistance, CEQ is also collecting questions on implementation from Federal agencies and developing a compilation of answers (<https://ceq.doe.gov/laws-regulations/fra.html>). Finally, CEQ has incorporated the FRA's amendments to NEPA into CEQ's Phase 2 proposed rule, the "Bipartisan Permitting Reform Implementation Rule". The preamble of the proposed rule provides agencies with direction they can use now to implement the FRA amendments into their NEPA reviews. CEQ will also evaluate whether issuing formal guidance or a memorandum would assist Federal agencies in implementing the FRA.

- c. How do you plan to work with the agencies to ensure that they abide by the page limits and timelines for NEPA documents established in the FRA?

CEQ Response: Agencies have experience complying with page limits and timelines in the NEPA process under the existing government-wide NEPA regulations. CEQ's Phase 2 proposed rule, the "Bipartisan Permitting Reform Implementation Rule," incorporates the FRA's new page limits and timelines into the regulations. In order to assist Federal agencies with implementation, CEQ is identifying opportunities for NEPA trainings and developing training materials.

2. How is CEQ working with the Permitting Council to speed-up the approval process for much needed infrastructure projects?

CEQ Response: As a member of the Federal Permitting Improvement Steering Council (the Permitting Council), CEQ is working to identify procedures to make the environmental review and permitting process more efficient and effective for much-needed infrastructure projects across the United States. CEQ meets regularly with the Permitting Council's Office of the Executive Director to support its efforts to speed up the approval process for projects covered by Title 41 of the Fixing America's Surface Transportation Act (FAST-41).

In addition, CEQ, the Office of Management and Budget, and the Permitting Council are leading the implementation of the Biden-Harris Permitting Action Plan, which directs agencies to conduct efficient and effective environmental reviews and permitting processes for infrastructure projects by:

- Accelerating smart permitting through early cross-agency collaboration;
- Establishing clear timeline goals and tracking key project information;

- Engaging in early and meaningful outreach and communications with Tribal Nations, states, territories, and local communities;
- Improving responsiveness, technical assistance, and support; and
- Adequately resourcing agencies and using the environmental review process to improve environmental and community outcomes.

3. What is your timeline for a Phase 2 rulemaking for NEPA?

CEQ Response: CEQ published a Notice of Proposed Rulemaking for the Phase 2 proposed rule in the July 31, 2023, edition of the *Federal Register*. CEQ invites the public to provide input on the proposed rulemaking through September 29, 2023. CEQ held/will hold virtual public meetings on the proposal on Saturday, August 26; Wednesday, August 30; Monday, September 11; and Thursday, September 21. Information about joining these public meetings is available at www.nepa.gov

4. The NEPA language in the FRA allows agencies to adopt other agencies categorical exclusions.
- a. What is CEQ doing to facilitate the sharing of CEs between agencies?
 - b. Have you put any guidance or anything else out yet encouraging agencies to identify CEs from other agencies that would be helpful to them?

CEQ Response: CEQ incorporated the FRA's categorical exclusion (CE) adoption amendment (section 109 of NEPA) into its Phase 2 proposed rule process and is providing technical assistance to agencies with ongoing NEPA reviews. CEQ is convening agencies to implement the new process, which allows agencies to use other agencies' categorical exclusions. Through this interagency collaboration, CEQ is developing strategies to help agencies successfully implement the CE adoption provision in a manner consistent with Congressional intent. With CEQ's leadership, Federal agencies are identifying CEs that are promising candidates for agency adoption and consulting with the relevant agencies to gather information to assess whether adopting those CEs would be appropriate.

5. From 2017 to 2020, CEQ undertook a comprehensive process to support and the build the record for its 2020 NEPA rulemaking. In 2017 and 2018, CEQ issued reports on the timelines and page counts of Environmental Impact Statements. In June 2018, CEQ issued an Advance Notice of Proposed Rulemaking that requested comment on potential revisions to update and clarify the NEPA regulations and included a list of questions on specific aspects of the regulations. In response, it received over 12,500 comments from a wide range of stakeholders. In January 2020, CEQ issued the proposed rule, held two public hearings, and conducted additional outreach.
- a. What steps has CEQ taken to support its Phase 2 rulemaking?

CEQ Response: Consistent with the direction in Executive Order (E.O.) 13990 of January 20, 2021 (*Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis*), CEQ engaged in extensive outreach with a wide variety of interested and experienced parties to solicit their feedback and recommendations on what new elements CEQ should consider adding; what elements from the 1978 regulations CEQ should consider restoring; what existing elements of the NEPA regulations CEQ should consider clarifying, revising, or removing; and what existing elements CEQ should retain in their current form. CEQ convened a Federal interagency working group made up of NEPA practitioners, attorneys, and other experts to hear and discuss their recommendations on a wide variety of issues in the NEPA regulations and on the environmental review process generally. The Federal agency participants represented the broad array of types of NEPA practice and environmental expertise across the Federal Government, and included experts in land management, infrastructure, resource conservation, climate, and environmental justice.

- b. In particular, can you provide the Committee with the list of stakeholders that CEQ has met with on the Phase 2 rulemaking?

CEQ Response: CEQ also hosted or participated in over 60 meetings with external parties, such as business and industry organizations (including timber, energy, air, grazing, mining, and transportation organizations), environmental organizations, Tribal Nations, State governments, environmental justice organizations, academics, and labor organizations. Additionally, CEQ held a Tribal consultation specifically on the Phase 2 regulations and the updates to CEQ's greenhouse gas (GHG) guidance on November 12, 2021. CEQ considered the feedback we received during these engagements in the development of this proposed rule, and we have included summaries of the external engagements in the docket, available at www.regulations.gov/docket/CEQ-2023-0003.

As part of the regulatory review process for the Phase 2 rule under E.O. 12866 of September 30, 1993 (*Regulatory Planning and Review*), CEQ also attended 11 meetings with stakeholders who requested meetings through the Office of Information and Regulatory Affairs (OIRA). A full list of those meetings and participants is available from OIRA at <https://www.reginfo.gov/public/do/eom12866SearchResults?pubId=202210&rin=0331-AA07&viewRule=true>.

- c. Will you commit to updating the environmental impact statement timeline and page count reports?

CEQ Response: CEQ regularly reviews the available data on environmental impact statements, including timeline data, to identify opportunities to make

the environmental review process more efficient. The Biden-Harris Permitting Action Plan also establishes clear goals for review timelines.

This Administration is committed to creating permitting schedules with clear timeline goals, tracking key information on the Federal Permitting Dashboard when appropriate, and identifying lead and cooperating roles for Federal agencies in the permitting process.

6. When do you plan on amending CEQ's interim NEPA Guidance on Consideration of Greenhouse Gas Emissions and Climate Change to align it with the NEPA amendments made in the FRA?

CEQ Response: CEQ is reviewing the public comments on the interim guidance and will also consider public input on the proposed Phase 2 rule as well as the FRA's amendments to NEPA in finalizing the guidance. CEQ's Regulatory Agenda notes that CEQ plans to issue final guidance in early 2024.

7. According to the National Association of Environmental Professionals, the number of final environmental impact statements, or EISs, issued in 2021 was the lowest for the period of 1997 to 2021. Only 80 final or final supplemental EISs were issued. On average, 196 EISs were issued annually between 1997 and 2021. That represents a decline of 245%.

- a. How do you account for this decline?

CEQ Response: CEQ is aware of the decline in final EISs and recognizes that this is part of a long-term trend. The National Association of Environmental Professionals' data shows that the number of final EISs has been declining for over a decade. There are likely many causes for this decline, but CEQ believes that one principal cause is that, in recent years, agencies have relied more heavily on categorical exclusions and environmental assessments to analyze actions, in lieu of EISs. The U.S. Forest Service is one example of an agency that now relies more heavily on categorical exclusions than it did in the past.

- b. Can you provide the Committee with updated figures for 2022, along with a commitment to work, government-wide, to increase this figure back to pre-2021 numbers this calendar year?

CEQ Response: The 2022 National Association of Environmental Professionals annual report showed that agencies issued 87 final EISs. CEQ works with agencies to ensure full compliance with NEPA, but individual agencies make the determination as to the appropriate level of NEPA review. The Biden-Harris Permitting Action Plan directs agencies to establish clear timeline goals and to track key project information. CEQ will work with Federal agencies to implement the Biden-Harris Permitting Action Plan's direction consistent with the provisions of the FRA.

8. What was CEQ’s role in the recent proposed rule from BLM that attempts to rewrite the Federal Land Policy and Management Act and change BLM’s multiple-use mandate?

- a. How did CEQ direct BLM to prioritize stakeholder engagement and input from folks on-the-ground in affected states?

CEQ Response: CEQ supports the BLM in its effort to develop the proposed public lands rule, which clarifies that conservation is a multiple use under the BLM’s statutory mandate and proposes to establish a conservation leasing program to provide certainty to developers carrying out mitigation and restoration opportunities on public lands. The BLM published the proposed rule in the Federal Register on April 3, 2023, and invited public comment through June 20, 2023. The public comment period is a critical opportunity for the BLM to engage with stakeholders and the public; in that spirit, on June 20, 2023, the BLM extended the public comment period through July 5, 2023.¹

CEQ understands that the BLM is considering the substantive, actionable feedback it received from stakeholders during the open comment period in developing a final rule.

- b. How is CEQ balancing effective stakeholder engagement with the need for timely reviews?

CEQ Response: CEQ appreciates BLM’s efforts to develop an effective and timely final rule. As discussed above, BLM extended the public comment period to ensure effective stakeholder and public engagement.

9. Under your leadership, how much money has CEQ issued in grants?

- a. How are you determining what projects to focus on?

CEQ Response: The Council on Environmental Quality does not issue grants.

10. How many full-time staffers does CEQ currently have? And how many detailees?

CEQ Response: Currently, the Council on Environmental Quality has 40 full-time employees and 42 detailees.

11. CEQ is charged with leading the Federal Clean Electricity and Vehicle Procurement Strategy and CEQ has an important role developing and implementing President Biden’s push to build out the electric vehicle infrastructure across America. In February, the Biden Administration issued a rule that companies seeking EV charging grants “must” have a Combined Charging System rather than the North American Charging standard. This is despite the fact that the North American Charging Standard – which is generally

¹ Conservation and Landscape Health: Extension of Comment Period, 88 FR 39818 (June 20, 2023).

viewed by industry experts as technologically superior in charging speed, ergonomics, and reliability – is used by Tesla and, starting in 2025, Ford and General Motors. Tesla accounted for 60% of electronic vehicle sales in the U.S. in the first quarter of this year and, together with Ford, and General Motors, the three companies accounted for 75% of all EV sales in the U.S. in the first quarter of this year.

- a. Can you explain why the Biden Administration put its thumb on the scale and required companies seeking access to \$7.5 billion in federal infrastructure funding for EV charging stations to use the Combined Charging System standard instead of the North American Charging standard?
- b. Why do you think the federal government should play a role picking winners and losers and, even then, why should the federal government choose the inferior technology used by the small fraction of the EV industry?

CEQ Response: On February 28, 2023, the Federal Highway Administration (FHWA) released its final rule titled *National Electric Vehicle Infrastructure Standards and Requirements*, which establishes regulations that set minimum standards and requirements for projects funded under the NEVI Formula Program² and projects for the construction of publicly accessible EV chargers funded under Title 23, United States Code (U.S.C.).³ The Bipartisan Infrastructure Law directs FHWA to create minimum standards and requirements for NEVI-funded projects.⁴ As outlined in statute, the purpose of the NEVI Formula Program is to “provide funding to States to strategically deploy EV charging infrastructure and to establish an interconnected network to facilitate data collection, access, and reliability.” The Program’s objective is to create a convenient, affordable, reliable, and equitable network of chargers throughout the country. The rule sets forth standards that promote reliability when travelling in an EV across and throughout the United States, regardless of which State one charges in, and support the development and training of a national workforce for charging station installation and maintenance.

At the time of issuance of this rule there were no other existing national standards for EV charging stations, although there were some State standards that existed. During the public comment process, commenters overwhelmingly supported the CCS connector standard and verified that the industry is moving to adopt CCS as a market standard; therefore, FHWA required CCS Type 1 connectors for each DCFC port through the final rule.

² The purpose of the NEVI Formula Program is to “provide funding to States to strategically deploy electric vehicle charging infrastructure and to establish an interconnected network to facilitate data collection, access, and reliability.” Infrastructure Investment and Jobs Act (also known as the Bipartisan Infrastructure Law, or BIL), Div. J, Tit. VIII, Pub. L. 117-58 (Nov. 15, 2021).

³ National Electric Vehicle Infrastructure Standards and Requirements, 88 FR 12724 (February 28, 2023).

⁴ BIL, Div. J, Tit. VIII.

Recognizing the need for flexibility to accommodate the evolving technological needs of charging in the future, and reflecting the recent Tesla announcement that its “North American Charging Standard” (NACS), which was previously proprietary, would be available for broad and open public use, including to network operators and vehicle manufacturers, FHWA modified the language of the final rule to allow DCFC charging ports to have other non-proprietary connectors (specifically identifying NACS and CHAdeMO) in addition to the required four CCS connectors so long as each DCFC charging port is capable of charging a CCS-compliant vehicle. The language was also modified to clarify that each charging port must still be accessible through a CCS connector. This avoids the possibility of having an entire charging port that a consumer cannot use if there are only non-CCS connectors attached to it.

12. Please send us a list of any nonprofits, nongovernmental agencies, and any individuals affiliated with any nonprofits or nongovernmental agencies that you have consulted with on CEQ’s work during your time as CEQ Chair. For any entities or individuals listed, please describe the nature of the coordination and communications.

CEQ Response: My staff and I meet and engage with all types of organizations across the United States, including nonprofits; nongovernmental agencies; State, Tribal, and local governments; and private sector organizations. This engagement means that CEQ is listening to the voices, perspectives, and lived experiences of communities across the country, so that we can ensure that the Biden-Harris administration is focusing on policies that help Americans live in healthy and thriving communities.

13. Earlier this month, CEQ announced the creation of an “Ocean Justice Strategy” that will be developed by the Ocean Policy Committee. The first tasks for the Ocean Policy Committee include defining “Ocean Justice” and answering the question “*what is Ocean Justice?*” and, simultaneously, receiving input on “barriers to ocean justice.”
- a. How is the Biden Administration simultaneously asking for comments on “barriers to ocean justice” without first defining what the term “ocean justice” means?
 - b. Wouldn’t it be common sense to define “ocean justice” first before asking what barriers there are to “realizing” it?

CEQ Response: While some non-governmental organizations have defined “ocean justice,” the Federal Government has yet to do so. The Ocean Justice Strategy will assess how the Federal Government should define ocean justice. It will also aim to identify barriers to fully integrating environmental justice principles into ocean-related activities of the Federal government and opportunities to overcome those barriers. Communities with environmental justice concerns face entrenched disparities that are often the legacy of racial discrimination and marginalization, redlining, exclusionary zoning, and other discriminatory decisions or patterns. Examples of such decisions and patterns include the inequitable placement of

polluting infrastructure, such as ports and landfills, and inadequate responses to natural hazards, such as storms and typhoons.

The Ocean Justice Strategy will take into account all relevant Biden-Harris Administration actions and reports, including: E.O. 13985 of January 20, 2021 (*Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*), E.O. 14008 of January 27, 2021 (*Tackling the Climate Crisis at Home and Abroad*), E.O. 14091 of February 16, 2023 (*Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*), E.O. 14096 of April 21, 2023 (*Revitalizing Our Nation's Commitment to Environmental Justice for All*), the Ocean Climate Action Plan, the National Nature Assessment, Opportunities to Accelerate Nature-Based Solutions, and Guidance for Federal Departments and Agencies on Indigenous Knowledge.

14. How will the Ocean Justice Strategy ensure that economic development and job creation in coastal communities are not hindered by burdensome regulations or restrictions imposed by the Federal Government?

CEQ Response:

The Ocean Justice Strategy will describe the vision, goals, and high-level objectives for coordinating and guiding ocean justice activities across the Federal Government. It may also serve as a reference for Tribal, Territorial, State, and local governments, regional management bodies, and non-governmental groups. The Ocean Justice Strategy will propose equitable and just practices to advance safety, health, and prosperity for communities residing near the ocean, the coasts, and the Great Lakes and for the whole country, now and for future generations. It builds on current Biden-Harris Administration activities and commitments aimed to advance environmental justice.

The Administration reaffirms the importance of minimizing the impacts of ocean climate action to communities that already face disproportionate burdens. The Ocean Justice Strategy will identify barriers to fully integrating environmental justice principles into ocean-related activities of the Federal Government and opportunities to overcome those barriers.

15. What safeguards will be put in place to prevent the Ocean Justice Strategy from impeding the exploration and responsible extraction of natural resources from the ocean and coasts which are essential for maintaining energy independence and supporting critical industries, including tourism through beach restoration?

CEQ Response: The Ocean Policy Committee (OPC), a Congressionally mandated, Cabinet-level interagency committee charged with coordinating Federal ocean

policy, called for the creation of the Ocean Justice Strategy in the Administration's Ocean Climate Action Plan (OCAP).⁵

OCAP's purpose is to advance climate solutions, promote environmental justice, create well-paying jobs, and ensure sustainable coastal communities and a healthy ocean economy. Likewise, one of the key goals of the Ocean Justice Strategy is to "describe how ocean justice should apply to access to and management of the ocean, coasts, and Great Lakes." The Federal Government is dedicated to ensuring opportunities for all communities to participate in a sustainable blue economy where good jobs, skills training, and economic benefits are shared.

16. What specific measures will be taken to balance need for economic growth and energy security in the coastal regions?

CEQ Response: Our ocean, coasts, and Great Lakes support strong local economies and provide well-paying jobs, healthy food, carbon storage, energy, recreation, culture and heritage, transportation, trade, mobility for our armed forces, natural protection from storm surge and floods, and numerous other benefits. To continue to secure and enhance these benefits, the Administration is committed to advancing the science, knowledge, tools, and activities that support sustainable policies, management, and practices as solutions.

The OPC, which CEQ co-chairs with the Office of Science and Technology Policy (OSTP), will develop a National Strategy for a Sustainable Ocean Economy (National Strategy) in consultation with federally recognized Tribes and input from governments, civil society, the private sector, and the public.

The National Strategy will:

- 1. Describe a vision and goals for sustainable management of the U.S. ocean, the coasts, and the Great Lakes;**
 - 2. Characterize and assess needs and opportunities to achieve the vision and goals;**
 - 3. Identify existing and new high-level actions by which Federal, Tribal, state, territorial, regional, and local governments can advance sustainable management; and**
 - 4. Describe how those actions will be implemented to engage with and build on the work of civil society, the private sector, and the public.**
17. Considering that the Ocean Justice Strategy purportedly aims to advance equity and justice for communities near the ocean, how will it ensure that the burden of funding and

⁵ Ocean Policy Committee, Ocean Climate Action Plan (March 2023), https://www.whitehouse.gov/wp-content/uploads/2023/03/Ocean-Climate-Action-Plan_Final.pdf; see also National Oceanic and Atmospheric Administration, Ocean Policy Committee (August 2023), <https://www.noaa.gov/interagency-ocean-policy-committee-0>.

implementing the strategy is not disproportionately placed on taxpayers, particularly those who do not directly benefit from these initiatives?

CEQ Response: Recognizing that effective action will require broad national participation, the OPC will develop the Ocean Justice Strategy with input from across the Federal Government, Tribal Nations, other Indigenous Peoples, stakeholders, and the public. The Ocean Justice Strategy will serve as a guide for Federal agencies as they look to meet the Administration's climate, justice, and ocean goals.

18. How will CEQ ensure that U.S. territories in the Pacific, like Guam, have a prominent role in developing the Biden Administration's ocean strategy?

CEQ Response: CEQ and OSTP have issued two Federal Register notices that request input on ocean-related matters, one on the Ocean Justice Strategy⁶ and the other on the National Strategy for a Sustainable Ocean Economy.⁷ CEQ and OSTP are working closely with the Department of the Interior (DOI) on targeted outreach to the Pacific territories on both of these matters. CEQ, OSTP, and DOI held a Virtual Territorial Roundtable for the Ocean Justice Strategy and the National Strategy for a Sustainable Ocean Economy on August 21, 2023. CEQ will continue to engage with U.S. territories as it develops the Federal Government's ocean strategy.

19. Please confirm in writing all WHEJAC meetings, including private sessions. Provide minutes for meetings, including information for all attendees, location of meetings, dates, and topics discussed.
- a. It is the Committee's understanding that an open solicitation for WHEJAC council members, including those from industry, occurred. Please provide documentation that includes the process by which council members were selected, notified, and any remaining open positions on the council.
 - b. Please provide documentation explaining the bylaws of the WHEJAC, if any.
 - c. Please provide documentation explaining the process by which agendas for upcoming WHEJAC meetings are developed.

CEQ Response: The White House Environmental Justice Advisory Council (WHEJAC) was established by E.O. 14008. In E.O. 14008, the President charged the WHEJAC with providing independent advice and recommendations to the Chair of CEQ and the White House Environmental Justice Interagency Council (IAC) on how to increase the Federal Government's efforts to address current and

⁶ Ocean Justice Strategy, 88 FR 37518 (June 8, 2023).

⁷ Request for Information; National Strategy for a Sustainable Ocean Economy, 88 FR 42111 (June 29, 2023).

historic environmental injustice. The WHEJAC's work implicates a broad range of strategic, scientific, technological, regulatory, community engagement, and economic issues related to environmental justice.

The President appoints the members of the WHEJAC. The Council currently has 24 members who represent a wide range of backgrounds and have expertise or experience in environmental justice, climate change, disaster preparedness, and racial inequity, among other areas. In December 2022, CEQ invited the public to submit expressions of interest in serving as members of the WHEJAC.⁸ To be considered for membership on the WHEJAC, interested individuals were required to complete the expression of interest questionnaire and submit a resume. Completed expressions of interest will inform CEQ's recommendation of potential new members to the President, who appoints all members of the WHEJAC and retains discretion over membership.

The WHEJAC is a Federal advisory committee that operates under the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. § 1001 *et seq.* The U.S. Environmental Protection Agency (EPA) is responsible for its financial and administrative support. As required by FACA, EPA publishes information about all WHEJAC public meetings in the *Federal Register*; information about previous public meetings can be found at <https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council>. Since the WHEJAC's establishment, it has convened 12 public meetings, each of which it has conducted in a virtual or hybrid fashion to enhance public engagement. In 2021, the WHEJAC held public meetings in March, April, May, and November. In 2022, the WHEJAC held public meetings in January, February, March, May, August, and November/December. In 2023, to date, the WHEJAC has held public meetings in March and June.

The WHEJAC's charter is available at [https://www.epa.gov/system/files/documents/2023-03/2023 White House Environmental Justice Advisory Council Charter.pdf](https://www.epa.gov/system/files/documents/2023-03/2023%20White%20House%20Environmental%20Justice%20Advisory%20Council%20Charter.pdf).

⁸ See Expression of Interest Questionnaire (December 2022), <https://www.epa.gov/system/files/documents/2022-12/Expression%20of%20Interest%20in%20WHEJAC%20Membership%20FormF.pdf>.

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Oversight hearing titled *"Examining the Council On Environmental Quality Fiscal Year 2024 Budget Request and Related Policy Matters"*

Questions from Rep. Raúl Grijalva for Chair Brenda Mallory, Council on Environmental Quality.

1. The biomass wood pellet industry has ambitious plans to expand throughout the American South. As you may know, a number of civil rights, anti-poverty, conservation, and faith-based organizations are concerned about the Environmental Justice implications of this industry's growth. How is CEQ ensuring that these Environmental Justice issues are addressed across Federal agencies such as EPA, USDA, and DOJ?

CEQ Response: During his first week in office, President Biden launched the most ambitious environmental justice agenda in our nation's history. To continue delivering on this historic commitment, President Biden signed E.O. 14096 of April 21, 2023 (*Revitalizing Our Nation's Commitment to Environmental Justice for All*). The Executive Order deepens the Biden-Harris Administration's whole-of-government commitment to environmental justice and makes clear that the pursuit of environmental justice is a duty of all Federal agencies.

In line with the President's vision, CEQ works with Federal agencies to advance policies, programs, and decisions to improve, preserve, and protect our nation's public health and the environment in a way that can make a positive difference in people's lives. CEQ also receives advice and recommendations from the White House Environmental Justice Advisory Council (WHEJAC) on a range of relevant topics to increase the Federal Government's efforts to address environmental injustice, and works jointly with EPA to respond to recommendations from the WHEJAC. Reports to Congress on our work to address recommendations from the WHEJAC on various topics, including environmental justice, are available at <https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council>. In all of our work, CEQ and our partner agencies seek to consistently and meaningfully engage with the public, including communities with concerns about the biomass wood pellet industry, to ensure their voices and lived experiences are reflected in Federal policies. As the chair of the White House Environmental Justice Interagency Council (IAC), CEQ is coordinating interagency collaboration to advance and implement environmental justice policies, programs, and activities across the Federal Government. Embedding environmental justice

into the work of Federal agencies enables them to achieve real, measurable progress that communities can count on.

2. How is CEQ working with Federal agencies to address the Environmental Justice impacts of industrial wood pellet facilities, which are frequently located in low-income, majority Black communities with populations at high risk of health problems such as asthma?

CEQ Response: President Biden believes that every person should have access to clean air, clean water, and live in a healthy community—now and into the future. For far too long, communities across our country have faced persistent environmental injustices, and these harms have fallen disproportionately on communities of color, Tribal communities, and low-income communities.

Under the President’s leadership, our Administration is working to better protect overburdened communities from environmental harms. The President has directed all agencies to consider measures to address and prevent disproportionate and adverse environmental and health impacts on communities, including the cumulative impacts of pollution and other burdens. At CEQ, we are working with Federal agencies to advance regulations, policies, and plans to recognize, undo, and mitigate harm to communities. Across the Administration, agencies are confronting longstanding environmental injustices and inequities to ensure that everyone lives in a safe and healthy environment.

CEQ greatly values the opportunity to hear concerns on environmental justice issues, such as those related to the industrial wood pellet industry, from Congressional leaders, the WHEJAC, members of the public, community members, and other stakeholders, so that agencies with relevant authorities and responsibilities can take appropriate action.

3. One of the changes made in the Fiscal Responsibility Act relate to project sponsors preparing their own environmental reviews. How will CEQ guide and/or oversee federal agency approval and oversight of the environmental review preparation by project sponsors?

CEQ Response: The Fiscal Responsibility Act (FRA) adds section 107 to NEPA, which, among other things, requires agencies to prescribe procedures to allow a project sponsor to prepare an EIS or EA under the agency’s supervision, in which case the lead agency must independently evaluate the environmental document and take responsibility for the contents. The FRA also amends NEPA section 102 to direct all agencies to “ensure the professional integrity, including scientific integrity, of the discussion and analysis in an environmental document” and to “make use of reliable data and resources in carrying out this Act.”

As these amendments to NEPA make clear, the lead agency remains responsible for the integrity and reliability of the environmental analysis regardless of whether the analysis is prepared by an applicant or by the agency itself.

CEQ supports Federal agencies in their implementation of NEPA by establishing government-wide regulations that implement the procedural provisions of NEPA; reviewing agencies' NEPA procedures that supplement these regulations; developing and issuing guidance interpreting the statute and regulations; overseeing initiatives that seek efficiencies and consistency across the Federal government; and providing technical assistance on a case-by-case basis. CEQ will work with Federal agencies on the implementation of the FRA using all of these efforts.

4. Does CEQ have an accounting or current estimate of the amount of covered Justice40 investments⁹ made to date and how these investments are being tracked?

CEQ Response: For the first time in our nation's history, the Federal Government has made it a goal that 40 percent of the overall benefits of certain Federal investments reach disadvantaged communities that are marginalized and overburdened by pollution and underinvestment. To meet the goal of the Justice40 Initiative, the Administration is transforming hundreds of Federal programs across the government to ensure that disadvantaged communities receive the benefits of new and existing Federal investments, consistent with applicable law. This work will help confront decades of underinvestment in disadvantaged communities, and bring critical resources to communities that have been overburdened by legacy pollution and environmental hazards. Under the Justice40 Initiative, benefits include both direct and indirect investments that positively impact disadvantaged communities, and through the Justice40 Initiative, communities are already seeing the benefits of the President's historic investments in America—from clean energy projects to floodwater protections—reaching communities that need them most.

Transparency and accountability are core principles of the President's commitment to environmental justice, including the Justice40 Initiative. That is why the President created the Environmental Justice Scorecard, the first government-wide assessment of what the Federal Government is doing to advance environmental justice. In April 2023, CEQ, in partnership with the Office of Management and Budget and the U.S. Digital Service, released Phase One of the Environmental Justice Scorecard. The first version of the Environmental Justice Scorecard establishes a baseline for tracking the Federal Government's efforts to secure environmental justice, including to advance the Justice40 Initiative. The Phase One Scorecard includes examples of how Federal agencies with Justice40 covered programs are transforming their programs to advance the goals of the Justice40

⁹ Covered Federal investments include any grant or procurement spending, financing, staffing costs, or direct spending or benefits to individuals for a covered program in a Justice40 category. The White House, Justice40, <https://www.whitehouse.gov/environmentaljustice/justice40/>.

Initiative and prioritize disadvantaged communities. For each agency with Justice40 covered programs, the Phase One Scorecard indicates the number of Justice40 covered programs; the number of funding announcements the agency made for Justice40 covered programs in Fiscal Year 2022; and examples of funding that the agency made available in Fiscal Year 2022 through Justice40 covered programs.

Future versions of the Environmental Justice Scorecard will build on this baseline assessment, measure the progress of Federal agencies over time, and include additional information on how this work benefits disadvantaged communities.

More information about the Justice40 Initiative, including the list of Justice40 covered programs, is available at <https://www.whitehouse.gov/environmentaljustice/justice40/>.

5. Will there be a tool to centralize information on Justice40 covered programs and funding opportunities to make it easier for communities with environmental justice concerns to access Justice40 investments?

CEQ Response: CEQ is committed to ongoing and transparent engagement and communication with stakeholders on the Justice40 Initiative. In May 2022, the White House launched a new website, www.whitehouse.gov/environmentaljustice/, to provide a public platform and a centralized location for the Biden-Harris Administration’s environmental justice priorities, including the Justice40 Initiative. The White House regularly updates this website, including by keeping an up-to-date list of Justice40 covered programs. The White House will continue to update this website to ensure information on the Justice40 Initiative is available to the public, including interested communities.

This website also includes information on the Climate and Economic Justice Screening Tool (CEJST),¹⁰ which helps agencies identify disadvantaged communities for the purposes of the Justice40 Initiative, and the Environmental Justice Scorecard,¹¹ which (as described above) includes information on actions taken by agencies to advance the Justice40 Initiative, along with other environmental justice goals.

Complementing this work, E.O. 14096 calls for EPA, in coordination with the White House Environmental Justice Interagency Council (IAC), to establish a public, internet-based, whole-of-government clearinghouse composed of culturally and linguistically appropriate and accessible materials related to environmental justice. The clearinghouse will include information on the activities of the members of the IAC to address issues relating to environmental justice; information on technical

¹⁰ Available at <https://screeningtool.geoplatform.gov/>.

¹¹ Available at <https://ejscorecard.geoplatform.gov/scorecard/>.

assistance, tools, and resources to assist communities with environmental justice concerns in building capacity for public participation; and copies of training materials developed by the IAC or its members to help individuals and employees understand and carry out environmental justice activities.

6. With respect to the definition of “disadvantaged community” under the Justice40 Initiative, how are recommended changes relating to the U.S. Territories and Tribal sovereignty considerations being addressed?

CEQ Response: In November 2022, CEQ launched version 1.0 of the CEJST, a geospatial mapping tool designed to identify geographically defined disadvantaged communities for any covered programs under the Justice40 Initiative and for programs where a statute directs resources to disadvantaged communities, to the maximum extent possible and permitted by law. To develop version 1.0 of the tool, CEQ engaged in meaningful and robust consultations with Tribal Nations. As a result of those consultations, and to respect Tribal sovereignty and self-governance and to fulfill Federal trust and treaty responsibilities to Tribal Nations, land within the boundaries of Federally Recognized Tribes is designated as disadvantaged on the map. For the purposes of the Justice40 Initiative, Federally Recognized Tribes and Tribal entities, including Alaska Native Villages, are considered disadvantaged or Justice40 communities, whether or not they have land. This is consistent with CEQ’s Action Plan for Consultation and Coordination with Tribal Nations, President Biden’s Memorandum of January 26, 2021 (*Tribal Consultation and Strengthening Nation-to-Nation Consultation*), and E.O. 13175 of November 6, 2000 (*Consultation and Coordination With Indian Tribal Governments*).

The CEJST features a user-friendly, searchable map that identifies disadvantaged communities across all 50 states, the District of Columbia, and the U.S. territories, to the extent data is available for the U.S. territories.

For example, the data used for Puerto Rico are from all relevant and available fields in the energy, housing, legacy pollution, transportation, and workforce development categories. The following data are used: projected flood risk, energy cost, lack of plumbing, lead paint, housing cost, proximity to hazardous waste facilities, proximity to Superfund or National Priorities List (NPL) sites, proximity to Risk Management Plan (RMP) facilities, diesel particulate matter exposure, traffic proximity and volume, underground storage tanks and releases, wastewater discharge, poverty, unemployment, and high school education. Linguistic isolation was removed for Puerto Rico based on feedback received on the beta version of CEJST. For American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands, the tool uses the following data: unemployment, poverty, low median income, and high school education. These burdens are in the workforce development category. Additional information is available in the Technical Support Document at <https://static-data-screeningtool.geoplatform.gov/data-versions/1.0/data/score/downloadable/1.0-cejst-technical-support-document.pdf>.

Moving forward, the CEJST will be continuously updated and refined based on feedback and as relevant new datasets and research become available, including for the U.S. territories.

7. Recently, USDA revised the scoring criteria for the Rural Energy for America Program, which provides grants and loans for clean energy and energy efficiency projects on farms and ranches to prioritize projects in disadvantaged or distressed communities as part of the Justice40 Initiative. However, some of these projects – like wood biomass and factory farm gas – are harmful to neighboring communities and will actually exacerbate environmental injustice. How will CEQ work to ensure that the Justice40 Initiative does not incentivize and support projects that exacerbate environmental injustice in disadvantaged or distressed communities?

CEQ Response: The Biden-Harris Administration’s commitment to secure environmental justice and confront decades of underinvestment is grounded in direct engagement with communities. This engagement informed the Justice40 Initiative, which seeks to address the intersection of underinvestment, environmental injustice, and the climate crisis.

Community engagement is a critical component of the Justice40 Initiative. M-21-28, Interim Implementation Guidance for the Justice40 Initiative, directs agencies with Justice40 covered programs to conduct meaningful engagement with stakeholders to ensure community members have an opportunity to provide input on program decisions, including in the identification of the benefits of Justice40 covered programs.

Through the Justice40 Initiative, the Administration has mobilized agencies across the Federal Government to transform their programs to ensure that disadvantaged communities are receiving the benefits of new and existing investments. To ensure that the Justice40 Initiative delivers tangible, positive benefits to disadvantaged communities, CEQ is working directly with federal agencies by providing technical assistance, support, and information as they work to meet the goals of the Justice40 Initiative.

Additionally, to increase awareness and understanding of the Justice40 Initiative, CEQ has convened briefings, which were attended by communities across the country, and in the fall of 2022, CEQ created the Justice40-in-Action webinar series. Justice40-In-Action webinars have highlighted federal agencies and external partners that are working to advance the Justice40 Initiative and deliver program benefits to disadvantaged communities.

By making long overdue investments, ensuring those investments reach the communities that need them most, and taking action to alleviate environmental

burdens, the Administration is delivering and will continue to deliver on President Biden’s promise of a healthy and safe environment for all.

8. I applaud the administration’s commitment to achieving net-zero emissions procurement by 2050 as outlined in the Federal Sustainability Plan.¹² What is your timeline for establishing an estimate of baseline emissions from federal procurement and what progress has been made toward establishing 2030 interim targets for procurement emissions reductions?

CEQ Response: E.O. 14057 of December 8, 2021 (*Catalyzing American Clean Energy Industries and Jobs Through Federal Sustainability*) and the accompanying Federal Sustainability Plan outline an ambitious path to achieve net-zero emissions from Federal procurement by 2050 while increasing the sustainability of Federal supply chains. Supply chain initiatives under development across the Administration include proposals to require major contractors to disclose their greenhouse gas (GHG) emissions and to set science-based targets for emissions reduction; a “buy clean” initiative for low-carbon materials; and a sustainable products policy.

In November 2022, the agency members of the Federal Acquisition Regulatory Council—DOD, GSA, and NASA—published a notice of proposed rulemaking that, if finalized, would require major Federal contractors to publicly disclose their greenhouse gas emissions and climate-related financial risks as well as set science-based emissions reduction targets.

Under the proposed rule, if finalized “major” Federal contractors receiving more than \$50 million in annual contracts would be required to publicly disclose scope 1,¹³ scope 2, and relevant categories of scope 3 emissions, disclose climate-related financial risks, and set science-based emissions reduction targets. Additionally, “significant” Federal contractors with more than \$7.5 million but less than \$50 million in annual contracts would be required to report scope 1 and scope 2 emissions. Federal contractors with less than \$7.5 million in annual contracts would be exempt from the rule. Today, more than half of major Federal contractors are already voluntarily disclosing climate related information and many have already set science-based targets.

¹² <https://www.sustainability.gov/federalsustainabilityplan/procurement.html>

¹³ “Scope 1” emissions are direct greenhouse gas emissions from sources that are owned or controlled by the reporting entity; “scope 2” emissions are indirect greenhouse gas emissions associated with the generation of electricity, heating and cooling, or steam, when these are purchased or acquired for the reporting entity’s own consumption but occur at sources owned or controlled by another entity; and “scope 3” emissions are greenhouse gas emissions, other than those that are scope 2 emissions, that are a consequence of the operations of the reporting entity but occur at sources other than those owned or controlled by the entity.

Separately, section 202 of E.O. 14057 requires that each agency reduce its scope 1, 2, and 3 greenhouse gas emissions, as defined by the Federal Greenhouse Gas Accounting and Reporting Guidance, by setting and meeting targets for fiscal year 2030 measured from a fiscal year 2008 baseline.

Consistent with section 302 of the same Executive Order and accompanying implementation instructions, the General Services Administration (GSA), in coordination with CEQ and the Office of Management and Budget (OMB), must assess systems and methodologies to track and report government-wide and agency-specific scope 3 emissions, considering all 15 categories of scope 3 emissions; the scale of each category relative to the Federal Government's total emissions; the availability of data; and the potential to use data to inform emissions reduction strategies. Based on the results of the assessment and in coordination with CEQ and OMB, GSA will develop systems to facilitate annual reporting of scope 3 emissions at the Federal and agency level.

In coordination with CEQ and OMB, GSA also must develop tools to establish appropriate baselines and assist agencies in setting scope 3 targets. When directed, each agency will develop and submit a FY 2030 target, along with annual progress targets, based on CEQ guidance.

Committee on Natural Resources
Oversight Hearing
1324 Longworth House Office Building
June 22, 2023
10:00 AM

Oversight hearing titled *“Examining the Council on Environmental Quality Fiscal Year 2024 Budget Request and Related Policy Matters”*

Questions from Rep. Mike Collins for Chair Brenda Mallory, Council on Environmental Quality:

Under a recently proposed rule, Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk (the FAR-GHG Rule), which your office was heavily involved in drafting, all major federal contractors would have to disclose their greenhouse gas emissions and set emission reduction targets that must be validated and approved by an international non-governmental organization known as the Science Based Target Initiative or SBTi. In effect, outsourcing government responsibilities to an outside foreign entity. SBTi has received criticism by some who argue there is an inherent conflict of interest in both setting emissions standards while also charging customers a fee to validate their emissions reduction targets.

- a. Are you aware that a report determined that several of SBTi’s emission assessments were “contentious or inaccurate”?
- b. Are you also aware that one of SBTi’s founders, who has since left the organization, has accused SBTi of having several conflicts of interest and of “putting their own interest above the interests of the public”?
- c. Did CEQ vet any of these allegations to determine if SBTi was the best fit for vetting companies’ emission targets?
- d. Why didn’t CEQ select a government agency to set emissions standards and vet companies?
- e. Why did CEQ decide to select SBTi as the sole source provider of emission reduction targets?
- f. Was a competitive process used in selecting SBTi as the sole source provider of emission target validation? What other agencies or non-profits were considered?
- g. If the FAR-GHG Rule is adopted, who will conduct oversight of SBTi to ensure they are producing accurate scientific estimates?

If the FAR-GHG Rule is adopted, who will conduct oversight of SBTi to ensure that they do not allow donations from private actors to influence their decision making?

- h. Since SBTi is not U.S. based, how will you ensure that they are not acting on behalf of a foreign power to negatively affect the U.S.?
- i. Why didn't CEQ select a U.S. based non-profit to vet the emissions standards set by contractors?

CEQ Response: On November 10, 2022, the Biden-Harris Administration took an important step toward addressing greenhouse gas emissions and protect the Federal Government's supply chains from climate-related financial risks: DOD, GSA, and NASA—as the agency members of the Federal Acquisition Regulatory Council (FAR Council)—published a notice of proposed rulemaking that, if finalized, would require major Federal contractors to publicly disclose their greenhouse gas emissions and climate-related financial risks and set science-based emissions reduction targets.

While E.O. 14030 directed the FAR Council to consult with CEQ and other agencies as appropriate in connection with this rulemaking, CEQ is not among the agencies that published the proposed rule or a member of the FAR Council. The Far Council agencies invited the public to provide comments on the proposed rule and are currently reviewing those comments.

**Committee on Natural Resources
Oversight Hearing
1324 Longworth House Office Building
June 22, 2023
10:00 AM**

Oversight hearing titled *"Examining the Council On Environmental Quality Fiscal Year 2024 Budget Request and Related Policy Matters"*

Questions from Rep. Fulcher for Chair Brenda Mallory, Council on Environmental Quality:

1. CEQ has directed stakeholders with an interest in the operations of the federal facilities throughout the Columbia River system to submit comments via the email address salmon@ceq.eop.gov. However, CEQ has not advised Members of Congress or members of the public as to what the purpose or intent of this inbox is.

CEQ Response: Litigation over the impact of the operation of certain Federal dams in the Columbia River System on salmon and other native fish has been ongoing for decades and the courts have consistently ruled that the Federal Government has fallen short of its legal obligations. Currently, several ongoing cases are pending in the U.S. District Court for the District of Oregon and in the U.S. Court of Appeals for the Ninth Circuit.

In the Fall of 2021, the plaintiffs and petitioners in the litigation and the Federal Government agreed to a temporary stay in the litigation to create an opportunity for the Federal Government to develop a long-term plan to restore Columbia River salmon and other native fish. Shortly thereafter, the Council on Environmental Quality (CEQ) convened an interagency group with leaders from: the Department of the Interior, including the Bureau of Indian Affairs, Bureau of Reclamation, and Fish and Wildlife Service; the Department of Commerce, including the National Oceanic and Atmospheric Administration; the Department of the Army, including the Army Corps of Engineers; and the Department of Energy, including the Bonneville Power Administration. This interagency group is intended to build on existing analyses to identify a durable path forward that ensures a clean energy future, supports local and regional economies, and restores ecosystem function, while honoring longstanding commitments to Tribal Nations.

In April 2022, the Federal Government engaged the Federal Mediation and Conciliation Service (FMCS) to mediate and facilitate between the parties in the litigation and the regional sovereigns, including Tribal Nations and states. CEQ and other Federal departments and agencies, including the Department of the Interior, the Department of Energy, Army Civil Works, and the National Oceanic and Atmospheric Administration, have solicited input from the public and stakeholders interested in Columbia River salmon and other native fish and operation of the Columbia River system through multiple channels. In response to feedback received at listening sessions held in January and February 2022 and nation-to-nation consultation with the Tribes of the Columbia River

Basin in March 2022, CEQ opened an email inbox (salmon@ceq.eop.gov) to receive written comments from members of the public, and provided the public with notice of the inbox in a blogpost published at that time.

After hearing requests from stakeholders in the region and Members of Congress for an opportunity for the public to provide written feedback to inform the mediation process, CEQ published a Request for Information in the *Federal Register* on May 4, 2023.¹⁴ Members of the public can submit comments in response to the Request for Information (RFI) through a public docket on *Regulations.gov*,¹⁵ which remained open through August 31, 2023, the date the stay agreement was set to expire.

The RFI replaced the salmon@ceq.eop.gov inbox as the means by which members of the public may submit written comments related to the issues raised in the litigation concerning the Columbia River System and Columbia River salmon.

On August 31, 2023, the stay in litigation was extended by an additional 60 days to allow for additional discussions.

- A. Will the comments submitted through this inbox be made available to relevant Committees in the Senate and House? If so, when? If not, why not?

CEQ Response: Some of the comments submitted to the inbox are publicly available, including to the relevant Committees in the Senate and the House, at <https://www.whitehouse.gov/wp-content/uploads/2023/08/2022-093-Combined-Optimized.pdf>. CEQ originally made these records available in response to a request under the Freedom of Information Act (the FOIA) seeking correspondence in the inbox. Consistent with standard FOIA request processing procedures, CEQ provided the requester with the specific records in the inbox that the requester sought; these records illustrate the range of public comments that CEQ received in the inbox.

In response to requests from stakeholders in the region and Members of Congress for an opportunity for the public to provide written feedback to inform the mediation process, CEQ published a Request for Information (RFI) in the *Federal Register* on May 4, 2023.¹⁶ The RFI clearly advises submitters that their comments will appear publicly in the *Regulations.gov* docket and are readily accessible to all participants in the mediation, other stakeholders in the region, and the general public.

Members of the public have submitted 72,052 comments to the docket when the RFI closed on August 31, 2023. CEQ has encouraged all participants in the mediation to review the

¹⁴ Columbia River Salmon and Other Native Fish Request for Information, 88 FR 28,532 (May 4, 2023).

¹⁵ Regulations.gov, Docket No. CEQ-2023-0002, <https://www.regulations.gov/document/CEQ-2023-0002-0001>.

¹⁶ Columbia River Salmon and Other Native Fish Request for Information, 88 FR 28,532 (May 4, 2023).

comments in the docket closely and to give serious consideration to the public's views, as CEQ is doing.

- B. What is CEQ's process for the review and evaluation of emails in conjunction with the salmon@ceq.eop.gov email account as CEQ complies with any previous or future Freedom of Information Act requests?

CEQ Response: CEQ processes FOIA requests for emails in the inbox using its standard FOIA request processing procedures.

CEQ personnel search for records that respond to the request; obtain copies of responsive records; review the responsive records to determine whether to withhold records (or redact portions of records) pursuant to the statutory exemptions set forth in the FOIA; and produce the records, subject to appropriate withholdings and redactions, to the requester. For example, CEQ generally redacts personal information pursuant to FOIA Exemption 6, which applies to certain information “the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6).

- C. CEQ recently issued a request for information (RFI) to solicit feedback on Columbia River salmon and other native fish restoration and other relevant information to an ongoing mediation (see Docket number CEQ–2023–0002). In the recent RFI, CEQ referenced the inbox as a “means for interested persons to share their thoughts on issues related to the mediation.” What is CEQ’s role in the mediation, and how does it intend to use these comments?

CEQ Response: CEQ convened an interagency group with leaders from the Department of the Interior (including the Bureau of Indian Affairs, the Bureau of Reclamation, and the Fish and Wildlife Service), the National Oceanic and Atmospheric Administration, the Department of the Army (including the Army Corps of Engineers), and the Department of Energy (including the Bonneville Power Administration) to work together on issues related to the Columbia River system and salmon restoration efforts in the Columbia River Basin. In an agreement to stay longstanding litigation concerning operation of the Columbia River system, the Federal Government made a commitment to work with regional stakeholders to develop a long-term, durable solution to restore salmon and other native fish populations in the interior Basin to healthy and abundant levels while honoring the Federal Government’s commitments to Tribal Nations; delivering affordable and reliable clean power; supporting local and regional economies; and meeting the many resilience needs of stakeholders across the region.

To meet this commitment, the interagency group has been working through a mediation process led by the Federal Mediation and Conciliation Service. CEQ is

involved in the mediation and is helping to coordinate Federal agencies' participation. The RFI, discussed above, provided the stakeholders who are not directly involved in the litigation and the mediation an opportunity to provide input on Columbia River Basin restoration in a publicly accessible docket. CEQ has encouraged all of the participants in the mediation to review the comments in the docket closely and to give serious consideration to the public's views, as CEQ is doing.

- D. What is CEQ's process for incorporating replies to this RFI that may be errantly or inadvertently submitted to the salmon@ceq.eop.gov email account?

CEQ Response: When CEQ published the RFI on May 4, 2023, we provided notice that we would close the salmon@ceq.eop.gov email address 30 days after publication of the RFI. The RFI directed interested parties to submit information in response to the RFI in lieu of emailing salmon@ceq.eop.gov. Individuals who wrote to the salmon inbox after May 4 received an automatic response asking them to submit their comments to the RFI's public docket by using the Federal eRulemaking Portal (<https://www.regulations.gov>). As stated in the RFI, CEQ closed the salmon@ceq.eop.gov inbox in June 2023.

2. During this Administration, CEQ made multiple references to a "convening effort" related to the Columbia River System to examine multiple issues, including the federal facilities throughout the system, salmon conservation efforts in the region, and the ongoing litigation. Despite acknowledging that only Congress possesses the authority to authorize the removal of any "federally authorized facility", which you also confirmed with Mr. Bentz of Oregon during the hearing, amidst this convening effort, CEQ indicated a preference for a solution that would result in the removal of four federally authorized facilities along the lower Snake River (i.e., four U.S. Army Corps of Engineer dams).

CEQ Response: In requesting a stay of the district court litigation concerning the Columbia River System, the Administration explained that it "is committed to supporting development of a durable long-term strategy to restore salmon and other native fish populations to healthy and abundant levels, honoring Federal commitments to Tribal Nations, delivering affordable and reliable clean power, and meeting the many resilience needs of stakeholders across the region."¹⁷ To demonstrate the breadth and seriousness of the Administration's commitment to completing and implementing the durable long-term strategy stated above, the Administration offered additional commitments, including "exploring lower Snake River habitat restoration opportunities, including but not limited to migration corridor restoration through breaching the four lower Snake River dams." CEQ continues to support this work to explore lower Snake River habitat restoration

¹⁷ Exhibit 2 to Joint Motion to Extend the Litigation Stay, Nat'l Wildlife Federation v. NMFS, No. 3:01-cv-640-SI (D. Or. Aug. 4, 2022).

opportunities. No decision has been made as to how the lower Snake River is to be restored, and the mediation is ongoing.

- A. How many CEQ staff, including detailees, are working in whole or in part on issues relating to the Columbia River System or salmon conservation efforts? For detailees working on issues relating to the Columbia River System or salmon conservation efforts, what is their home agency or place of employment?

CEQ Response: Currently, three CEQ staff, including one detailee, work – amid other duties and responsibilities they have - on issues related to the Columbia River system, or related salmon conservation efforts. The detailee’s home agency is the National Oceanic and Atmospheric Administration. Other CEQ staff support the work related to the Columbia River System and related salmon conservation as needed.

- B. As part of this convening effort, does CEQ continue to recognize that the Executive Branch of government does not have the authority to direct the removal of a "federally authorized facility"?

CEQ Response: Yes, CEQ recognizes that the Executive Branch does not have the authority to direct the removal of a federally authorized facility.

3. CEQ has been making references to salmon conservation efforts in the Columbia River basin using the terms “healthy and harvestable” and “healthy and abundant” while the various agencies’ directive is to operate federal facilities under authorized uses while managing species for no jeopardy under the Endangered Species Act (ESA).

- A. How is CEQ defining either “healthy and harvestable” or “healthy and abundant?”

CEQ Response: The terms “healthy and harvestable” or “healthy and abundant” derive from the work of the Columbia Basin Partnership Task Force (Partnership), which convened in 2017 to bring together Federal agencies, Tribes, States, and stakeholders representing commercial and recreational fishing interests, ports and navigation interests, hydropower producers and providers, other non-governmental organizations, and the agricultural community. The Partnership has produced two

reports, a Phase 1 report¹⁸ and a Phase 2 report,¹⁹ setting forth a vision for salmon and steelhead and establishing goals to restore thriving salmon and steelhead to the Columbia River Basin. The Phase 2 report, specifically, set the qualitative goal of “[r]estor[ing] salmon and steelhead in the Columbia Basin to healthy and harvestable/fishable levels.”²⁰ The Phase 2 report also set low, medium, and high-range quantitative abundance goals, and established that the high-range goals would represent healthy and harvestable levels.²¹ CEQ and the Federal agencies participating in the Partnership understand the terms in that context.

- B. Is CEQ advising the agencies to manage the species in excess of what is required pursuant to the ESA?

CEQ Response: In requesting a stay of the district court litigation concerning the Columbia River System, the Administration explained that it “is committed to supporting development of a durable long-term strategy to restore salmon and other native fish populations to healthy and abundant levels, honoring Federal commitments to Tribal Nations, delivering affordable and reliable clean power, and meeting the many resilience needs of stakeholders across the region.”²² CEQ supports this Administration commitment.

In the Endangered Species Act (ESA), Congress declared as a matter of policy that “all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the

¹⁸ Columbia Basin Partnership Task Force, A Vision for Salmon and Steelhead, Goals to Restore Thriving Salmon and Steelhead to the Columbia River Basin, Phase 1 Report of the Columbia Basin Partnership Task Force of the Marine Fisheries Advisory Committee (May 2019), https://media.fisheries.noaa.gov/dam-migration/mafac_report_cbp_phase_1_recommendations_full_report.pdf (hereinafter “Phase 1 Report”).

¹⁹ Columbia Basin Partnership Task Force, A Vision for Salmon and Steelhead, Goals to Restore Thriving Salmon and Steelhead to the Columbia River Basin, Phase 2 Report of the Columbia Basin Partnership Task Force of the Marine Fisheries Advisory Committee (October 2020), https://s3.amazonaws.com/media.fisheries.noaa.gov/2020-10/MAFAC_CRB_Phase2ReportFinal_508.pdf (hereinafter “Phase 2 Report”).

²⁰ Phase 2 Report at 17, 31-32; *see also* Phase 1 Report at 10, 40-41.

²¹ Phase 2 Report at 171 (“High-range goals are intended to represent ‘healthy and harvestable’ abundance levels that would sustain very high levels of species viability, significant fishery opportunities and harvest, and a fuller range of ecological values. These goals reflect potential future habitat conditions (i.e., restored habitats) but are still typically just a fraction of historical numbers before development.”); *see also* Phase 1 Report at 50 (describing high-range goals as reflecting healthy and harvestable levels).

²² Exhibit 2 to Joint Motion to Extend the Litigation Stay, Nat’l Wildlife Federation v. NMFS, No. 3:01-cv-640-SI (D. Or. Aug. 4, 2022).

purposes of this Act.”²³ Conserve, conserving, and conservation are defined as “to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.”²⁴ The interagency cooperation procedures under Section 7 of the ESA, 16 U.S.C. § 1536 – which require that each Federal agency ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of threatened or endangered species – support this overarching conservation goal. The Columbia Basin Partnership Task Force has explained that healthy and harvestable levels of salmon and steelhead exceed the levels that would be necessary for those species to qualify for delisting under the ESA.

4. On another issue, during a hearing two weeks ago on a on a bill to withdraw the BLM’s “Conservation and Landscape Health Rule,” Deputy Director Nada Culver testified before the Committee on Natural Resources that CEQ was involved in the decision to certify this Rule as not having an economically significant impact.

According to a letter we’ve received from the Small Business Administration Office of Advocacy they state, “[I]f an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, they must include a factual basis for such certification. BLM’s certification provides no such factual basis and offers no information as to how they arrived at this conclusion.”

- A. Can you please explain how CEQ came to the determination that this Rule, which will have a significant effect on small businesses and rural communities in my state, somehow did not have a significant economic impact?

CEQ Response: BLM is the appropriate source for information regarding this or other BLM regulatory actions. BLM published the proposed rule in April and accepted public comments through July 5, 2023, during which time BLM also held multiple public informational meetings about the proposed rule. BLM provides additional information regarding this proposed rule at <https://www.blm.gov/public-lands-rule>.

For more information regarding the regulatory review process, including new steps by the Office of Management and Budget’s Office of Information and Regulatory Affairs (OIRA) to work with Federal agencies to make it easier for interested members of the public to voice their views in the regulatory process, see OMB’s

²³ Endangered Species Act, Section 2(c)(1); 16 U.S.C. § 1531(c)(1).

²⁴ Endangered Species Act, Section 3(3); 16 U.S.C. § 1532(3).

webpage on Broadening Public Engagement in the Federal Regulatory Process²⁵ or visit OIRA’s website at <https://www.reginfo.gov>.

- B. During that same hearing, Deputy Director Culver testified that the BLM did not consult any small businesses in their economic assessment of this Rule. Did CEQ consult with any small businesses on the economic analysis of this Rule that you certified?

CEQ does not certify rules from other agencies. BLM is the appropriate source for information on this or other BLM regulatory actions. BLM published the proposed rule in April and accepted public comments through July 5, 2023, during which time BLM also held multiple public informational meetings about the proposed rule. BLM provides additional information regarding this proposed rule at <https://www.blm.gov/public-lands-rule>. For more information regarding the regulatory review process, including new steps by the Office of Management and Budget’s Office of Information and Regulatory Affairs (OIRA) to work with Federal agencies to make it easier for interested members of the public to voice their views in the regulatory process, see OMB’s webpage on Broadening Public Engagement in the Federal Regulatory Process²⁶ or visit OIRA’s website at <https://www.reginfo.gov>.

²⁵ OMB, Broadening Public Engagement in the Federal Regulatory Process (July 2023), <https://www.whitehouse.gov/omb/information-regulatory-affairs/broadening-public-engagement-in-the-federal-regulatory-process/>.

²⁶ *Id.*

**Committee on Natural Resources
Oversight Hearing
1324 Longworth House Office Building
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1324 Longworth House Office Building
June 22, 2023
10:00 AM**

Oversight hearing titled *"Examining the Council On Environmental Quality Fiscal Year 2024 Budget Request and Related Policy Matters"*

Questions from Rep. Radewagen for The Honorable Brenda Mallory

1. As you are aware, there are statutory limitations on the designation of new sanctuaries.

As Chair, have you affirmed that legal obligations have been met?

The Office of National Marine Sanctuaries, part of the National Oceanic and Atmospheric Administration, manages a national system of 17 underwater protected areas. Since 1972, the Office of National Marine Sanctuaries has worked cooperatively with the public and Federal, state and local officials to promote conservation while allowing compatible commercial and recreational activities. Scientific research, monitoring, exploration, educational programs, outreach, and increasing public awareness of our marine heritage are just a few of the ways the Office of National Marine Sanctuaries fulfills its mission to the American people.

Under the 1972 Marine Protection, Research and Sanctuaries Act, the Secretary of Commerce is authorized to designate discrete areas of the marine environment as national marine sanctuaries to promote comprehensive management of their special conservation, recreational, ecological, historical, research, educational or aesthetic resources. Congress can also designate national marine sanctuaries. The President can also use the authority of the Antiquities Act to establish marine national monuments to be managed as part of the National Marine Sanctuary System.

For additional information regarding national marine sanctuaries or the National Marine Sanctuary System, see <https://sanctuaries.noaa.gov/>.

2. Earlier this month, CEQ published an RFI for an Ocean Justice Strategy in the Federal Register, with little actual fanfare or public notice. Among other items, this RFI requests that stakeholders include information on the definitions of ocean justice, and the definition of ocean justice in the context of their communities and work. Rather than creating additional strategies and working groups, with new buzz words like ocean

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justice, can I ask why CEQ would rather not focus on streamlining NEPA, its core mission, which would provide the opportunity for millions of jobs across our country?

Congress created CEQ in the National Environmental Policy Act of 1969 to advise the President and recommend policies to foster and promote environmental quality to meet the conservation, social, economic, health and other goals of the nation (42 U.S.C. § 4344). To meet this charge, CEQ develops policies on climate change, environmental justice, Federal sustainability, public lands, oceans, and wildlife conservation, among other areas. As the agency responsible for implementing NEPA, CEQ also works to ensure that environmental reviews for infrastructure projects and Federal actions are thorough, efficient, and reflect the input of the public and local communities.

At the same time, in fulfilling its broad statutory mission, CEQ also supports the Administration's work to create well-paying union jobs, grow our economy, build energy security, combat climate change, advance environmental justice, and help lower costs, including energy costs, for families. The Administration's Ocean Climate Action Plan (OCAP) is the first plan to harness the power of the ocean to mitigate and adapt to climate change while providing co-benefits such as well-paying jobs, sustainable livelihoods and communities, and healthier ocean ecosystems. The OCAP calls for an Ocean Justice Strategy to advance environmental justice while building on the goals of the OCAP—to mitigate climate change, protect biodiversity, create well-paying jobs, and enhance the resilience of communities and ecosystems. This work falls within CEQ's mission.