

**EXAMINING THE COUNCIL ON ENVIRON-
MENTAL QUALITY FISCAL YEAR 2025
BUDGET REQUEST AND RELATED
POLICY MATTERS**

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

Thursday, May 16, 2024

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HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: Committee on Natural Resources Republican Members
From: Subcommittee on Oversight and Investigations Staff—Michelle Lane,
michelle.lane@mail.house.gov, x6-4137
Date: Thursday, May 16, 2024
Subject: Oversight Hearing on “*Examining the Council on Environmental Quality
Fiscal Year 2025 Budget Request and Related Policy Matters*”

The Committee on Natural Resources will hold a full committee oversight hearing on “*Examining the Council on Environmental Quality Fiscal Year 2025 Budget Request and Related Policy Matters*” on **Thursday, May 16, 2024, at 10 a.m. in room 1324 Longworth House Office Building.**

Member offices are requested to notify Sophia Varnasidis (Sophia@mail.house.gov) by 4:30 p.m. on Tuesday, May 14, 2024, if their Member intends to participate in the hearing.

I. KEY MESSAGES

- Under the Biden administration, the Council on Environmental Quality (CEQ) has transformed from a small staff tasked with ensuring compliance with the National Environmental Policy Act of 1969 (NEPA), into a legion of frontline warriors implementing radical social change and eco-justice initiatives.
- CEQ’s role in implementing executive orders and rulemaking vastly exceeds its statutory authority. Under this administration, no corner of the government is free from CEQ’s tentacles.
- Despite the significant bipartisan NEPA and permitting reforms in the Fiscal Responsibility Act, CEQ is ignoring Congress’s will and must be held accountable. CEQ’s Phase 2 NEPA Rule will hinder efforts to build critical infrastructure. It is eroding progress when the government should be reducing permitting burdens and streamlining bureaucratic processes.

II. WITNESS

- **The Honorable Brenda Mallory**, Chair, Council on Environmental Quality, Washington, DC

III. BACKGROUND

CEQ, housed within the Executive Office of the President, oversees federal agency compliance with NEPA,¹ issuing regulations and guidance detailing how federal agencies must implement and comply with the statute.² Notably, although NEPA authorized CEQ, a 1978 Executive Order (EO) charged CEQ to issue regulations

¹40 C.F.R. pts. 1500-1518.

²Nina M. Hart, CONG. RESEARCH SERV., R47205, *Judicial Review and the National Environmental Policy Act of 1969* (Aug. 4, 2022), <https://crsreports.congress.gov/product/pdf/R/R47205>.

applicable to all federal agencies regarding preparing an Environmental Impact Statement (EIS).³ CEQ was not, however, authorized to enforce these regulations.⁴ Over the decades, this first EO authorized by President Nixon has been updated, expanded upon, and supplemented with additional guidance by multiple presidents.⁵

a. CEQ's Budget Request

The explosive growth of CEQ's mission and bureaucratic morass is mirrored in the dramatic rise of its budget. CEQ's budget remained relatively stable since its inception until it received an infusion of funding through the Inflation Reduction Act.⁶ From 2019 to 2023, CEQ's baseline budget grew from \$2.89 million to approximately \$4.67 million—an increase of approximately 63% over four years. In addition, CEQ received \$62.5 million from the Inflation Reduction Act to support environmental and climate data collection as well as CEQ's baseline functions for “training personnel, developing programmatic environmental documents, and developing tools, guidance, and technologies to improve stakeholder and community engagement.”⁷ The President's Fiscal Year (FY) 2025 Budget reports an unexpired, unobligated balance of \$63 million for FY 2023, an estimate of \$58 million for FY 2024, and an estimate of \$42 million for FY 2025.⁸ Despite the unexpired and unobligated balance, the President's budget requests \$4.67 million in appropriations for FY 2025.⁹

In addition to increases in the agency's budget, CEQ's staffing, which generally ranged from 17–25 full-time equivalent (FTE) employees, has also increased. According to the President's FY 2024 Budget request, CEQ supported 17 FTE's in 2022, and estimated this number would increase to 36 in FY 2023 and 2024.¹⁰ In an official document uploaded to CEQ's website in May 2023, more than 100 employees—including fellows—are listed (nearly doubling the agency's listed staff size from the year prior).¹¹ It is unclear how many of the staff are CEQ employees and how many are on detail from other federal agencies. The President's FY 2025 Budget request reports the total number of actual FTEs in FY 2023 at 32 (nearly doubling the staff size from the year prior) and estimates the FTE for FY 2024 and 2025 at 54, nearly doubling the size of FY 2023 staffing level.¹²

b. CEQ's Role has Transformed from Ensuring NEPA Compliance to a Government-Wide Agency Tasked with Implementing President Biden's Radical Social and Environmental Justice Agenda

President Biden has transformed CEQ's role from overseeing NEPA compliance to implementing his radical eco-agenda, remaking federal agencies as vehicles of social change, and leading the war on domestic energy production.¹³ As Chair of CEQ, Brenda Mallory has described her role as “focused particularly on addressing the environmental justice and climate change challenges.”¹⁴ CEQ's chief of staff describes the responsibilities and powers that President Biden has bestowed upon CEQ as “unprecedented.”¹⁵

³Linda Luther, CONG. RESEARCH SERV., RL33152, *The National Environmental Policy Act (NEPA): Background and Implementation* (Jan. 10, 2011), <https://crsreports.congress.gov/product/pdf/RL/RL33152>.

⁴*Id.*

⁵*Id.*

⁶Publ. L. 117-169 (Aug. 16, 2022), <https://www.congress.gov/117/plaws/publ169/PLAW-117-publ169.pdf>.

⁷*Id.*

⁸See THE WHITE HOUSE, *Congressional Budget Submission*, Executive Office of The President (Fiscal Year 2025), https://www.whitehouse.gov/wp-content/uploads/2024/03/eop_fy2025.pdf.

⁹*Id.*

¹⁰See THE WHITE HOUSE, *Congressional Budget Submission*, CEQ-3 (Fiscal Year 2024), <https://www.whitehouse.gov/wp-content/uploads/2023/03/FY-2024-EOP-Congressional-Budget-Submission.pdf> (hereinafter *The President's Budget for Fiscal Year 2024*).

¹¹COUNCIL ON ENVT QUALITY, *CEQ Names Titles* (May 31, 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/05/CEQ-Names-Titles-2022.05.31.pdf>.

¹²See EXECUTIVE OFFICE OF THE PRESIDENT, *The Budget for Fiscal Year 2025*, https://www.whitehouse.gov/wp-content/uploads/2024/03/eop_fy2025.pdf.

¹³See THE WHITE HOUSE, *Congressional Budget Submission*, CEQ (Fiscal Year 2025), <https://www.whitehouse.gov/wp-content/uploads/2024/03/FY-2025-Executive-Office-of-the-President-Congressional-Budget-Submission.pdf> (hereinafter *The President's Budget for Fiscal Year 2025*).

¹⁴THE WHITE HOUSE, *Council on Environmental Quality*, <https://www.whitehouse.gov/ceq/>

¹⁵Robin Bravender & Kelsey Brugger, *supra* note 11.

CEQ Implements President Biden's Radical Social Change and Eco-Agenda Executive Orders

On his first day in office, President Biden issued Executive Order (EO) 13990. This EO aimed to bolster resilience to climate change, restore and expand national monuments, prioritize environmental justice, and “create the well-paying union jobs necessary to deliver on these goals.”¹⁶ Practically speaking, the EO required all government agencies to immediately review all existing government regulations promulgated by the previous administration that may have been inconsistent with the goals of EO 13990.¹⁷ The Chair of CEQ was directed to consult on the national monument review process, participate as a member of the Interagency Working Group on the Social Cost of Greenhouse Gases, and more. In addition, EO 13990 canceled the construction permit for the Keystone XL pipeline and revoked several executive orders published by the Trump administration, including those that prioritized permitting streamlining and infrastructure development.¹⁸

The following week, Biden issued EO 14008, which mandated broad environmental justice goals for the federal government to ensure environmental and economic justice are key considerations in how we govern.¹⁹ EO 14008 established—among other initiatives—the National Climate Task Force, which is chaired by the National Climate Advisor and includes the Chair of CEQ as a member.²⁰ Additionally, the EO directed the Chair of CEQ to lead the Federal Clean Electricity and Vehicle Procurement Strategy, which would work to facilitate a carbon free electricity sector by 2035, and clean or zero-emission vehicle fleets for federal, state, local, and tribal governments.²¹ CEQ was further directed to update federal procurement standards and work with relevant Cabinet officials on renewable energy siting and permitting plans.²²

EO 14008 also established two new councils within the White House responsible for implementing environmental justice in government actions: the White House Environmental Justice Interagency Council (IAC) and the White House Environmental Justice Advisory Council (WHEJAC).²³ Both IAC and WHEJAC report to CEQ and work to develop and institute Biden's radical eco-agenda and wage war on domestic energy production.

The IAC—primarily composed of leading Cabinet officials and White House advisors—is charged with promoting and coordinating environmental justice initiatives across the executive branch.²⁴ It is also tasked with developing environmental justice performance metrics and issuing a scorecard on agency implementation of environmental justice goals.²⁵ For example, the IAC advised CEQ's creation of the Climate and Economic Justice Screening Tool,²⁶ a tool to identify what communities will receive federal benefits for affordable housing and environmental justice projects.²⁷ CEQ Chair Brenda Mallory also chairs the IAC.²⁸

WHEJAC is charged with providing recommendations to the IAC, CEQ, and the Chair of CEQ regarding addressing current and past environmental injustice.²⁹ For example, in August 2022, WHEJAC issued recommendations on how to transform the practices of all federal agencies and ensure Justice40 Initiatives are used to

¹⁶ EXEC. ORDER NO. 13990, 86 F.R. 7037 (Jan. 20, 2021), <https://www.federalregister.gov/documents/2021/01/25/2021-01765/protecting-public-health-and-the-environment-and-restoring-science-to-tackle-the-climate-crisis>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ EXEC. ORDER NO. 14008, 86 F.R. 7619 (Jan. 27, 2021), <https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad>.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ THE WHITE HOUSE, *White House Environmental Justice Interagency Council*, <https://www.whitehouse.gov/environmentaljustice/white-house-environmental-justice-interagency-council/> (hereinafter IAC).

²⁶ *Id.*

²⁷ Press Release, THE WHITE HOUSE, *Biden-Harris Administration Launches Version 1.0 of Climate and Economic Justice Screening Tool, Key Step in Implementing President Biden's Justice40 Initiative* (Nov. 22, 2022), <https://www.whitehouse.gov/ceq/news-updates/2022/11/22/biden-harris-administration-launches-version-1-0-of-climate-and-economic-justice-screening-tool-key-step-in-implementing-president-bidens-justice40-initiative/>.

²⁸ IAC, *supra* note 25.

²⁹ THE WHITE HOUSE, *White House Environmental Justice Advisory Council*, <https://www.whitehouse.gov/environmentaljustice/white-house-environmental-justice-advisory-council/>.

address “systemic inequities.”³⁰ WHEJAC’s recommendations included mandating every federal agency to convene a board of environmental and climate justice advocates, requiring state and local agencies to use CEQ’s Climate and Economic Justice Screening Tool, prioritizing the recruitment and training of staff with expertise in environmental and climate justice, and prohibiting the use of Justice40 Initiative funds to support fossil fuel infrastructure or generation.³¹

The Justice40 Initiative—also created by EO 14008—is chaired by CEQ and seeks to direct 40 percent of certain federal investments to disadvantaged communities, which are not defined. The White House has issued formal Interim Implementation Guidance directing all federal agencies to identify which of their programs are covered under the Justice40 Initiative and to begin implementing reforms to those programs.³² Without Congressional authorization, Justice40 is changing the way hundreds of federal programs across government touch climate change, clean energy, transit, housing, workforce development, remediation of legacy pollution, and critical infrastructure operate.³³

EO 14008 also established the administration’s 30x30 agenda, which seeks to preserve 30 percent of our lands and waters by 2030.³⁴ Since re-branding 30x30 as the America the Beautiful Initiative, for over two and a half years the administration has failed to provide basic definitions or baseline metrics for what counts towards this goal, while using 30x30 to justify taking preservationist actions like designating national monuments or initiating mineral withdrawals. In fact, the Biden administration has issued 7 monument designations, locking up over 3.62 million acres of land, and implemented onerous restrictions on a Marine National Monument off the coast of New England.³⁵ Just this month, the Biden administration expanded two monuments in California by 120,000 acres and there are reports the administration is under pressure to expand or designate several new monuments throughout the remainder of the year.³⁶ In many instances, the expansion or creation of new monuments has been met with considerable pushback from state and local officials, notably in Colorado and Utah. The administration also created a \$1 billion 30x30 slush fund—with no statutory authority or clearly defined funding sources—to fund vaguely defined projects consistent with 30x30. A letter sent by Committee Republicans in May 2022 to Chair Mallory asking specific questions about this fund has gone unanswered.³⁷

On April 19, 2024, the White House announced the creation of Conservation.gov, a “website that will help connect people with information, tools, resources, and opportunities to support land and water conservation projects in communities across the country” along with the beta version of the *American Conservation and Stewardship Atlas (The Atlas)* to track 30x30 progress.³⁸ This included a preliminary framework for assessing 30x30 progress, summarized in the diagram below.³⁹

³⁰ WHITE HOUSE ENVIRONMENTAL JUSTICE ADVISORY COUNCIL, *Justice40 Initiative Implementation Phase 1 Recommendations* (Aug. 17, 2022), <https://www.epa.gov/system/files/documents/2022-08/WHEJAC%20J40%20Implementation%20Recommendations%20Final%20Aug2022b.pdf>.

³¹ *Id.* at 3.

³² THE WHITE HOUSE, *Justice 40*, <https://www.whitehouse.gov/environmentaljustice/justice40/>.

³³ *Id.*

³⁴ THE WHITE HOUSE, *Year One Report America the Beautiful* (Dec. 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/12/AtB-Year-One-Report.pdf>.

³⁵ The White House, “Fact Sheet: President Biden Expands San Gabriel Mountains National Monument and Berryessa Snow Mountain National Monument”, May 2, 2024, <https://www.whitehouse.gov/briefing-room/statements-releases/2024/05/02/fact-sheet-president-biden-expands-san-gabriel-mountains-national-monument-and-berryessa-snow-mountain-national-monument/>.

³⁶ Wilson, Janet, “National pressure mounts for Biden to create Chuckwalla monument, protect other lands,” *Desert Sun*, April 16, 2024, <https://www.desertsun.com/story/news/nation/california/2024/04/16/chuckwalla-national-monument-biden-urged-to-take-action-ahead-of-election/72599477007/>.

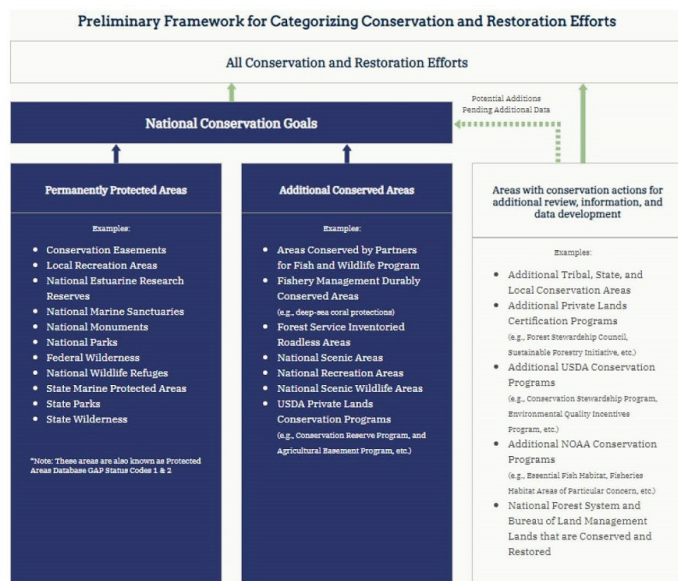
³⁷ Letter from Rep. Bruce Westerman et al., H. COMM. ON NATURAL RESOURCES, to Brenda Mallory, Chair, COUNCIL ON ENV’T QUALITY; (May 12, 2022), https://naturalresources.house.gov/uploadedfiles/2022-05-12_westerman_et_al_to_mallory_re_america_the_beautiful_challenge.pdf.

³⁸ Council on Environmental Quality, *Biden-Harris Administration Launches Conservation.gov, Showcasing and Supporting the Rapid Acceleration of Locally Led Efforts to Conserve, Protect and Restore Lands and Waters across America*, THE WHITE HOUSE (Apr. 19, 2024), <https://www.whitehouse.gov/ceq/news-updates/2024/04/19/biden-harris-administration-launches-conservation-gov-showcasing-and-supporting-the-rapid-acceleration-of-locally-led-efforts-to-protect-and-restore-lands-and-waters-across-america/>.

³⁹ *Supporting Conservation Ambition and Progress across the U.S.*, Conservation.org, <https://www.conservation.org/pages/supporting-conservation>.

The Atlas also included preliminary assessment of progress, including “13 percent of U.S. lands that are permanently protected and not subject to extractive uses” and 26 percent of marine areas are designated as Marine Protected Areas (MPA).⁴⁰ However, *The Atlas* is not complete, and CEQ acknowledges additional data is needed for a more precise estimate.

Alarming, CEQ also states that “protection, conservation, and restoration efforts will need to stay at or above 2021–2023 levels of expansion.”⁴¹



Source: *Conservation.gov*⁴²

On May 20, 2021, President Biden issued EO 14030, *Climate-Related Financial Risk*, which, among other things, directs CEQ and other agency heads to consider amending the Federal Acquisition Regulation (FAR) and require major federal suppliers to publicly disclose greenhouse gas emissions and climate-related financial risk, and to “set science-based reduction targets.”⁴³ Further, EO 14030 grants CEQ the power to amend the FAR to favor bids and proposals from suppliers with a lower social cost of greenhouse gas emissions.⁴⁴

In April 2022, President Biden issued Executive Order 14072, directing the U.S. Department of Agriculture (USDA) and the Department of the Interior (DOI) to define, identify, and inventory mature and old growth forests on public lands by April 22, 2023, and subsequently develop policies to protect those forests.⁴⁵ The interagency mature and old growth initiative began in July 2022 with a Federal Register Notice and public comment period, resulting in roughly 4,000 responses and more than 100,000 signatures on various form letters from across the country.⁴⁶ In April of last year, the Forest Service (USFS) published an “initial draft” seeking to define and inventory “old-growth and mature forests” and even convened a

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ EXEC. ORDER NO. 14030, 86 F.R. 27967 (May 20, 2021), <https://www.federalregister.gov/documents/2021/05/25/2021-11168/climate-related-financial-risk>.

⁴⁴ *Id.*

⁴⁵ Executive Office of the President [Joseph Biden]. Executive Order 14072, “Strengthening the Nation’s Forests, Communities, and Local Economies,” April 20, 2023, 87 F.R. 24851, <https://www.govinfo.gov/content/pkg/FR-2022-04-27/pdf/2022-09138.pdf>.

⁴⁶ U.S. Forest Service and Bureau of Land Management, “Request for Information (RFI) on Federal Old-growth and Mature Forests,” July 15, 2024, 87 FR 42493, <https://www.federalregister.gov/documents/2022/07/15/2022-15185/request-for-information-rfi-on-federal-old-growth-and-mature-forests>

“Definition Development Team.”⁴⁷ All of these efforts have failed to create a single, coherent definition for “old-growth” or “mature” forests. This is a predictable failure as no standard definition exists for “old growth forests” and “mature forests” and they are not terms recognized in the scientific practice of forestry. Despite this lack of clear definitions, the report identified 32.7 million acres of old growth and 80.1 million acres of mature forest in USFS and Bureau of Land Management lands.⁴⁸ There are over 91 million acres of old-growth and mature forested lands on national forests, which is 63 percent of all USFS land.⁴⁹

The administration ultimately admitted “these ‘definitions’ are considered dynamic, not static, and thus are subject to refinement as new information is incorporated (working definitions).”⁵⁰ Despite this lack of a real definition, the administration released an introductory report in January that identified wildfire, insects, and diseases as the leading threats to mature and old-growth forests, and even admitted that “tree cutting” is a minor threat that generally “improved or maintained” the stands that had been managed.⁵¹ In a continuation of this misguided and incomplete effort, the Biden administration published a Notice of Intent to amend all 128 national forest land management plans to provide direction on how to manage, conserve and steward old-growth forest conditions.⁵² A draft Environmental Impact Statement is expected this summer, and the amendment process is expected to be completed in early 2025.⁵³

Chairman Westerman, along with the other Republican leaders of committees of jurisdiction, recently sent a letter to USDA Secretary Tom Vilsack expressing significant concerns with the forest plan amendment process for old growth and the serious threat this poses to forest health and multiple use.⁵⁴ This letter also raises concerns with how this likely conflicts with the 2012 Planning Rule, the forest plan development process, and the National Environmental Policy Act by placing management restrictions on thousands of acres, stands, or entire units based on a “narrative framework” or a “working definition.”⁵⁵

President Biden continues to promote his environmental justice priorities through executive action. On April 21, 2023, President Biden signed EO 14096,⁵⁶ *Revitalizing Our Nation’s Commitment to Environmental Justice for All*, with the purpose of “further embedding environmental justice into the work of federal agencies”⁵⁷ by making environmental justice part of “each agency’s” mission.⁵⁸ EO 14096 cements CEQ as the leading entity charged with executing Biden’s eco-agenda and war on domestic energy production.

EO 14096 also created yet another bureaucratic entity—the White House Office of Environmental Justice—to coordinate the implementation of environmental justice policy across the federal government.⁵⁹ The White House Office of

⁴⁷ U.S. Forest Service and Bureau of Land Management, “Mature and Old-Growth Forests: Definition, Identification, and Initial Inventory on Lands Managed by the Forest Service and Bureau of Land Management”, April 2023, <https://www.fs.usda.gov/sites/default/files/mature-and-old-growth-forests-tech.pdf>.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ U.S. Forest Service and Bureau of Land Management, “Analysis of Threats to Mature and Old-Growth Forests on Lands Managed by the Forest Service and Bureau of Land Management, January 2024, https://www.fs.usda.gov/sites/default/files/fs_media/fs_document/MOG-Threats-Intro.pdf.

⁵² U.S. Forest Service, “Land Management Plan Direction for Old-Growth Forest Conditions Across the National Forest System, December 20, 2023, 88 FR 88042, <https://www.federalregister.gov/documents/2023/12/20/2023-27875/land-management-plan-direction-for-old-growth-forest-conditions-across-the-national-forest-system>.

⁵³ U.S. Forest Service, “National Old-Growth Amendment”, <https://www.fs.usda.gov/managing-land/old-growth-forests/amendment#:~:text=The%20National%20Old%20Growth%20Amendment,to%20rapidly%20changing%20climate%20conditions>.

⁵⁴ Letter from Sen. John Boozman, Sen. John Barrasso, Rep. Bruce Westerman, and Rep. GT Thompson to Thomas Vilsack, Secretary, U.S. Department of Agriculture, https://republicans-naturalresources.house.gov/UploadedFiles/Letter_Old.Growth.Forest.Plan.Amendment_03.20.2024.pdf

⁵⁵ *Id.*

⁵⁶ EXEC. ORDER NO. 14096, 88 F.R. 25251 (Apr. 21, 2023) <https://www.federalregister.gov/documents/2023/04/26/2023-08955/revitalizing-our-nations-commitment-to-environmental-justice-for-all>.

⁵⁷ THE WHITE HOUSE, *FACT SHEET: President Biden Signs Executive Order to Revitalize Our Nation’s Commitment to Environmental Justice for All* (Apr. 21, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/04/21/fact-sheet-president-biden-signs-executive-order-to-revitalize-our-nations-commitment-to-environmental-justice-for-all/>

⁵⁸ EXEC. ORDER NO. 14096, *supra* note 47.

⁵⁹ *Id.*

Environmental Justice is housed within CEQ.⁶⁰ The Biden administration has not clarified why creating the White House Office of Environmental Justice is necessary since EO 14008 tasked the IAC with promoting environmental justice initiatives across federal agencies. Nonetheless, the IAC, WHEJAC, and the White House Office of Environmental Justice all report to and take orders from the same entity—CEQ.

c. CEQ's Active Role in Rules that Attack Domestic Energy Production and Increase Regulatory Burdens

CEQ has taken an active role in the Biden administration's rules that attack domestic energy development and increase regulatory burdens on American businesses. Chief among the examples of CEQ and the Biden administration's crusade against American energy production and the strength of America's economy are the Greenhouse Gas Rule, the empowerment of the Science Based Target Initiative (SBTi), and the promulgation of rules related to NEPA and permitting reforms that do not adequately adhere to the Fiscal Responsibility Act of 2023 (Fiscal Responsibility Act).

Greenhouse Gas Rule

In November 2022, the Biden administration proposed a rule, *Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk* (the Proposed GHG Disclosure Rule), to mandate that government contractors publicly “disclose their greenhouse gas emissions and climate-related financial risk and set science-based targets to reduce their greenhouse gas emissions.”⁶¹ If finalized, the Proposed GHG Disclosure Rule would implement Section 5(b)(i) of the aforementioned EO 14030, *Climate-Related Financial Risk*.⁶² The Proposed GHG Disclosure Rule mandates “major” government contractors, defined as those with contracts valued at over \$50 million, develop “science-based reduction targets” that are validated and approved by an international non-governmental organization known as SBTi.⁶³

The proposed rule—labeled as FAR Case 2021-015—remains open and unfinalized as of May 3, 2024.⁶⁴ Although the public comment period for the proposed rule closed on January 13, 2023, and the Director of the Defense Acquisition Regulation (DAR) Council tasked the Acquisition Environmental and Contract Management Team with issuing a report by April 19, 2023, to facilitate the finalization of the GHG Disclosure Rule, the report deadline has been extended to May 22, 2024.⁶⁵

The Proposed GHG Disclosure Rule far exceeds the original authority granted by President Biden. Most problematically, EO 14030 does not require—nor does President Biden have the authority to require—a reduction target validation by a private international non-governmental organization like SBTi.

Science Based Target Initiative

In its Proposed GHG Disclosure Rule, CEQ seeks to significantly exceed the authority President Biden granted CEQ in EO 14030 by offloading its responsibility to set standards for greenhouse gas emissions to SBTi and require all major contractors use SBTi validation services.⁶⁶ Essentially, CEQ wants to promulgate a rule imposing draconian “science-based targets,” but outsource the ability to “validate” and enforce the targets to a monopolistic international non-governmental organization—a dereliction of duty of the highest order.⁶⁷

In March 2023, the House Committee on Natural Resources (Committee), along with the House Committee on Science, Space, and Technology (SST Committee), launched an investigation into CEQ, SBTi, and SBTi's selection as the sole arbitrator—effectively judge, jury, and executioner—of emission reduction targets for

⁶⁰ *Id.*

⁶¹ Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk, 87 Fed. Reg. 68312 (proposed on Nov. 14, 2022) (to be codified 48 C.F.R. pts. 1, 4, 9, 23, 52), <https://www.federalregister.gov/documents/2022/11/14/2022-24569/federal-acquisition-regulation-disclosure-of-greenhouse-gasemissions-and-climate-related-financial> (hereinafter Proposed GHG Disclosure Rule).

⁶² EXEC. ORDER NO. 14030, 86 Fed. Reg. 27967 (May 20, 2021), <https://www.federalregister.gov/documents/2021/05/25/2021-11168/climate-related-financial-risk>.

⁶³ Proposed GHG Disclosure Rule, *supra* note 54.

⁶⁴ U.S. DEPT. OF DEFENSE, OPEN FAR CASES (May 3, 2024), <https://www.acq.osd.mil/dpap/dars/opencases/farcasenum/far.pdf>.

⁶⁵ *Id.*

⁶⁶ SCIENCE BASED TARGETS, <https://sciencebasedtargets.org/>.

⁶⁷ See Proposed GHG Disclosure Rule, *supra* note 54.

federal contractors.⁶⁸ On June 22, 2023, during last year's hearing regarding CEQ and its budget, the Committee asked CEQ Chair Mallory multiple questions related to SBTi.⁶⁹ Those questions—on SBTi's selection through an uncompetitive process, SBTi's foreign identity and influences, SBTi's emission assessment processes, and SBTi's conflicts of interest—went unanswered.⁷⁰

Subsequently, on September 6, 2023, the Committee sent a letter to CEQ and Chair Mallory reemphasizing its concerns about CEQ's outsourcing its compliance authority to SBTi and requesting targeted documents and information related to SBTi in CEQ's possession.⁷¹ After acknowledging receipt of the Committee's letter, CEQ ignored the Committee's concerns and failed to respond.⁷² The Committee sent a second letter to CEQ and Chair Mallory on October 17, 2023, once again requesting CEQ to produce documents and information responsive to the Committee's requests, which were grounded in serious concerns about SBTi and its empowerment by CEQ.⁷³

Meanwhile, the SST Committee held two hearings—in September and November 2023—on SBTi and improprieties in CEQ's outsourcing of its authority to the foreign organization.⁷⁴ Eventually, after pressure from both committees, in December 2023, CEQ produced documents responsive to some of the Committee's concerns. These released documents, as well as other materials uncovered by the Committee and the SST Committee, served as a foundation for a January 2024 SST Committee staff memo on preliminary findings from both committees' investigation into SBTi. The investigation's preliminary findings include CEQ's inappropriately influencing the FAR Council to benefit SBTi and other environmental activist groups; a coordinated effort to fast-track SBTi's selection and drown out genuine concerns related to SBTi; misleading CEQ testimony during congressional hearings; and—perhaps most alarmingly—national security concerns related to SBTi given its international nature and the ability of foreign adversaries to both impact domestic procurement awards and collect potentially sensitive information about federal government contractors.⁷⁵ The Committee's investigation into CEQ and SBTi is ongoing.

NEPA & Permitting Reforms under the Fiscal Responsibility Act

In April 2022, CEQ instituted rules to roll back aspects of the Trump administration's 2020 NEPA regulations and to bolster cumbersome aspects of NEPA that increase the regulatory burdens for building pipelines and other energy infrastructure.⁷⁶ CEQ referred to this rulemaking as its Phase 1 of revisions to existing NEPA regulations.⁷⁷ On May 1, 2024, CEQ published its final rule instituting Phase 2 of its overhaul, with broader changes to the 2020 NEPA regulations.⁷⁸ In significant part, the Phase 2 regulation's purpose was to implement the bipartisan Fiscal

⁶⁸ See STAFF OF H.R. COMM. ON SCIENCE, SPACE, AND TECHNOLOGY, 118TH CONG., PRELIMINARY FINDINGS—SBTi INVESTIGATION (2024); Letter from Rep. Bruce Westerman et al., H. COMM. ON NATURAL RESOURCES, to Brenda Mallory, Chair, COUNCIL ON ENV'T QUALITY (Sept. 6, 2023).

⁶⁹ Letter from Rep. Bruce Westerman et al., H. COMM. ON NATURAL RESOURCES, to Brenda Mallory, Chair, COUNCIL ON ENV'T QUALITY (Sept. 6, 2023).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ Letter from Rep. Bruce Westerman et al., H. COMM. ON NATURAL RESOURCES, to Brenda Mallory, Chair, COUNCIL ON ENV'T QUALITY (Oct. 17, 2023).

⁷⁴ See Press Release, H.R. COMM. ON SCIENCE, SPACE, AND TECHNOLOGY, *Science Committee Finds Evidence of Inappropriate Influence in Biden administration Contracting Rule-making* (Jan. 22, 2024), <https://science.house.gov/press-releases?ID=B88A5C8F-2308-4BC1-B4B3-FA1E3714809C>.

⁷⁵ See STAFF OF H.R. COMM. ON SCIENCE, SPACE, AND TECHNOLOGY, 118TH CONG., PRELIMINARY FINDINGS—SBTi INVESTIGATION (2024).

⁷⁶ See COUNCIL ON ENV'T QUALITY, F.R. 23453 (Apr. 20, 2022), <https://www.federalregister.gov/documents/2022/04/20/2022-08288/national-environmental-policy-act-implementing-regulations-revisions>; Kelsey Brugger, *Biden restores climate to NEPA, undoing Trump's efforts*, E&E NEWS (Apr. 19, 2022), <https://www.eenews.net/articles/biden-restores-climate-to-nepa-undoing-trumps-efforts/>.

⁷⁷ OFF. OF MGMT. AND BUDGET, *National Environmental Policy Act Implementing Regulations Revisions Phase 2*, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202110&RIN=0331-AA07>.

⁷⁸ National Environmental Policy Act Implementing Regulations Revisions Phase 2, 89 Fed. Reg. 35442 (May 1, 2024) (to be codified at 40 C.F.R. §§1500-08), <https://www.federalregister.gov/documents/2024/05/01/2024-08792/national-environmental-policy-act-implementing-regulations-revisions-phase-2>.

Responsibility Act.⁷⁹ signed by President Biden on June 2, 2023, which provides the first significant NEPA and permitting reforms in over forty years. Regarding NEPA, the Fiscal Responsibility Act:⁸⁰

- *Provides Statutory Clarity.* Clarifies and narrows agency considerations of impacts, effects, and alternatives to assess whether NEPA applies to a proposed activity.
- *Promotes Interagency Coordination and Timely Reviews.* Codifies key elements of the One Federal Decision Framework for all projects that must undergo NEPA review. This includes the designation of a lead agency to set a permitting schedule, procedures to elevate and streamline delays or disputes, and the preparation of a single document for environmental reviews involving multiple agencies.
- *Streamlines Review Process.* Allows agencies to adopt categorical exclusions utilized by other agencies through a streamlined review process.
- *Clarifies Major Federal Action.* Major federal actions are limited to those subject to federal control and responsibility. It also includes examples of actions that are not major federal actions.
- *Involves Project Sponsors in the Preparation of Environmental Reviews.* Allows project sponsors to assist agencies in conducting environmental reviews to help speed up the process and resolve issues without taking control or authority away from the lead agency.
- *Limits the Length of Environmental Impact Statements and Assessments.* Sets 150-page limits for environmental impact statements (300 pages if the project is of extraordinary complexity) and 75-page limits for environmental assessments. Sets time limits of one year for environmental assessments and two years for environmental impact statements. Provides a right of action to project applicants if the agency does not adhere to these deadlines.
- *Promotes the Adaptation of Modern Technology.* Directs CEQ to study modernizing the NEPA process by utilizing digital technologies to create an online portal to streamline communications and data sharing between agencies and project applicants.

Yet, CEQ's Phase 2 final rule largely ignores the Fiscal Responsibility Act's prescriptions in favor of further progressing the Biden administration's radical environmental justice agenda. Rather than abide by the Fiscal Responsibility Act's significant NEPA and permitting reforms intended to make it easier to build in America, speed up timelines for critical infrastructure projects, and reduce the burden on taxpayers by creating efficiencies in the permitting process, CEQ's Phase 2 rule weaponizes the NEPA process to delay critical domestic energy projects at a time when our nation should pursue energy independence. This includes exasperating extensive delays of onshore lease sales on federal lands.⁸¹ In fact, rather than streamline the permitting process fairly for all projects under NEPA, Phase 2 subjectively accelerates procedures for CEQ's favored energy sources like wind and solar while effectively mummifying domestic oil and gas production with red tape.⁸² As the White House itself made clear, the NEPA Phase 2 regulations aim to "address climate change" and "advance environmental justice" instead of

⁷⁹ Press Release, THE WHITE HOUSE, *Bills Signed: H.R. 346, H.R. 3746* (June 3, 2023) <https://www.whitehouse.gov/briefing-room/legislation/2023/06/03/press-release-bills-signed-h-r-346-h-r-3746/>.

⁸⁰ See H. COMM. ON NATURAL RESOURCES, *Westerman Applauds Permitting Provisions in Fiscal Responsibility Act* (May 30, 2023), <https://naturalresources.house.gov/news/documentsingle.aspx?DocumentID=413361>; H. COMM. ON THE BUDGET, *H.R. 3746, The Fiscal Responsibility Act of 2023: Frequently Asked Questions* (May 31, 2023), <https://budget.house.gov/resources/staff-working-papers/hr-3746-the-fiscal-responsibility-act-of-2023-frequently-asked-questions>; H. COMM. ON FINANCIAL SERVICES, *FRA: Section-by-Section*, https://financialservices.house.gov/uploadedfiles/fra_section_by_section.pdf.

⁸¹ See Thomas Catenacci, *Biden administration Delays Oil and Gas Lease Sales Amid Environmental Protest*, FOX BUSINESS (June 21, 2022), <https://www.foxbusiness.com/politics/joe-biden-oil-gas-lease-sales-delay-energy-environmental-protest>.

⁸² See National Environmental Policy Act Implementing Regulations Revisions Phase 2, 89 Fed. Reg. 35442 (May 1, 2024) (to be codified at 40 C.F.R. §§1500-08), <https://www.federalregister.gov/documents/2024/05/01/2024-08792/national-environmental-policy-act-implementing-regulations-revisions-phase-2>.

implementing positive bipartisan permitting reform that would benefit Americans, as Congress directed in the Fiscal Responsibility Act.⁸³

CEQ Guides Administration's Protective Oceans and Waters Policy

The Biden administration has implemented its radical climate and preservation goals for our oceans and waters through several interconnected initiatives, including EO 14008, the 30x30 Strategy, the *Ocean Climate Action Plan* (OCAP), and the related *Ocean Justice Initiative*. The administration is weaponizing oceans and fisheries policy and MPA designations to satisfy these climate goals, as described in several White House Initiatives below.

The Office of Science and Technology Policy (OSTP) and CEQ, working with the White House Ocean Policy Committee (OPC) released the OCAP in March 2023, a government-wide strategy to advance President Biden's climate initiatives through oceans and fisheries related policies, including conserving at least 30% of U.S. waters by 2030.⁸⁴ The stated goals of the OCAP are to:

- *Create a Carbon Neutral Future* through advancing offshore wind and marine energy, implementing policies towards achieving zero greenhouse gas emissions from international maritime shipping by no later than 2050, and discover additional ways to sequester carbon in the ocean;
- *Accelerate Nature-Based Solutions* through protecting marine environments that naturally store carbon, and the utilization of MPAs; and
- *Enhance Community Resilience to Ocean Change* through oceans, fisheries and aquaculture policies, the protection of certain species, and enhancing coastal resilience.⁸⁵

On April 17, 2024, CEQ released *Progress Report: Year One of Ocean Climate Action* to summarize the administration's actions taken so far under the OCAP, including advancing environmental justice through the Ocean Justice Strategy, scaling up the offshore wind energy industry, advancing the decarbonization of the U.S. marine transportation system, enhancing community resilience, and addressing and mitigating the impacts of climate change.⁸⁶

As directed by the OCAP,⁸⁷ in June 2023, CEQ first sought public input to determine the concept of 'ocean justice' including: "What is ocean justice?" and "What are the barriers for realizing ocean justice?"⁸⁸ These questions demonstrated 'ocean justice' is a concept the administration themselves did not understand and it revealed the lack of need for such programming. On December 22, 2023, CEQ, OSTP, and OCP released their Ocean Justice Strategy.⁸⁹ The Ocean Justice Strategy describes 'ocean justice' as deriving from "environmental justice with a specific focus on communities with environmental justice concerns that rely on the ocean and Great Lakes for economic, cultural, spiritual, and recreational purposes, and food security."⁹⁰ The Ocean Justice Strategy also stated three action items for accomplishing 'ocean justice':

1. *Embed Ocean Justice in Federal Activities*: Provide an opportunity for meaningful community engagement, better incorporate equity into funding processes and budget development, embed ocean justice into Federal practices, and improve interagency coordination.⁹¹
2. *Develop a Diverse, Equitable, Inclusive, and Accessible Federal Ocean Workforce*: Grow Federal staffing capacity, increase recruitment within the

⁸³THE WHITE HOUSE, *Biden-Harris Administration Finalizes Reforms to Modernize Environmental Reviews, Accelerate America's Clean Energy Future, Simplify the Process to Rebuild our Nation's Infrastructure, and Strengthen Public Engagement* (Apr. 30, 2024), <https://www.whitehouse.gov/ceq/news-updates/2024/04/30/biden-harris-administration-finalizes-reforms-to-modernize-environmental-reviews-accelerate-americas-clean-energy-future-simplify-the-process-to-rebuild-our-nations-infrastructure/>.

⁸⁴Ocean Policy Comm., *Ocean Climate Action Plan*, THE WHITE HOUSE (Mar. 2023), https://www.whitehouse.gov/wp-content/uploads/2023/03/Ocean-Climate-Action-Plan_Final.pdf.

⁸⁵*Id.*

⁸⁶Ocean Policy Comm., *Progress Report: Year One of Ocean Climate Action*, THE WHITE HOUSE (Apr. 2024), https://www.whitehouse.gov/wp-content/uploads/2024/04/OCAP-Progress-Report_April-2024.pdf.

⁸⁷*Id.*

⁸⁸*Id.*

⁸⁹Ocean Policy Comm., *Ocean Justice Strategy*, THE WHITE HOUSE (December 22, 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/12/Ocean-Justice-Strategy.pdf?cb=1701982354>.

⁹⁰*Id.*

⁹¹*Id.*

Federal Government ocean workforce and leadership pipeline, and recruit and retain students and early career professionals.⁹²

3. *Enhance Ocean Justice through Education, Data, and Knowledge:* Expand and improve ocean education and workforce development, consider and apply Indigenous Knowledge throughout Federal research and development, apply an ocean justice lens to ocean research and ways of knowing, and expand the Federal tools used in characterizing social and environmental justice patterns to encompass ocean justice indicators.⁹³

d. Expanding and Implementing New Marine Protected Areas

One of the tools the administration has utilized to accomplish its 30x30 strategy is the development of MPAs, which are designations, often national marine sanctuaries or marine national monuments, used by the National Oceanic and Atmospheric Administration (NOAA) and DOI to limit human activity in certain areas of the marine environment to protect all or part of the designated environment.⁹⁴ Restricted activities differ by MPA, but generally could include commercial fishing, mining, oil and gas production, and renewable energy development.⁹⁵

On January 26, 2024, CEQ released their third annual *America the Beautiful 2023 Annual Report*, which provided an update on the administration's 30x30 strategy as it relates to this nation's waters.⁹⁶ The report describes how NOAA has furthered work on designations for six new national marine sanctuaries, including initiating the public scoping process for a national marine sanctuary for the Pacific Remote Islands, releasing the draft designation for the Chumash Heritage National Marine Sanctuary, nearing the completion of the Lake Ontario national marine sanctuary in early 2024, moving forward with the sanctuary designation processes for Hudson Canyon, and continuing the designation processes for proposed sanctuaries in Lake Erie and Papahānaumokuākea (Northwestern Hawaiian Islands).⁹⁷ The report also proposed two national estuarine research reserves in the Atchafalaya Basin in Louisiana and the Bay of Green Bay in Wisconsin.⁹⁸

President Biden has weaponized these MPA designations to accomplish his radical climate goals without considering the negative consequences on the economy for affected communities.⁹⁹ For example, in March 2023, the administration announced the consideration of “a new National Marine Sanctuary designation . . . to protect all U.S. waters around the Pacific Remote Islands” to accomplish the President's 30x30 goal.¹⁰⁰ However, the Pacific Remote Island Area provides critical fishing grounds for tuna species for U.S. vessels in the South Pacific. Otherwise, vessels are restricted in fishing access to the high seas, and must pay thousands of dollars per day to fish within the exclusive economic zones (EEZ) of other nations.¹⁰¹ According to the Western Pacific Regional FMC, since 2018, “the U.S. tuna purse seine fleet, which supplies the American Samoa tuna cannery, has dwindled from 38 vessels to 15 vessels today.”¹⁰² If the Biden administration implements the MPA designation

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Harold F. Upton & Eugene H. Buck, CONG. RESEARCH SERV., RL3215, *Marine Protected Area: An Overview* (Sep. 29, 2010), <https://sgp.fas.org/crs/misc/RL32154.pdf>.

⁹⁵ Marine Protected Areas Center, *About Marine Protected Areas*, DEPT. OF COMMERCE & THE DEPT. OF THE INTERIOR, <https://marineprotectedareas.noaa.gov/aboutmpas/#:-:text=A%20marine%20reserve%20or%20%22no,in%20these%20no%2Dtake%20areas>.

⁹⁶ Council on Environmental Quality, *America the Beautiful 2023 Annual Report*, U.S. DEPT. OF THE INTERIOR (Jan. 26, 2024), <https://www.doi.gov/media/document/america-beautiful-2023-annual-report>.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Taotasi Archie Soliai, *Op Ed: Expanding Existing PRI Monument Will Negatively Impact the American Samoa Economy*, SAMOA NEWS (May 23, 2023), <https://www.samoanews.com/opinion/op-ed-expanding-existing-pri-monument-will-negatively-impact-american-samoa-economy#:-:text=That%20means%20less%20fish%20will,islands%2C%20atolls%2C%20and%20reefs>.

¹⁰⁰ *FACT SHEET: Biden-Harris Administration Takes New Action to Conserve and Restore America's Lands and Waters*, THE WHITE HOUSE (Mar. 21, 2023) <https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/21/fact-sheet-biden-harris-administration-takes-new-action-to-protect-and-restore-americas-lands-and-waters/>.

¹⁰¹ *Potential Economic and Political Fallout of Tuna Fishery Closures in Proposed PRIA Sanctuary*, WESTERN PACIFIC REGIONAL FISHERY MANAGEMENT COUNCIL (Jun. 8, 2023), <https://www.wpcouncil.org/wp-content/uploads/2023/06/1-Potential-Economic-and-Political-Fallout-of-Tuna-Fishery-Closures-in-Proposed-PRIA-Sanctuary.pdf>.

¹⁰² *Pacific Remote Islands Marine National Monument Expansion Proposal*, WESTERN PACIFIC REGIONAL FISHERY MANAGEMENT COUNCIL (Aug. 24, 2022), <https://>

with commercial tuna fishing restrictions, it will force the remaining U.S. purse seiner fleet to either discontinue operations, or fish farther away waters and deliver their catch to foreign ports.¹⁰³

Additionally, tuna fishing and processing is the main driver for the American Samoa economy, providing employment to approximately 5,000 of the 18,000-person workforce¹⁰⁴—StarKist Tuna cannery is the largest employer in the territory.¹⁰⁵ If the proposed sanctuary were to prohibit tuna fishing, the tuna industry and the communities that depend on it would be decimated by the loss of revenue and fishing access.¹⁰⁶ For example, following the closure of one of the two canneries in American Samoa over a decade ago, American Samoa's gross domestic production of tuna fell by 25 percent.¹⁰⁷

MPA designations also conflict with the gold standard for fisheries management, the Magnuson-Stevens Fishery Conservation and Management Act (MSA),¹⁰⁸ which established eight regional Fishery Management Councils (FMC) to apply national standards, prepare fishery management plans to prevent overfishing, rebuild overfished stocks, facilitate long-term protection of essential fish habitats, realize the full potential of the Nation's fishery resources, and establish regulations for fisheries that require conservation and management.¹⁰⁹ Instead of the FMCs guiding fisheries management as intended under the MSA, the White House is skirting their authority through MPA designations that can outright ban commercial fishing without justification.¹¹⁰ In a letter to former Secretary of Commerce Wilbur Ross, the FMCs stated:

*Designations of marine national monuments that prohibit fishing activities—especially those that did not receive adequate economic and social impact review and did not allow for a robust public review process—have disrupted the ability of the Councils to manage fisheries throughout their range as required by MSA and in an ecosystem-based manner. Marine monument designations have the potential to be counterproductive to achieving domestic fishery management goals.*¹¹¹

IV. CONCLUSION

President Biden has transformed CEQ's role from overseeing NEPA compliance to implementing his radical eco-agenda, remaking federal agencies as vehicles of social change, and leading the war on domestic energy production. A bureaucratic morass of various agencies, offices, and councils report to and take directions from CEQ. At the same time, CEQ's role in implementing executive orders and rule-making vastly exceeds its statutory role and prescribed authority. CEQ has chosen to weaponize NEPA to carry out the Biden administration's radical environmental justice agenda rather than abide by the Fiscal Responsibility Act's significant NEPA and permitting reforms—reforms that will make it easier to build in America, speed up timelines for critical infrastructure projects, and reduce the burden on taxpayers by creating efficiencies in the permitting process. Additionally, CEQ must be held accountable for its improper intimate relationship with SBTi and other environmental activist groups.

www.wpcouncil.org/wp-content/uploads/2022/08/PIFN-Aug-2022-PRIMNM-Expansion-Proposal-FINAL-high-res.pdf.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Angelina Tan, *Biden's Expansion Of US Pacific Marine Sanctuaries Pushes Tuna Fishing Industry Towards China*, MARITIME FAIRTRADE (May 3, 2023), <https://maritimefairtrade.org/bidens-expansion-of-us-pacific-marine-sanctuaries-pushes-tuna-fishing-industry-towards-china/>.

¹⁰⁶ *Potential Economic and Political Fallout of Tuna Fishery Closures in Proposed PRIA Sanctuary*, WESTERN PACIFIC REGIONAL FISHERY MANAGEMENT COUNCIL (Jun. 8, 2023), <https://www.wpcouncil.org/wp-content/uploads/2023/06/1-Potential-Economic-and-Political-Fallout-of-Tuna-Fishery-Closures-in-Proposed-PRIA-Sanctuary.pdf>.

¹⁰⁷ *Id.*

¹⁰⁸ 16 U.S.C. 1801 et seq.

¹⁰⁹ 16 U.S.C. 1801(a)(6).

¹¹⁰ Letter to Secretary of Commerce Wilbur Ross, U.S. REGIONAL FISHERY MANAGEMENT COUNCILS (May 29, 2020), http://www.wpcouncil.org/wp-content/uploads/2020/05/29May2020CCCLettertoDOC_Sec_final-1.pdf.

¹¹¹ *Id.*

**OVERSIGHT HEARING ON EXAMINING THE
COUNCIL ON ENVIRONMENTAL QUALITY
FISCAL YEAR 2025 BUDGET REQUEST AND
RELATED POLICY MATTERS**

**Thursday, May 16, 2024
U.S. House of Representatives
Committee on Natural Resources
Washington, DC**

The Committee met, pursuant to notice, at 10:04 a.m., Room 1324, Longworth House Office Building, Hon. Bruce Westerman [Chairman of the Committee] presiding.

Present: Representatives Westerman, Gosar, Graves, LaMalfa, Fulcher, Stauber, Tiffany, Rosendale, Bentz, Moylan, Collins, Duarte, Hageman; Huffman, Porter, Leger Fernández, Stansbury, Peltola, Hoyle, Kamlager-Dove, Velázquez, and Case.

The CHAIRMAN. The Committee will come to order.

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

The Committee is meeting today to hear testimony on examining the Council of Environmental Quality Fiscal Year 2025 budget request, and related policy matters.

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

Without objection, so ordered.

I now recognize myself for an opening statement.

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

The CHAIRMAN. Good morning, everyone. Welcome, Chair Mallory. Thank you for being here with us today.

Under the Biden administration, CEQ has transformed from an agency charged with overseeing Federal agencies' NEPA compliance to an agency that reaches into nearly every facet of American life. CEQ serves as the tip of the spear for implementing President Biden's radical agenda, retooling Federal agencies as vehicles of social change, and assaulting domestic energy production. CEQ's implementation of Executive Orders and rulemaking oversteps its bounds, blatantly ignoring the will of Congress. Today, no one is spared from CEQ's overreach.

CEQ's metamorphosis is reflected in its bloated budget. Though CEQ has only ever been authorized to receive \$1 million in Federal funds this year, the President's budget requests more than \$4.6 million and 54 full-time equivalent staff for CEQ. This is in

addition to more than \$42 million in unexpired and unobligated balances for Fiscal Year 2025 that are remnants of the Inflation Reduction Act. It begs the question, how much taxpayer money does CEQ actually deserve? With CEQ leading the charge, the Biden administration has irreparably damaged America's natural resources and the jobs and communities they support.

Chair Mallory, you recently likened CEQ's role in the Biden administration to "laying the foundation for this house that we are building together." You continue by noting that your work is "just the beginning." A foundation of structural flaws cannot build a home that stands the test of time. We know that building a house on rock is wise. We have learned that. But President Biden's sweeping climate environmental justice Executive Orders are trying to build a house on sand. Policies like the Justice40 and the 30x30 initiative have weakened, not strengthened, America's foundation.

CEQ's crusade against domestic energy production empowers our foreign adversaries. Rulemakings, including the Greenhouse Gas Rule, the science-based target initiative, and the distortion of a Phase 2 NEPA, which blatantly ignores congressional directives, actively puts America in jeopardy. Misguided Executive Orders that lock up so-called old growth forests and restrict access to Federal waters for commercial and recreational fishing are not "building a new house." Rather, they are destroying the American foundation.

This Committee has repeatedly sought to rein in CEQ's improper influence over the Federal Government. It has launched four separate investigations into CEQ's activities. Despite formal letters from Committee members and detailed follow-up by Committee staff, CEQ has failed to provide substantial responses to the Committee's inquiries. CEQ's repeated lack of response to oversight requests, other than acknowledging receipt or offering terse replies, is not acceptable.

Chair Mallory, I appreciate your appearing here today. I look forward to your testimony, the questions from our Members, and the answers that you will provide.

I now recognize Vice Ranking Member Kamlager-Dove for her opening statement.

STATEMENT OF THE HON. SYDNEY KAMLAGER-DOVE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. KAMLAGER-DOVE. Thank you, Chairman.

And thank you very much, Chairwoman, for being here with us today. I do want to give you a bit of forewarning, although I am guessing you are already aware, that today's hearing is likely to feature a range of hyperbole and theatrics from my colleagues across the aisle especially spectacular, even for them. After all, the Council on Environmental Quality, which you lead, is responsible for implementing what I have come to find out during my time on this Committee is the Majority's public enemy No. 1, the National Environmental Policy Act, or NEPA, a Nixon legacy, no doubt.

If you want any assurance of that fact, you need not look any further than the first few months of the 118th Congress. My

Majority colleagues wasted no time in immediately rolling out bills, including their H.R. 1, the Polluters Over People Act intended to gut NEPA's most fundamental and sacred provisions. As a new Member of Congress at the time, I couldn't help but wonder what was behind this political vendetta. From where I stand, NEPA is not just one of the most important protections we have for our environment, it is absolutely essential to this country's pursuit of equity and justice.

For decades, low-income communities, communities of color, and tribal communities have been purposely and relentlessly targeted by polluting industries as the preferred siting location for their dirtiest messes. And let's be clear, it is not because these communities didn't care or didn't voice their opposition loud and clear. They did. They were simply pushed aside, silenced, or ignored. But with NEPA, their voices must be heard.

NEPA enshrined into law the American people's right to weigh in on major Federal projects or permit decisions, and when unlawful permit decisions or otherwise dangerous projects are put in place, NEPA gives communities the right to challenge them through judicial review. And as the climate crisis impacts the same overburdened communities first and worst, there is no question that NEPA is as important, if not more, than it has ever been.

That is why I am so grateful for your leadership, Chair Mallory. When you took the helm at CEQ, you inherited a suite of extreme Trump-era NEPA rollbacks that willfully ignored both the climate crisis and the cumulative impacts of multiple sources of pollution, putting American families directly in harm's way. But the Council's recently finalized Phase 2 NEPA regulations have turned the page on these pro-polluter priorities.

Under the Biden administration, CEQ is putting climate, communities, and environmental justice back into focus for a future that serves all Americans, not just those lucky enough to afford to live where polluters won't go. But, of course, as we will see today, not everyone is happy with the change. My colleagues across the aisle have made a veritable art out of scheming and designing giveaways for their polluting industry friends, namely big oil. Or in the case of the former President, they are simply asking big oil to draft the giveaways for them.

So, when you have an Administration like this one that is committed to protecting the American people, rather than bending over backwards to prop up the already record-breaking profits of big oil, we can fully expect the GOP to come out with their proverbial guns blazing. Although in this Committee, we can actually bring real guns. We will likely hear their usual protests about high energy prices, even though I dare say these arguments fall a little flat in light of the recent complaint from the Federal Trade Commission showing how big oil colluded with OPEC to raise energy prices.

We may hear about permitting delays, even though not a single one of my Republican colleagues voted with Democrats to pass more than \$1 billion in funding through the Inflation Reduction Act to address staff capacity and resources in permitting offices. Experts have repeatedly identified insufficient staff capacity, not NEPA itself, as a top reason for permitting delays.

Basically, we will hear a lot, and probably at loud volumes. So, I want to commend you in advance, Chairwoman, not just for the patience you will likely need to employ today, but for your commitment to carrying out the Council's mandate to deliver clean air, clean water, and a healthy environment for all Americans, no matter how well funded the opposition may be.

Thank you. I yield back.

The CHAIRMAN. I will now introduce our witness, the Honorable Brenda Mallory, Chair of the Council on Environmental Quality.

Let me remind you that under Committee Rules, you must limit your oral statement to 5 minutes, but your entire statement will appear in the hearing record.

To begin your testimony, please press the "on" button on the microphone.

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

I now recognize Chair Mallory for 5 minutes.

**STATEMENT OF THE HON. BRENDA MALLORY, CHAIR,
COUNCIL ON ENVIRONMENTAL QUALITY, WASHINGTON, DC**

Ms. MALLORY. Thank you, Chairman Westerman, Vice Ranking Member Kamlager-Dove, and distinguished members of the Committee. It is really a privilege to be here with you today.

Congress established the Council on Environmental Quality more than 50 years ago to advise the President on environmental policy. Some of the specific environmental challenges we face today are different than they were a half century ago, but many of our goals and much of our focus remains the same. Our nation's rivers no longer catch on fire, yet we have much work to do to bring them back to full health. Our skies are no longer blanketed by acid rain producing sulfur dioxide, but now we must slash climate-warming greenhouse gas emissions and reduce toxic pollutants. We have saved hundreds of wildlife species from extinction, yet natural areas and wildlife habitat are continuing to disappear.

CEQ's mission to help deliver clean water, clean air, and a healthy environment to all is as important today as it has ever been. That is why I am so proud of the work that we have done under President Biden and Vice President Harris' leadership. Today, I will highlight progress we have made in three key areas that the President's Fiscal Year 2025 budgets support.

First, confronting the climate crisis and deploying clean energy. President Biden is leading the most ambitious climate agenda in history. Thanks to his leadership and Congress' landmark legislation, we are making once-in-a-generation investments in clean energy and infrastructure, while creating millions of good-paying jobs. The Council on Environmental Quality is proud to play a key role in advancing this work. That includes modernizing Federal permitting and environmental review processes.

Thanks to President Biden's Permitting Action Plan and the nearly \$1 billion dedicated through the Inflation Reduction Act to boost permitting capacity at Federal agencies, we have expanded the Federal permitting workforce, incorporated new technologies, and improved coordination of permitting processes.

We also worked with Congress on a bipartisan basis to enact, as part of the Fiscal Responsibility Act of 2023, the most significant changes to the National Environmental Policy Act since the law was enacted. CEQ recently finalized the bipartisan Permitting Reform Implementation Rule, which fully implements these bipartisan reforms, as well as additional steps that modernize and accelerate the permitting process.

Second, CEQ is helping confront the long-standing environmental injustices to better protect people from environmental harms and deliver clean air, clean water, and a healthy environment for all. The Administration continues to make progress to combat toxins, like asbestos and PFAS, while cleaning up legacy pollution, reclaiming abandoned land mines, capping orphan oil and gas wells, and replacing toxic lead pipes.

As part of the President's commitment to environmental justice, the Council on Environmental Quality is focused on strengthening government-wide technical assistance and capacity building, which is helping communities access the Administration's historic resources. Our White House Office of Environmental Justice is coordinating implementation of environmental justice policies across the Federal Government, including delivering on the President's vision for the Justice40 Initiative.

Third, we are supporting locally-led conservation of our nation's lands and waters. In the first days in office, President Biden established the country's first national conservation goal to protect, conserve, and restore at least 30 percent of U.S. lands and waters by 2030. To reach this goal we launched the America the Beautiful initiative, and are supporting one of the most rapid accelerations of locally-led conservation in our nation's history.

Notably, conservation across the country has been driven by local efforts of ranchers, farmers, fishers, forest owners, Tribal Nations, communities, and others to safeguard the health and integrity of the lands and waters upon which we all depend.

Thank you for the opportunity to testify today, and I look forward to our continued partnership, and welcome any questions that you may have.

[The prepared statement of Ms. Mallory follows:]

PREPARED STATEMENT OF BRENDA MALLORY, CHAIR,
COUNCIL ON ENVIRONMENTAL QUALITY

Introduction

Chairman Westerman, Vice Ranking Member Kamlager-Dove, and distinguished Members of the Committee, thank you for the opportunity to testify in support of President Biden's Fiscal Year (FY) 2025 Budget for the Council on Environmental Quality (CEQ). It is an honor and a privilege to be here with you today.

Congress established CEQ more than fifty years ago to advise the President on environmental policy, document and define changes in the natural environment, and help coordinate environmental policies and programs across the Federal government. In particular, the law establishing CEQ—the National Environmental Policy Act (NEPA) of 1969—directs CEQ “to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation.”

Some of the specific environmental challenges we face today are different than they were half a century ago, but many of our goals and much of our focus remains the same. Our nation's rivers no longer catch on fire, yet we have much work to do to bring them back to full health and to rid our waterways and drinking water

systems of toxic chemicals. Our skies are no longer blanketed by acid rain-producing sulfur dioxide, but now we must slash the greenhouse gas emissions that are warming our climate and the toxic pollution that imperils our communities. Our country has successfully saved hundreds of wildlife species from extinction, yet natural areas and wildlife habitat are continuing to rapidly disappear, and safe and accessible outdoor opportunities remain out of reach for too many.

CEQ's mission—to help deliver clean water, clean air, and a healthy environment for all people in our country—is as important today as it ever has been. That is why I am so proud of the work we have done over the past three and a half years under President Biden and Vice President Harris's leadership. Much of the progress we have made at CEQ and across the Administration on these critical issues—from improving the efficiency and effectiveness of environmental reviews to tackling so-called forever chemicals, or PFAS—has been enabled by bipartisan collaboration with Congress and historic investments from the American Rescue Plan Act (ARPA), the Bipartisan Infrastructure Law (BIL), the CHIPS and Science Act (CHIPS), and the Inflation Reduction Act (IRA).

President Biden's Fiscal Year 2025 Budget

Today, I will talk about our priorities and progress at CEQ, how this work is helping advance the President's climate, conservation, and environmental justice agenda for our country, and the areas on which we intend to focus in FY 2025.

The President has proposed a budget of \$4.676 million in discretionary appropriations for CEQ, an increase of \$47,000 from the FY 2024 enacted budget. The FY 2025 budget builds on critical investments in the IRA (P.L. 117-169) and supports the following priorities and goals for the country:

- Confronting climate change, accelerating the deployment of clean energy and vital infrastructure, and improving environmental review and permitting processes;
- Delivering clean air, clean water, and a healthy environment for all; and
- Supporting locally led conservation of our nation's lands, waters, and wildlife.

Confronting Climate Change, Accelerating the Deployment of Clean Energy and Vital Infrastructure, and Improving Environmental Review and Permitting Processes

Thanks to President Biden's leadership and Congress's passage of several landmark pieces of legislation over the past three and a half years, the Administration is making once-in-a-generation investments to accelerate clean energy deployment and fight climate change, rebuild our nation's crumbling infrastructure, and create millions of good-paying jobs.

CEQ is proud to play a key role in advancing this work. Within the Federal government, CEQ's Federal Chief Sustainability Office is helping Federal agencies lead by example by powering more government facilities with clean energy, shifting Federal fleets to zero- and low-emission vehicles, and meeting other objectives that President Biden set in Executive Order 14057, *Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability*. We have been pleased to work with the U.S. Postal Service, for example, as it builds the world's largest electric delivery vehicle fleet. The Postal Service is currently planning to transition 66,000 vehicles to electric over the next five years, which will result in cleaner air in communities and lower costs for the agency. We are also working with agencies to help them develop and implement adaptation and resilience plans to better protect Federal facilities and the communities in which they are located from the impacts of climate change. We have worked, for example, with the Office of Science and Technology Policy and the National Oceanic and Atmospheric Administration, to provide agencies and the public with a new flood mapping tool and a climate risk tool that helps illustrate climate risks over the years ahead.

CEQ is also helping accelerate the deployment of clean energy and other vital infrastructure by working to modernize Federal permitting and environmental review processes. We recognize the need to permit and build things—quickly and well—to upgrade our transportation infrastructure, confront the climate crisis, close the digital divide, bolster our energy security, and advance our industrial policy.

That is why President Biden launched his Permitting Action Plan in 2022, and has directed his Cabinet and senior staff to be directly and fully engaged to address any delays and bottlenecks in permitting, simplify and improve permitting processes, and direct appropriate resources and attention to get projects built well and on time.

The Administration's focus on permitting is delivering results. The IRA dedicated nearly \$1 billion to boost permitting capacity at Federal agencies. With these investments, we have already expanded the Federal permitting workforce by 14%, we are incorporating new, more efficient technology, and we are improving coordination of permitting processes.

In addition to the investments in permitting that the Administration is making with the help of the IRA, we were also pleased to work with Congress on a bipartisan basis to enact—as part of the Fiscal Responsibility Act (FRA) of 2023—the most significant changes to NEPA since the law was enacted in 1970. Earlier this month, CEQ finalized the Bipartisan Permitting Reform Implementation (BPRI) Rule, which fully implements these bipartisan reforms, as well as additional reforms that will modernize and accelerate the permitting process. Altogether, these streamlining efforts will help us drive forward the infrastructure we need for our future. I will briefly highlight four major features of these reforms in the BPRI rule.

First, the reforms we made in the BPRI rule will improve the efficiency and speed of environmental reviews. The rule will accelerate review of all projects, including clean energy, transmission, clean water, broadband, transportation, and other crucial infrastructure. It does so by setting clear deadlines and page limits for environmental reviews; charging the lead Federal agency for each project with coordinating a unified and efficient environmental review process; allowing agencies to share categorical exclusions, which unlocks faster reviews for projects that do not have significant environmental effects; establishing new and more flexible methods for agencies to create categorical exclusions that will speed up projects without significant adverse effects; expanding the use of programmatic environmental reviews; and encouraging lower levels of environmental review when a project's effects can be mitigated.

Second, our reforms in the BPRI rule will facilitate better environmental outcomes, not by dictating the outcome of any particular decision-making process, but by improving Federal decision making across the board. The rule clarifies that agencies should consider climate change effects in environmental reviews, which courts have already required agencies to do, look at alternatives that would reduce a project's climate impacts, and evaluate how to ensure that projects are designed to withstand climate change. The rule also makes sure that agencies conduct the proper level of environmental review and that the review focuses on the most consequential effects of the proposed action.

Third, the rule advances environmental justice and promotes meaningful—and early—public input. We know that community buy-in helps make sure projects are built smart from the start, improving project design and avoiding conflicts that can result in litigation and delays.

Fourth and finally, the BPRI rule reverses provisions of a rule, issued in 2020, that were legally uncertain and jeopardized community input. Along with steps we took two years ago to clarify and restore basic safeguards for environmental reviews and guidance we issued to agencies last year on how to account for climate change and greenhouse gas emissions, the BPRI rule will help ensure that more projects get built right the first time.

I am grateful for all the input and comments that helped inform the BPRI rule. The rule strikes the right balance between expediting the permitting process and ensuring informed decision making to meet NEPA's environmental stewardship and national policy goals. It will deliver more efficiency and certainty for project sponsors, more tools to Federal agencies, and better projects and decisions for communities.

We are already working with agencies and will continue to do so over the next year to implement more efficient and effective environmental reviews as set forth in the BPRI rule. This includes supporting agencies as they update their NEPA implementing procedures, develop new categorical exclusions, and strengthen and modernize their NEPA programs; developing environmental review and permitting trainings for agency staff; and helping agencies explore technology updates to make permitting more efficient, including building on the work begun at the Environmental Permitting Technology and Data Summit that CEQ held last fall.

Delivering Clean Air, Clean Water, and a Healthy Environment for All

In addition to helping accelerate the deployment of clean energy and vital infrastructure, CEQ is working to deliver a healthy and safe environment for all communities. In particular, CEQ is helping Federal agencies advance policies, programs, and practices to confront long-standing environmental injustices and inequities and to better protect people from pollution and environmental harms. This is resulting in real and meaningful progress in communities across the country.

With President Biden's and Vice President Harris's leadership, CEQ is supporting Federal agencies' work to address and prevent disproportionate and adverse environmental and health impacts in communities—now and in the future. For example, the Environmental Protection Agency's (EPA) recently finalized standards that will cut toxic pollution from chemical plants, which will reduce the number of people at heightened risk for cancer. Additionally, the EPA has finalized a ban on asbestos and established the first national standard for PFAS in drinking water.

In addition to the Administration's work to tighten pollution standards, CEQ is supporting agencies in mobilizing once-in-a-generation funding and resources from the Inflation Reduction Act and Bipartisan Infrastructure Law to transform our country for the better. Communities are experiencing the benefits of these historic investments right now. In rural and urban communities across the nation, former industrial and energy sites that were once sources of blight and pollution are being transformed, thanks to new funding to tackle legacy pollution and remediate environmental harms. This includes investments to clean up Superfund and brownfield sites, reclaim abandoned mine land, and cap orphaned oil and gas wells. At the same time, we are working to ensure a future where every child and family lives without the fear and harmful effects of lead in drinking water by investing billions of dollars to replace every lead pipe in the country.

As part of the President's commitment to environmental justice, CEQ is also focused on strengthening government-wide technical assistance and capacity building, which is helping communities across the country access these historic resources. The White House Office of Environmental Justice at CEQ is coordinating implementation of environmental justice policy across the Federal government, including delivering on the President's vision for the Justice40 Initiative. Directed by Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*, the Justice40 Initiative is reshaping how the Federal government ensures communities that have been historically left behind and faced underinvestment see the benefits of Federal investments. There are 518 programs across 19 federal agencies that are currently being reimagined and transformed through the Justice40 Initiative to maximize benefits to disadvantaged communities.

Since President Biden signed Executive Order 14096, *Revitalizing Our Nation's Commitment to Environmental Justice for All*, last spring, CEQ has been pleased to work with agencies to conduct assessments of their environmental justice efforts by developing, implementing, and updating Environmental Justice Strategic Plans. To promote transparency and accountability, CEQ published a template for Federal agencies, drawing on leading practices and recommendations created by government performance and planning experts. Its purpose is to ensure that agencies use planning and performance measures that will pave the way for effective implementation for years to come.

CEQ is also working to improve the information and data that the Federal government needs to address environmental injustice and to better protect all communities from the impacts of pollution and climate change. In particular, CEQ led the development of the Climate and Economic Justice Screening Tool (CEJST), which Federal agencies use to identify disadvantaged communities that can benefit from the Justice40 Initiative. Through partnerships with other Federal agencies and institutions, CEQ is also working to bolster national data on the cumulative and disproportionate impacts of climate change, pollution, environmental, and socio-economic burdens on disadvantaged communities, and to help ensure the government uses these data effectively to reduce burdens and improve outcomes for communities with environmental justice concerns.

Though much work remains to fulfill the President's vision of clean air, clean water, and healthy communities for all people, thanks to these efforts we are seeing real, positive change in communities across the country.

Supporting Locally Led Conservation and Restoration of our Lands and Waters

In his first days in office, President Biden established the country's first national conservation goal to protect, conserve, and restore at least 30 percent of U.S. lands and waters by 2030. To reach this goal, the Administration launched the America the Beautiful Initiative, a call to action to conserve and restore the nation's lands and waters for the benefit of all people through locally led, voluntary, collaborative conservation efforts.

Since the launch of the America the Beautiful Initiative, the United States has experienced some of the most rapid conservation progress in our nation's history, with more than 41 million acres of land and water conserved in just over three years. This work is happening at all levels of government. Last month, ten states, eight Tribes, and 24 local governments became inaugural members of the Adminis-

tration's America the Beautiful Freshwater Challenge, which supports Tribal, state, and local efforts to protect and restore the nation's lakes, rivers, streams, estuaries, and wetlands.

Thanks to the Bipartisan Infrastructure Law and the Inflation Reduction Act, the Administration is investing more than \$10 billion to support locally led conservation and restoration efforts. To help communities access this historic funding, the Administration launched Conservation.gov, a new information hub that connects people with tools to advance meaningful conservation and restoration work on the ground. Built through an interagency partnership that CEQ helped lead, the website offers opportunities for the public to learn about conservation efforts underway across the country, explore outdoor recreation and volunteer opportunities, and apply for financial assistance in support of conservation projects.

Conservation.gov also houses the new American Conservation and Stewardship Atlas, an innovative tool that illustrates locally led, partnership-driven conservation and restoration work underway in communities across the nation. The Atlas also includes a preliminary framework for tracking progress towards the nation's conservation goals.

The Administration's conservation work includes a wide range of approaches that meet the needs of communities. This ranges from taking action to protect 9.3 million acres of the world's largest intact temperate rainforest in Alaska to planting trees in urban nature-deprived neighborhoods. It includes working to address long-standing litigation in the Columbia River Basin and strengthening efforts to restore salmon to healthy and abundant levels. It also includes expanding enrollment in working lands programs, as well as withdrawing sensitive areas—such as the Thompson Divide in Colorado—from future mineral development. Notably, conservation across the country has been driven by local efforts of ranchers, farmers, fishers, forest owners, Tribal Nations, communities, and others to safeguard the health and integrity of the lands and waters upon which we all depend.

Conclusion

CEQ is proud to be working to deliver a healthy environment for all, to help conserve and restore our lands and waters, and to accelerate a clean energy economy that will combat climate change and make our communities more resilient. Overall, with the FY25 budget request, CEQ will be well-positioned to help advance the President's climate, conservation, and environmental justice agenda for our country.

Thank you for the opportunity to testify today. I look forward to our continued partnership and welcome any questions you may have.

QUESTIONS SUBMITTED FOR THE RECORD TO THE HON. BRENDA MALLORY, CHAIR,
WHITE HOUSE COUNCIL ON ENVIRONMENTAL QUALITY

The Hon. Brenda Mallory did not submit responses to the Committee by the appropriate deadline for inclusion in the printed record.

Questions Submitted by Representative Westerman

NEPA Phase 2:

Question 1. Aren't CEQ's Final Phase 2 NEPA Regulations a significant departure from NEPA's historic role as a procedural statute?

1a) How can you reconcile Phase 2 and the Administration's imposing an obligation on Federal agencies to "use all practicable means" to achieve environmental goals with the forty plus years of court cases saying NEPA doesn't mandate specific results?

Question 2. Does Chevron doctrine or Chevron deference apply to CEQ?

2a) What is your contingency plan should Chevron be overturned by the Supreme Court given the divergence between the text of NEPA amendments contained in the FRA and CEQ's new Phase 2 regulations?

Question 3. The recently finalized NEPA Phase 2 rulemaking appears to disproportionately favor renewable energy related projects and discriminate against oil and natural gas projects when the rule should prompt agencies instead to focus on a project's environmental effects regardless of energy type.

3a) Explain CEQ's rationale in crafting a rule that has the high potential to stop the permitting of many critical energy projects in the U.S. that Americans and overseas allies will need to meet their growing energy demands in the coming decades—demands for petroleum products that this administration's own EIA notes will continue to rise through at least 2050?

30 x 30 Initiative

Question 4. Since President Biden took office, gas prices at the pump have gone from \$1.93 in April 2020 to \$3.73 in April 2024. This is digging into the wallets of the everyday, hardworking American people. Do you truly think locking up America's lands under the 30x30 initiative from further resource development will help decrease the price of gas at the pump?

Question 5. CEQ has been restricting access to America's natural resources the day President Biden took office. The United States currently imports 51 minerals and 12 are considered "critical." Will the 30x30 initiative affect foreign dependency on importing our natural resources?

Question 6. A portion of the 30x30 initiative states that the goal is to "create jobs and strengthen the economy," but the 30x30 initiative does the complete opposite. The Biden administration has increased inflation to almost 20 percent and the prices of homes, cars, groceries, and gas are the highest in our country's history. What has CEQ done to actually strengthen the economy for the American people?

Global Freshwater Challenge

Question 7. On December 10, 2023, while attending the United Nations Climate Change Conference (COP28), you announced that the United States would participate in the Global Freshwater Challenge. During earth week of this year, the Biden-Harris administration announced America the Beautiful Freshwater Challenge which, according to the press release, is intended to "call on all states and other governments and entities, including Tribes, interstate organizations, cities, and local communities to advance their own policies and strategies for conserving and restoring America's freshwater systems." What is the Global Freshwater Challenge? Who is participating in it? Who funds it?

Question 8. Since this was launched at the United Nations, how is the UN supporting this initiative? Can you walk the committee through how the initiative will work? Are there incentives being given to the participants?

Question 9. What checks are in place to ensure that Foreign Nationals, foreign groups, or groups which receive funding from the Chinese Communist Party do not participate in the Global Freshwater Challenge in the United States?

Executive Order 14072

Question 10. Executive Order 14072 directed the Department of Agriculture and the Department of the Interior to define, identify, and inventory so-called mature and old growth forests on Federal land, and to develop policies to protect these forests. This effort has raised serious concerns from many stakeholders who believe it will be used to block forest management activities in areas at a high risk for catastrophic wildfire. In the face of a historic wildfire crisis, this is a very understandable concern. Can you provide some clarification on that front. Is the overall goal of this old growth forest order to reduce forest management activities, and responsible timber harvests?

Question 11. Evidence shows that the Old Growth order is in fact being used to reduce forest management and timber harvests. For instance, in the BLM's FY 2025 Budget Justification, the BLM specifically justifies a whopping 19 percent reduction in timber volume in Western Oregon in order to quote "focus on the protection of mature and old-growth forests." Further reducing timber harvests in an area that is already struggling with extreme wildfire risk due to overgrown conditions is deeply misguided. Is it the Administration's position that drastically reducing timber volume in high-risk areas will help protect old growth forests?

Marine Sanctuaries & Permitting

Question 12. Within the proposed Chumash Heritage National Marine Sanctuary there are existing and planned fiber optic networks off the central California coast. These cables have been determined time and again to be environmentally benign and become part of the seabed after they are laid. The US is heavily reliant on subsea fiber optic cables for global connectivity that is imperative to our national and

economic security. What is CEQ doing to ensure our nation's environmental laws accommodate our need for the connectivity provided by subsea cables in the designation of national marine sanctuaries?

Pacific Northwest Hydroelectric Issues

Question 13. The Council on Environmental Quality has been implementing radical environmental justice initiatives across the Federal Government, but then seemingly supports the closure of a hydroelectric dam. How would closing a dam site that does not emit greenhouse gas emissions increase a clean energy future? Also, are hydroelectric plants not considered clean energy?

Question 14. Breaching the Lower Snake River Dams only decreases clean energy production giving the United States more reliance on our foreign adversaries. Why did you agree that breaching the Lower Snake River Dams was a good idea?

Question 15. In a statement released by the Biden administration on the restoration of Pacific Northwest salmon you stated "Business as usual will not restore the health and abundance of Pacific Northwest salmon. We need a durable, inclusive, and regionally-crafted long-term strategy for the management of the Columbia River Basin." The National Marine Fisheries Service released a report in 2022 admitting that there is "uncertainty" on whether breaching the Lower Snake River Dams would provide "direct productivity and survival benefits" for "salmon and steelhead stocks." As you know, the Department of Commerce has authority over the NMFS, so do you disagree with the National Marine Fisheries Service?

Science-Based Targets Initiative

Question 16. Please explain how Science-Based Targets Initiative (SBTi), a "partnership between CDP, the United Nations Global Compact (UNGC), the World Resources Institute (WRI), and the World Wide Fund for Nature (WWF, also known as the World Wildlife Fund)" came to be listed as the primary validation source in the Federal rulemaking process for the proposed rule, "Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk," including the role any employees of CEQ (full time, term, volunteer, or otherwise) had in the development of this rulemaking.

Question 17. SBTi is not based in the United States. Why didn't CEQ select a U.S. based non-profit to vet the emissions standards set by contractors?

Question 18. If this rule is adopted, who will conduct oversight of SBTi to ensure they are producing accurate scientific estimates?

Question 19. If this rule is adopted, who will conduct oversight of SBTi to ensure that they are not allowing donations from private actors influence their decision making?

Questions Submitted by Representative Lamborn

Question 1. Much of your testimony focused on the oversight CEQ is doing with the NEPA process, specifically touting that you are speeding up the permitting process. Typically mines in the hardrock mineral space can take decades to begin production. And this is unacceptable. Many of the most critical minerals listed on USGS critical minerals list are ones the US is beholden to China to mine and refine. FAST-41 was created to speed up the NEPA permitting process. Mineral mining was added to the FAST-41 only a few years ago. Have there been any concerns that mining companies have been taking advantage of this accelerated process outside of the intent of the law?

Question 2. FAST-41 was downgraded to only minerals listed on the Critical Minerals list made by the USGS, which is required to be updated every 3 years. A Mine might be approved under FAST-41, and before entering production, already be ineligible for continuing in that project. Would you concur that many of the green energies the Administration is prioritizing uses these hardrock minerals, such as Nickel and Copper in electric vehicles?

Question 3. You specifically mention that your work with the NEPA Phase II rule is in part to bolster energy security. How do you rectify the Bipartisan Permitting Reform Implementation Rule's focus on green energies at the expense of our reliable and affordable producing energies when Americans are paying the cost at the pump and to maintain their homes?

Question 4. If the Biden administration is serious about a transition to an electric future, they must be aware of the amount of copper alone that is needed. As many as six new large copper mines must be brought online annually over the next several decades. About 40 percent of the production from new mines will be required for electric vehicle-related grid upgrades. With all this in mind how does the Biden administration rectify the fact that we will need to bring on a minimum of 6 new copper mines a year in order to meet this demand, but they are also committed to locking up 30 percent of working Federal lands by 2030?

Question 5. In the first 3 years of the Trump administration the Department held 11 oil and gas lease sales, leasing 221,000 acres, bringing in \$8.8 million in revenue to the state and Federal Government. In the first 3 years under your control, the Department has held 1 lease sale in Colorado, leasing one 290 acre parcel, bringing in \$1.2 million in revenue to the State and Federal Government. How are western states and communities supposed to provide essential services to their constituents when the Administration is locking up lands and failing to hold regular lease sales?

Question 6. BLM has one upcoming lease sale in Colorado for a small parcel of 120 acres. This lease sale along with the only other lease sale held by this administration neglects the Western Slope. Will your organization commit to supporting a lease sale on the Western Slope this year?

Question 7. Some of what you have mentioned in your testimony focuses on the attention to “Old growth” or “mature forests.” Currently, the definition of mature forests is nebulous, and as such 63 percent of all USFS lands—91 million acres—would be classified as such. Additionally, the Forest Service has stated that “Thinned forests are healthy forests.” Through what processes does CEQ intend to oversee the effort to protect and harden our forests through wildfire mitigation of wildfire fuel?

Question 8. In the average forest, how is salvage material spread throughout verdant or otherwise healthy portions of the forest?

Question 9. What do you think are the largest factors holding back contractors from fulfilling more contracts?

Questions Submitted by Representative Graves

Question 1. The NEPA Phase II guidance requires agencies to identify the “environmentally preferable alternative” even if that alternative is outside of the scope of the agency’s expertise or authority. Is CEQ, in effect, telling agencies such as the Federal Energy Regulatory Commission (FERC), which is a long-standing technology and fuel-neutral agency, that they have to disregard that impartiality to pursue the administration’s policy agenda? If these alternatives can be outside of the agency’s authority, would this guidance justify an agency denying an energy infrastructure project in favor of a purely hypothetical project that has not even been proposed? In other words, are you saying FERC should deny a needed pipeline in favor of a wind farm that no one plans to build?

Question 2. It is clear from CEQ’s NEPA Phase 2 guidance that the agency is focused on ensuring that the projects and energy sources you favor get built, while making it more burdensome to build projects such as natural gas pipelines. Would CEQ agree that natural gas is a critical energy resource to support intermittent generation resources? If so, how does CEQ justify effectively creating a dual track for review where the projects that the current administration favors are subject to significantly less review under NEPA than projects that deliver reliable energy like natural gas pipelines?

Questions Submitted by Representative Radewagen

Question 1. On February 20 during a meeting at the Marriot hotel with Governor Lemanu and Congresswoman Radewagen, Assistant Secretary Bavishi agreed there was an “unusual process here” as to the rapidity of this PRIMNM/Sanctuary designation process being conducted; do you agree with the Assistant Secretary’s observation that this PRIMNM Sanctuary designation has been an “unusual process here”?

Question 2. Members of The Pacific Remote Islands Coalition stated in meetings March 7 with my Congressional staff that their clear goal is to kill all purse seine fishing and shutdown the cannery in American Samoa in pushing for the PRIMNM/Sanctuary designation they have been lead sponsor for, do you agree with the Pacific

Remote Islands Coalitions sponsors goals to shut down our cannery in American Samoa?

Question 3. The CEQ, under the Executive Office of the President is the policy agency for environmental impact statements which drive most decisions made by the Executive branch. I understand the 2nd draft EIS for the PRI Sanctuary has been written and is being reviewed by NMFS and other agencies. When will the draft be made public and does it include options for commercial fishing?

Question 4. The proposed monument expansion could devastate the economy of American Samoa, where 80 percent of all private sector jobs are related to fishing in the region.

4a) Prior to issuance of this decision, what analysis, if any, was made of the harm expanding the Marine National Monument will have on my Territory's economy and my constituents?

4b) Can you provide the Committee with a copy of any such analysis?

4c) What measures or strategies have been implemented—or are contemplated to be implemented—to mitigate these potential harms and ensure the sustainable growth of both the marine monument and the fishing industry in the region?

Question 5. Our fisheries must compete with foreign operations which are often subsidized, and which do not have to meet the stringent environmental, labor, and other regulatory requirements imposed by the Federal Government. It's been reported that China is the world's largest subsidizer of its fishing fleet.

5a) Has CEQ analyzed the benefits Chinese and other foreign fishing fleets will reap once the National Marine Monument is expanded as is proposed by President Biden?

5b) Has CEQ conducted any analysis of the environmental impacts that could occur, should foreign fisheries supplant the U.S. fisheries in the region?

Questions Submitted by Representative Levin

Question 1. As we look to rapidly build out clean energy and transmission infrastructure to support a more resilient grid and reduce energy costs for consumers, based on your experience, what are the most significant hurdles to the timely processing of Federal permits?

Question 2. How will the Council on Environmental Quality's "Bipartisan Permitting Reform Implementation Rule" help to address existing hurdles to permitting reform?

Question 3. Given the considerable work from Congress through the Fiscal Responsibility Act, and this Administration through the "Bipartisan Permitting Reform Implementation Rule" to address permitting reform, do you believe additional legislative action is needed, and if so, what actions should we consider taking to responsibly speed up permitting while ensuring adequate protections for impacted communities and our environment?

Question 4. To what extent might additional resources across the Federal Government help with permit processing times?

Question 5. I appreciate this Administration's focus on improving opportunities for public engagement and increasing transparency in the agency decision-making process. Can you compare the projects that have successfully gone through the permitting process with those that have struggled due to community opposition? Specifically, is there a correlation between how actively project sponsors engage with interested or impacted communities early on or prior to the permitting process and positive project outcomes? Is there a correlation between a lack of stakeholder engagement and project delays or even cancellations?

Questions Submitted by Representative Dingell

Question 1. What were some of the key provisions of the Trump administration's 2020 NEPA rule that the NEPA Phase 2 rule reverses? For example, how did the Trump provisions impact public input and litigation risks?

Question 2. In what ways does the Phase 2 rule protect public health and ensure better environmental outcomes compared to the Trump 2020 NEPA rule?

Question 3. The Biden administration has taken steps to secure critical minerals supply chains by joining the Sustainable Critical Minerals Alliance alongside allied nations. President Biden also directed Federal agencies to strengthen critical mineral and advanced battery supply chains with Executive Order 14017. How is CEQ supporting these efforts to secure our critical mineral supply chains WITHOUT gutting environmental protections, like some of my Republican colleagues have proposed?

The CHAIRMAN. Thank you for your testimony. I will now recognize Members for 5 minutes of questions, and I will begin by recognizing myself for 5 minutes.

Chair Mallory, I would like to ask you about some situations where alternative arrangements under NEPA may be used. So, yes or no, has CEQ recommended the use of alternative arrangements for construction of chips facilities, rebuilding the Francis Scott Key Bridge, or forest management to save giant sequoias in Yosemite National Park?

Ms. MALLORY. Thank you, Congressman, for that. The alternative arrangements are a tool that we have used for emergency—

The CHAIRMAN. The answer is no. You have not used it for those projects. But I would like to talk to you about a place where alternative arrangements have been supported by CEQ.

A year ago, New York Governor Hochul declared a state of emergency regarding migrants seeking shelter in New York City. Following months of negotiations with the White House, the City of New York signed a lease with the National Park Service to provide shelters and services to migrants using alternative arrangements. The Committee has investigated this issue and received two versions of the story. CEQ sent the Committee a letter stating that they “did not require DOI to consult with CEQ on alternative arrangements.” However, e-mails obtained by the Committee document CEQ staff directing DOI towards alternative arrangements. These e-mails also noted support for the Department’s NEPA framework, which provided no opportunity for public comment.

Do you take full responsibility for forcing DOI to use alternative arrangements, even though CEQ sent a letter to the Committee stating you had no position?

Ms. MALLORY. Thank you, Congressman, for that question. No, I think our posture was that we did not—

The CHAIRMAN. So, you don’t take responsibility for that. Is a public comment period necessary for turning national park lands into a migrant camp?

Ms. MALLORY. Congressman, that is not an action on which we have taken any active position.

The CHAIRMAN. You have taken an active position. You have forced DOI to use these alternative arrangements.

At any point during the months of negotiations with Governor Hochul, which included CEQ’s staff to lease Floyd Bennett Field, did anyone propose a public comment period or town hall to allow the community a voice?

Ms. MALLORY. Congressman, in that case we actually told DOI that they had regulations that they could follow, that we did not actually direct them to do anything, and we did not actually—

The CHAIRMAN. We have the e-mails from DOI saying that CEQ advised them to use alternative arrangements. Do you now acknowledge that DOI officials based their decision to avoid public comment or advice from CEQ?

Ms. MALLORY. I would like to see the e-mails. I don't believe that is what we—

The CHAIRMAN. We can get you some copies of those.

Without objection, I will submit these e-mails to the record.

[The information follows:]

From: Braegelmann, Carol
To: Jacobs, David D
Cc: Cobbs, Molly R
Subject: Fw: [EXTERNAL] RE: need to touch base today
Date: Thursday, August 24, 2023 2:39:18 PM

FYI and can you reference this email (and maybe attach) to the alternative arrangements request?

From: Maldonado Vazquez, Jomar EOP/CEQ <Jomar.MaldonadoVazquez@ceq.eop.gov>
Sent: Thursday, August 24, 2023 3:59 PM
To: Braegelmann, Carol <carol_braegelmann@ios.doi.gov>
Cc: Tryon, Steve G <stephen_tryon@ios.doi.gov>; Healy, Megan E. EOP/CEQ <Megan.E.Healy@ceq.eop.gov>
Subject: [EXTERNAL] RE: need to touch base today

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hi Carol,

Thank you for approaching us on the question related to the emergency actions at Gateway National Park. Based on the information you provided, we believe that this emergency could be addressed through the DOI NEPA emergency procedures at 43 CFR 46.150(b)-(c). At this time, we do not believe that alternative arrangements under 40 CFR 1506.12 are needed because there is no likelihood for actions that would result in significant impacts to the human environment.

CEQ commends and fully supports DOI's and NPS efforts and framework to address NEPA for your actions in this situation. We encourage you to take a look at our guidance on emergency situations (<https://ceq.doe.gov/docs/nepa-practice/emergencies-and-nepa-guidance-2020.pdf>) as you consider the documentation you would develop pursuant to 43 CFR 46.150(c).

We are available to discuss alternative arrangements in the future if this situation changes and DOI or NPS identifies an action that could have significant impacts to the human environment and, as a result, necessitate the preparation of an environmental impact statement.

Thank you for your coordination on this matter.

Jomar

Jomar Maldonado | Director for NEPA
CEQ/EOP

jomar.maldonadovazquez@ceq.eop.gov

From: Braegelmann, Carol <carol_braegelmann@ios.doi.gov>
Sent: Thursday, August 24, 2023 1:21 PM
To: Maldonado Vazquez, Jomar EOP/CEQ <Jomar.MaldonadoVazquez@ceq.eop.gov>
Subject: Re: need to touch base today

Hi Jomar,

Any update from our call Tuesday? Interior is still anticipating taking next steps this week.

Thanks,
Carol

From: Braegelmann, Carol
Sent: Tuesday, August 22, 2023 11:36 AM
To: Jomar.MaldonadoVazquez <jomar.maldonadovazquez@ceq.eop.gov>
Subject: need to touch base today

Hi Jomar,

Welcome back and hope you enjoyed your time off. Left you a voice and need to start some coordination with CEQ today on a potential proposed action—can you give me a call as soon as possible? My cell number is listed below. Thank you.

Carol

*Carol Braegelmann
Division Chief
NEPA and Environmental Coordination
Office of Environmental Policy and Compliance
Department of the Interior
phone: 202-208-6661
cell: 202-256-3113*

From: Tryon, Steve G
To: Vietzke, Gay E; Nersisyan, Jen T; Jacob, David DJ
Cc: Sams, Charles E; Salvador, Raymond D; Braegelmann, Carol
Subject: FW: Gateway NRA Alternative Arrangements Decision Memorandum (NEPA Emergency Action) for DOI Approval
Date: Tuesday, September 12, 2023 6:31:46 AM
Attachments: For PDAS_PMB signature GATE Alternative Arrangements 09.11.2023.pdf

Good morning,

Please find attached the signed emergency NEPA procedures for your work at Gateway NP.

Hope everything goes well today!

Steve Tryon
 Director, Office of Environmental Policy and Compliance
 Chief Environmental Review and Permitting Officer
 U.S. Department of the Interior
 (o) 202-208-4221
 (c) 202-527-2651

From: Mooney, Joan M <joan_mooney@ios.doi.gov>
Sent: Monday, September 11, 2023 9:01 PM
To: Tryon, Steve G <stephen_tryon@ios.doi.gov>; Werwa, Eric <eric_werwa@ios.doi.gov>; Abimbola, Oluwarotimi M <oluwarotimi_abimbola@ios.doi.gov>
Subject: RE: Gateway NRA Alternative Arrangements Decision Memorandum (NEPA Emergency Action) for DOI Approval

Thank you kindly for the time sensitive review. It is returned to you signed by me.



Joan M. Mooney
 Principal Deputy Assistant Secretary for
 Policy, Management & Budget
 U.S. Department of Interior
joan_mooney@ios.doi.gov
 (202) 579-4180 (direct)

From: Tryon, Steve G <stephen_tryon@ios.doi.gov>
Sent: Monday, September 11, 2023 8:56 PM
To: Mooney, Joan M <joan_mooney@ios.doi.gov>; Werwa, Eric <eric_werwa@ios.doi.gov>; Abimbola, Oluwarotimi M <oluwarotimi_abimbola@ios.doi.gov>
Subject: RE: Gateway NRA Alternative Arrangements Decision Memorandum (NEPA Emergency Action) for DOI Approval

Joan this is cleared by SOL, signed by Chuck Sams, awaiting your counter-signature. NPS and NYC

expect to sign the lease for use of Gateway NP for up to 90 days tomorrow, to house up to 2,000 immigrants. This document is suitable for emergency procedures; it covers all the same affected resources as would an environmental assessment, just without the opportunity for public comment. Notably, the housing tents will be pitched on an abandoned airfield strip, so the environmental effects of the proposed action would be quite modest.

OEPC recommends that you approve the request.

st

Steve Tryon
 Director, Office of Environmental Policy and Compliance
 Chief Environmental Review and Permitting Officer
 U.S. Department of the Interior
 (o) 202-208-4221
 (c) 202-527-2651

The CHAIRMAN. Is avoiding public comment something that CEQ routinely recommends?

Ms. MALLORY. We believe that public comment is important for actions.

The CHAIRMAN. But it wasn't important on that project.

Moving on, in your prepared testimony before the Committee last year, you spoke about the importance of public engagement as part of the NEPA process, saying it is among the hallmarks of democracy and good governance that result in stronger, smarter, scientifically-supported decisions with benefits for everyone in the United States. Do you feel that the process of negotiating the lease for Floyd Bennett Field, waiving NEPA, and denying public comment serves as an example of a hallmark of democracy?

Ms. MALLORY. Congressman, as I have said, DOI used its alternative measures because of the circumstance.

The CHAIRMAN. At CEQ's direction.

Ms. MALLORY. I don't accept that.

The CHAIRMAN. I have no problems with emergency procedures under NEPA. When used appropriately, they are vital. However, the migrant crisis is an emergency of President Biden's own making. It is not a natural disaster like a hurricane that demands an emergency response.

Not only is CEQ carrying out the Biden administration's failed border policies, you are not playing by your own rules. On one hand, CEQ is creating complex and unnecessary regulations for American energy producers, such as a bureaucratic morass that ultimately benefits our foreign adversaries when these policies are put in place. And then, on the other hand, CEQ is advising government agencies to ignore the input of local communities so that migrants may live rent free on our national park.

Chair Mallory, I also understand that you have a particular interest in clean water along our northern border, which is admirable. However, there are 693 miles of Federal land on the southern border, with thousands of migrants crossing our southern border daily, each leaving pounds of trash behind, and there is a pressing need for action there. We actually held a hearing there.

Have you been to the southern border to see firsthand the environmental devastation caused by the Biden border crisis?

Ms. MALLORY. I have not.

The CHAIRMAN. So, you are very concerned about the northern border, but you have not even been to the southern border?

Ms. MALLORY. I have not been there.

The CHAIRMAN. Well, I have been to the southern border, as well as our Committee. And this is something that has to be fixed.

As an officer of the President and one of the Administration's chief stewards of our environment, will you commit to CEQ developing a whole government plan to address the immigration and environmental crisis at the southern border?

Ms. MALLORY. Congressman, that is an area that is actually in the domain of the Department of Homeland Security. That is not a place where I have a role.

The CHAIRMAN. Well, the southern border is in crisis, and your written testimony speaks volumes on environmental justice, yet does nothing to address the environmental devastation on Federal lands along our southern border.

I am out of time, and I now recognize the gentleman from California, Mr. Huffman.

Oh, I am sorry, Ms. Stansbury, the gentlelady from New Mexico, you are recognized.

Ms. STANSBURY. Thank you, Mr. Chairman.

Chair Mallory, it is wonderful to see you.

Ms. MALLORY. It is good to see you.

Ms. STANSBURY. Thank you so much for being here with us today. And I want to also thank you, and the White House, and President Biden for your extraordinary leadership, particularly on climate and environmental justice issues.

And I want to say a lot of people don't really know about the Council on Environmental Quality. They don't know about its history, its role. So, I think it is helpful to take a moment to share that this Council, which is a part of the executive office of the President, was created as a White House agency by Congress in the 1960s on a bipartisan basis under the Nixon administration. And the reason why they created it is that Americans understood at that moment that this was not a partisan issue, that our rivers were on fire, there were toxic releases that were poisoning our communities, there were schools that were built on hazardous waste sites, and that our low-income and tribal communities had been impacted for generations by decisions for siting and other activities on our public and community lands.

And we are still dealing with the aftermath of those decisions today, and that is why the work that you are doing and your leadership is so important and essential. It is about righting the wrongs of the past and making sure that we don't do that again. It is about protecting our special and sacred places. It is about tackling our energy and our climate crisis, and it is about making sure that our communities have a real seat at the table in Federal decisions.

And last year, I had the awesome opportunity to join you, Madam Chair, as well as our President and a number of officials in the signing of the President's Executive Order on environmental justice. And I have to say it was on the Rose Garden lawn that I had a moment as I was sitting there and I took it all in, and it really, for me, was a moment of sea change for our country. It was a moment when we had leaders from communities, from every state and territory across this great land, and they finally had a seat at the table. So, I want to thank you for that work. I think a lot of people don't understand how profound it is in the arc of our work to bend our work towards the arc of moral justice.

The issues that New Mexico faces in environmental justice are real. They have affected our communities for generations. And in my office, one of the issues that we are dealing with every single day is around the legacy of our nuclear program. And Madam Chair, I am sure you are aware that last year President Biden came to New Mexico as part of his tour of the Inflation Reduction Act, and he publicly committed to helping us pass the RECA reauthorization, which would provide just compensation for our downwinders and uranium miners who have been impacted by uranium mining and testing of the atomic weapons in New Mexico.

So, I would love to ask for your commitment once again today, as our President did, that you will help us. We are working on a bipartisan basis, but we have to get RECA across the finish line. Can I get your commitment?

Ms. MALLORY. Thank you. Absolutely. I think if the President has already committed to it, I certainly will be there in service.

Ms. STANSBURY. Thank you. And I hope and I ask that my colleagues across the aisle here in House Natural Resources will also support us. Senator Hawley is leading this effort in the Senate, and we need your help and support. We have to get it done. We have people dying because of it.

The second issue that is related to this is that we are currently working with the NNSA and Department of Energy overall, as well as DOD, to address unexploded ordnance. Our pueblos and tribes, during especially the Manhattan era and the decades after, essentially were used as shooting ranges for the testing of both nuclear shell bombs, as well as other ordinances. And many of these dangerous materials still have not been cleaned up on those lands. We still have tailings piles from uranium mines on our lands, and there is a complete lack of coordination between the NNSA and DOD. We have great leaders in those organizations, but the bureaucracy is grinding our communities down.

So, the other question and commitment I would love to ask you today is will CEQ please help our communities in getting coordination across these agencies to clean up these materials?

Ms. MALLORY. Thank you for that, Congresswoman. I will actually investigate this and see what role we are already playing, and if there is any assistance we can provide.

Ms. STANSBURY. Wonderful. Thank you.

With that, I yield back.

The CHAIRMAN. The gentlelady yields back. The Chair recognizes the gentlelady from Wyoming, Ms. Hageman, for 5 minutes.

Ms. HAGEMAN. Good morning, and thank you, Mr. Chairman.

Director Mallory, on April 30, the Council on Environmental Quality finalized its revisions to the NEPA regulations codifying climate change and environmental justice principles for NEPA purposes, including a definition of environmental justice. "Environmental justice," according to the CEQ, means "just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment so that people are: (1) fully protected from disproportionate and adverse human health and environmental effects, including risks and hazards including those related to climate change, the cumulative impacts of environmental and other burdens in the legacy of racism, or other structural or systemic barriers; and (2) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural subsistence practices."

The very Executive Order coming from President Biden that you are using to expand the NEPA process creates greater reliance on foreign countries with hardly any environmental or even child labor laws. Could you please explain to me where is the environmental justice in children in the Congo mining cobalt and other minerals for EV batteries, when this Administration is doing everything it can to ban mining in the United States?

Ms. MALLORY. Thank you, Congresswoman, for that question.

I think that we are actually doing everything that we can to make mining possible in the United States in places where it is appropriate.

Ms. HAGEMAN. Actually, the BLM just came out with an order yesterday related to Wyoming that essentially bans mining in the northern part of the state. So, that is not accurate.

Previous to the development of this definition, what laws prevented any person, regardless of race, color, national origin, or tribal affiliation from participating in the public processes such as NEPA?

Ms. MALLORY. The issue that we are addressing, Congresswoman, is that, despite laws that would make it possible that, in fact, these things weren't happening, so the executive——

Ms. HAGEMAN. Well, my question is were there any laws that prevented these various groups from being able to participate in the process. It is a very simple question. Are you aware of any laws prior to your definition that prevented people that you have identified from being able to participate in the process?

Ms. MALLORY. What I am saying, Congresswoman, is that the laws were not the problem. The problem is the practice.

Ms. HAGEMAN. OK, so there weren't any laws. In fact, the answer is that under the law all people, regardless of race, color, national origin, or tribal affiliation are entitled to and encouraged to participate in public processes impacting our natural resources in our Federal lands, aren't they?

Ms. MALLORY. They are, but that is not the reality.

Ms. HAGEMAN. OK. Can you give me an example when you say——

Ms. MALLORY. Oh, many examples. I mean, I think the problem is that when you actually set up a permitting or an engagement process that doesn't take into account that you are in a ritual season where people can't get there, or Alaska Natives can't arrive, those are examples of where you are not giving thoughtful——

Ms. HAGEMAN. But can you give me a specific example of where that has occurred?

Ms. MALLORY. I can't today. But we can certainly provide that.

Ms. HAGEMAN. OK. We are seeing Federal agencies issue regulations that cripple the communities they are supposed to be protecting. As Wyoming's sole Representative, I can attest to the fact that the Federal Government is creating greater economic uncertainty through its radical environmental agenda for all races, for all genders, for all people. We are seeing attacks on states with large amounts of Federal land as tightening restrictions impact their ability to generate revenue for essential services.

Director Mallory, last June, you highlighted in your testimony that the Biden administration provided more than \$1 billion to "make sure that agencies have the environmental review and permitting experts they need." While I agree with you that personnel can be a serious cause for delays, it isn't the main problem. I have seen permit modifications in my district essentially go through the NEPA process three or four times, and get up hung up on a single solicitor's review.

Do you agree that duplication within NEPA is a significant roadblock in the permitting process?

Ms. MALLORY. Thank you, Congresswoman, for that. We have been focused on making sure that the processes are not duplicative.

Ms. HAGEMAN. But they are. So, what are you doing to take care of and address the duplication that we see basically on a daily basis?

Ms. MALLORY. The new rules that we just released actually focus on making sure that we align the processes across state and local governments.

Ms. HAGEMAN. Would you agree, Chairman Mallory, that low-income communities are disproportionately impacted by policies that raise energy prices?

Ms. MALLORY. Congressman, yes, that is an issue that the Administration has been very focused on.

Ms. HAGEMAN. Thank you.

I yield back.

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

Ms. KAMLAGER-DOVE. Thank you, Mr. Chair.

And thank you again, Chairwoman, for showing up today. I have a few questions for you.

How are you working to ensure the 40 percent of the Justice40 monies are getting to EJ communities?

Ms. MALLORY. Thank you, Congresswoman, for that question. I think that is a very important part of the work that we are doing, and it has a number of key aspects to it.

No. 1, as you know, the President created the White House Environmental Justice Advisory Council as a body that we use and rely on to make sure that we are getting information from experts in the community who understand what is happening on the ground. So, that is a very important resource.

No. 2, we created the White House Interagency Council, which also is very much focused on ensuring that across all agencies there are senior-level people who are focused on environmental justice and how it is impacting their programs. And we rely on them in our activities as we try to make sure that people in the communities are getting the technical assistance that they need in order to be able to take advantage of some of the opportunities that exist.

One of the things that we have been doing, and something that we call the kind of White House environmental justice campaign, is going out to communities across the country and, in particular, looking at places where state, local, and Federal entities are sort of coming together around projects that are going to have benefits for communities that have been disproportionately disadvantaged. And we have used our scorecard, which was also required by the President's Executive Order at the beginning of the Administration to set sort of a preliminary analysis on how dollars are actually reaching communities and are impacting folks on the ground.

Ms. KAMLAGER-DOVE. Thank you for that. It sounds a lot like you are committed to equity. Yet, I happen to be in another committee, not this one, and I heard a Republican colleague say that equity was a dirty word. So, then I had to look it up in the dictionary because I was trying to figure out what happened to this word. And it said, "fair and impartial," or "the value of a stock."

So, I was wondering how all of a sudden impartiality and fairness became dirty words, but I digress.

How does the Phase 2 rule define and incorporate environmental justice considerations into NEPA regulations?

Ms. MALLORY. Thank you so much for that question.

One of the things that we do in the rule is to identify the environmental justice climate change impacts as impacts that should be recognized as agencies are doing their environmental reviews, so that the rule actually talks about it as among the reasonably foreseeable effects that should be taken into consideration, and it calls for the creation of a public engagement officer specifically focused on ensuring that all communities are having the opportunity to participate in processes, and that we are setting them up in ways that recognize what their hurdles may be, what barriers there may be.

And it also says to agencies, as you are thinking about the reasonable range of alternatives that you should consider, you should also envision how you might reduce the impacts or burdens on communities and climate change.

Ms. KAMLAGER-DOVE. Thank you. At a prior hearing held by this Committee about CEQ and NEPA, Professor Pleune, a scholar of NEPA and a co-author on several seminal papers on the topic of permitting, testified that NEPA can accelerate major projects by providing a way for stakeholders to get together early in the process and work out differences before they become intractable. Is this consistent with your experience?

Ms. MALLORY. Absolutely, and that is why we emphasize early and often engagement as part of the process.

Ms. KAMLAGER-DOVE. We say that where I am from, too: early and often.

Lastly, what are some other provisions in the Phase 2 rule that can improve permitting time and accelerate projects?

Ms. MALLORY. Thank you so much for that question. I mean, there are a couple of key ones.

There are those that were implemented as part of the Fiscal Responsibility Act, which includes specific deadlines, that includes page limits, that includes coordination mechanisms around the agencies with a focus on having a lead agency who is leading activities.

There are the provisions that allow for categorical exclusions to be shared across the Federal Government. We then took that a step further in beyond what the Fiscal Responsibility Act provided for by creating new mechanisms in which categorical exclusions can be introduced through programmatic agreements or through some of the planning measures.

It also emphasizes the value of programmatic agreements and the importance of using that as a way to shorten what might be an individual project review.

Ms. KAMLAGER-DOVE. Thank you.

Thank you so much, Mr. Chair, I yield back.

The CHAIRMAN. The gentlelady yields back. The Chair recognizes the gentleman from Minnesota, the Chair of the Subcommittee on Energy and Mineral Resources, Mr. Stauber.

Mr. STAUBER. Thank you, Mr. Chair.

Chair Mallory, thank you for coming before us today. I will say that you had talked about this Administration wanting to work and consult with the citizens of this country. I can tell you for sure that they did not engage with the Native tribes on the North Slope or the community in reference to their ANWR and Strategic Petroleum Reserve, Alaska. And I know that because they sat in that same chair and told us they were never consulted.

I was really incredibly frustrated to see the final NEPA Phase 2 that the Biden administration published a couple of weeks ago. It is clear this Administration has not held up its end of the bargain. This Administration, including your office, has completely ignored the reforms Congress included in the Fiscal Responsibility Act. Plain and simple, this Administration is not following the law, a law that President Biden signed, I should add.

When it became apparent this would be the case last year, I authored an amendment to the Fiscal Year 2024 Interior appropriations bill last year, blocking the Administration's NEPA Phase 2 rulemaking. This amendment, along with my parallel amendment blocking the NEPA Phase 1 rulemaking, were both agreed to by the House by voice vote, and included in the final bill that cleared the House last November.

I want to thank my good friend, Representative Graves from Louisiana, and I am proud to co-sponsor his impending CRA disapproval resolution to block this Phase 2 rule.

One of the greatest issues I have with the Phase 2 rule, Chair Mallory, is the fact that it will result in increased litigation. And I am especially concerned that you struck from the regulation language that clarified the purpose of NEPA is not to generate litigation. Why was this removed from the regulation?

And were you directed by the White House to write the rule in a way that it would encourage more litigation and help stop important infrastructure and development projects?

Ms. MALLORY. Thank you for that question.

I think, first of all, I just want to say that we believe that the rule fully implements the Fiscal Responsibility law, almost provision by provision, almost word for word.

Mr. STAUBER. It doesn't, but go ahead.

Ms. MALLORY. We will disagree on that.

And second, as to specific litigation provisions, I am actually not familiar with the one that you are talking about. But our view was that there are things that we have responsibility for as an agency, or that the agencies have responsibility for, and there are things that the courts have responsibility for. And we tried to be clear about what we actually controlled.

Mr. STAUBER. In the Phase 2 rule, you removed the text stating that NEPA is a procedural statute and instead replaced it with the following: "NEPA is the basic national charter for protection of the environment."

Real quick, what does the acronym NEPA stand for?

Ms. MALLORY. National Environmental Policy Act.

Mr. STAUBER. OK. How many times is the word "protection" used in the underlying statute from 1970?

Ms. MALLORY. I haven't done that calculation.

Mr. STAUBER. Zero. This is the 5-page statute from 1970, NEPA. These are your regulations. These are all your regulations from a 5-page statute to all your regulations. Do you think there is government creep?

This is what the American people are concerned about, Madam Chair. Mind you, the original statute refers to procedure or procedures. Multiple times.

Mr. Chairman, I would like to provide some additional context. This, the original statute, it is just 5 pages long, and I want to enter that into this record.

The CHAIRMAN. Without objection.

Mr. STAUBER. Over the past five decades, NEPA has grown into a mammoth, mammoth document. The Biden administration's Phase 2 rule, again, 136 pages from 5, your Administration, 136 pages. It is clear that NEPA has grown out of control.

These regulations represent a significant departure from NEPA's historic role as a procedural statute. It appears that CEQ is attempting to rewrite statute through regulation. We have to bring that back to the Members of Congress. Your rulemaking and others' has to stop. It is devastating for our communities, devastating to extract natural resources. It is devastating.

Chair Mallory, the finalized NEPA Phase 2 rule appears to favor renewable energy projects and discriminate against oil, natural gas, or mineral development projects. I am disappointed.

I yield back.

The CHAIRMAN. The gentleman yields back. The Chair recognizes the gentlelady from Alaska, Mrs. Peltola.

Mrs. PELTOLA. Thank you, Mr. Chairman.

Welcome. My question is about Alaska. I represent Alaska, and we have just seen decision after decision coming out of this Administration in recent months, probably the last year, that have been very injurious, honestly, to Alaska resource development. And as the Representative for all Alaska, every time I hear one of these new decisions it sets me back on my heels. There is no advanced warning to my office on many of the decisions that have come out of this Administration.

And I am wondering if you can please tell me what your overall strategy is for resource development in Alaska. We are not a snow globe. I just want to say that.

Ms. MALLORY. Thank you, Congresswoman, for that question.

I think where Alaska comes into play, obviously, it is a very important and strategic location. It is also one that has tremendous, both environmental and ecological value, and it has challenges, just given its location in how we can best meet the needs of the people there. And I think we are focused on trying to really balance all of those things as the Administration is looking at various policies.

Mrs. PELTOLA. It does not feel very balanced from this Alaskan's perspective.

And I have to laugh when I hear that this Administration is concerned about racial justice, because it does not feel to me, as an Alaska Native, that this Administration listens to Alaska Natives.

I know it was mentioned a moment ago, but when there was an opportunity presented for public input, it was very strategically timed to coincide with the spring whale hunt of the Inupiat people,

and they were completely precluded from that public comment period on their own lands, lands that had been in their families for generations. They have never lived anywhere else. These are their lands. And when a rule was put forth by this Administration, they actually intentionally timed it to coincide with a period when they knew Inupiat people would not be next to a fax machine, or within cell range, or with Internet service. So, I just am very frustrated.

I am not going to give you any gotcha questions, or present you with a question and then not allow you to respond. That is a favorite trick, I think, of many people in Congress and I find it really rude. I really am wanting to hear your comment on my frustration as an Alaska Native.

Ms. MALLORY. Yes, well, thank you, Congresswoman. I really appreciate that, and I appreciate you sharing it.

The specific circumstance that you are describing, I can't really speak directly to. I know the Department of the Interior was very much trying to make sure that they were taking in and creating an opportunity for all of the folks who were going to be directly impacted to participate, and even added additional timelines on some of the comment periods. I don't know if it is the one that you are specifically referring to.

But I do think that it is an important part of trying to make sure that we are hearing from everyone and giving every community, including Alaska Natives, which I think have particular challenges that we are aware of and are trying to work to address.

Mrs. PELTOLA. So, after the fact, after the comment period was almost over and we were asking for an extension so people could respond who are from that region, I basically had to trick the Department of the Interior to have an audience, for Inupiat people to have an audience with the Department of the Interior. As a Congressman, I had to set up a meeting, and then I brought 12 Eskimos with me because they could not get an appointment. I shouldn't have to trick this Administration into meeting with people from my state.

So, I am, like, 100 different kinds of enraged about the situation in Alaska right now because it seems like at least twice a week there is something injurious to Alaskans and our ability to pay our bills. Over 80 percent of the way that the state of Alaska pays its bills is from oil royalties. We have to get mines on-line. We have to develop new oil fields in order to meet our constitutional requirements as a state. And this Administration is tying two arms and two legs behind our back.

So, I appreciate you being here. I appreciate the work you do, but I am extremely frustrated with this Administration.

The CHAIRMAN. The gentlelady's time has expired. The Chair recognizes the gentleman from Oregon, the Chair of the Committee on Subcommittee on Water, Wildlife and Fisheries, Mr. Bentz.

Mr. BENTZ. Thank you, Mr. Chair.

Thank you for being here today. I am looking at your letter of February 7, 2024 to me in response to a letter that I had sent with the co-Chair of the Subcommittee on the Administrative State over in Judiciary, on which I also sit. So, I have your response. Before I go to it, I would like you to share with us in a little more detail how much budget your organization has. I know you say \$4 million,

but it is considerably more than that. Can you share with us what the funds are that you have available?

Ms. MALLORY. Yes. Right now, Congressman, the request that is in the President's budget is for \$4.6 million. We were also allocated \$62.5 million in the Inflation Reduction Act that we are in the process of adding to Fiscal Year 2026. And we are in the process of spending that.

Mr. BENTZ. And on what?

Ms. MALLORY. The Inflation Reduction Act actually directs us in specific areas.

The first is towards permitting and environmental review, which allows for funding on staffing, resources, and technology.

The second, the \$32.5 million, is for environmental justice data-related expenses, which includes the climate and economic justice screening tool, the Environmental Justice Scorecard, and related staffing. So, those are the big buckets associated with that.

Mr. BENTZ. And I appreciate that. I just wanted to call out the numbers of employees. Perhaps you can share with us how many people are employed by the CEQ.

Ms. MALLORY. There are full-time employees who CEQ funds, approximately 50 employees. We have arrangements where there are temporary assignments from other Federal agencies for about 35 employees.

Mr. BENTZ. Yes, I am looking at the list right here. There are 28 on page 1; 31 employees on page 2; 31 employees on page 3; and 13 employees on page 4. How does this compare to your predecessor's number of employees for CEQ?

Ms. MALLORY. Over time, CEQ's staffing has actually changed. When it first started, it was on the order of about 100 people a year. In the recent years—

Mr. BENTZ. Yes, your predecessor. My understanding is it was an extremely modest number, and now it has gone up to closer to 60 to 70. It seems like a massive increase.

But what I was most interested in is the foundation for what it is you do. And I was looking at your mission statement, and there are many different statutes called out on, it is the mission statement and background of the CEQ. I am having a hard time finding, though, the exact language that gives you the power to do some of the things you have been doing. And this is, of course, why we wrote you the letter, Chair Massie and I, some months ago, asking where in the world you found the power and authority to do what, you say here in the second paragraph of your letter dated September 7, may I offer this?

The CHAIRMAN. Without objection.

Mr. BENTZ. The second paragraph reads, "In 2022, CEQ convened an inter-agency group that worked to resolve a long-standing litigation in Federal court over operation of the Columbia River system." Where does that authority come from?

Ms. MALLORY. Congressman, we have had authority since the beginning to actually work across inter-agency matters that are complicated and require some coordination.

Mr. BENTZ. Tell me the source of the authority.

Ms. MALLORY. The source of the authority is under the statute itself that has us advising the President; and under the

Environmental Quality Act, which is related to the NEPA statute, it identifies hiring the necessary staff for——

Mr. BENTZ. Wait, wait. It says you are advising the President. It never says anything about going out and actually participating.

The reason I am so interested in this, are you subject to the APA? Is the CEQ subject to the APA?

Ms. MALLORY. Yes.

Mr. BENTZ. How? If we were unhappy with what you did, how do we challenge you?

Ms. MALLORY. When we do rulemaking, we have to go through the APA process.

Mr. BENTZ. Well, wait. This is not rulemaking.

Ms. MALLORY. Not correct.

Mr. BENTZ. How do I challenge what you did, if you are not subject to the APA? And you are not. Because I don't think you have the authority to do this. But how do I challenge you in the event that I am right, or you are right, that you somehow are challengeable? Tell me.

Ms. MALLORY. I think you would challenge through normal administrative and congressional oversight.

Mr. BENTZ. Oh, you mean what we are doing right now?

Ms. MALLORY. What you are doing right now.

Mr. BENTZ. Yes, really. So, you are responding to me and saying this is the only way that we can address what we believe the CEQ is doing inappropriately is what I am doing right now. Is that what you are saying?

Ms. MALLORY. It depends on what the action is. If there is an actual Federal action that is going to occur, it comes from a normal process.

Mr. BENTZ. So, what you say here in the same second paragraph is 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, that is the Columbia River basin, to healthy and abundant levels.

Where does that standard come from?

Ms. MALLORY. The standard was actually developed by a Federal task force that the region put together. It was a regional task force.

Mr. BENTZ. And that report is not even signed by a Federal group.

I yield back.

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

Mr. HUFFMAN. Thank you, Mr. Chairman.

Welcome, Chair Mallory. It is great to see you, and I appreciate all the great work that you do.

A little bit earlier the Chairman asked you some, I guess you could call them questions. They seemed a lot more like statements, and you weren't allowed to give much of an answer.

But at least the Chairman is here, and some of his colleagues are here. Some of our colleagues across the aisle have decided to be in New York today to take part in the spectacle of the great philanthropic leader and his criminal trial. But it is good to see that some people have a little dignity and are willing to be part of a congressional hearing today.

At any event, you were asked about whether you had forced the Department, literally the Chairman's words, forced the Department of the Interior to use alternative measures under NEPA with respect to Gateway National Park. And although you weren't allowed a chance to really respond to that, I want to give you that chance now.

And I actually have the e-mail that the Chairman entered into the record. I have read it. There is nothing in this e-mail that supports the proposition that you somehow forced Interior to do anything. It begins by thanking the Department of the Interior for approaching CEQ for guidance, and it then leaves open various possible pathways for the Department of the Interior to consider and pursue, and expresses your support for them doing so.

Do you want to tell us the story of what happened there?

Ms. MALLORY. Yes. Actually, what happened is they called us up to ask whether or not there was any particular process that they needed to follow. And we talked to them, and they shared what their regulations allowed. And because their regulations provided for a path for them to move forward, we said, well, we don't really need to do anything, you can just abide by your own regulations. That was really the extent of it. And I think that is what we reflected in the letter that we presented to the Congressman.

Mr. HUFFMAN. I think the Chairman is giving hyperbole a bad name by suggesting that this e-mail somehow forced the Department, or anything you did forced the Department to do anything.

By the way, do you have the authority to force the Department of the Interior to do anything?

Ms. MALLORY. No, I don't have that authority. Sometimes I wish I did.

Mr. HUFFMAN. Wouldn't it be nice if all of us had such authority, yes.

Ms. MALLORY. Wouldn't it be nice?

Mr. HUFFMAN. So, you have also been asked a lot about the Fiscal Responsibility Act. And there is a disconnect, certainly, between some of the hype that my friends across the aisle have attributed to the changes to NEPA that were called for in the Fiscal Responsibility Act and the reality of those changes. I have read them. And it is much less significant if you actually just read them and think about the modest changes that the Fiscal Responsibility Act put in place. We are talking about time and page limits for NEPA reviews. And, of course, you incorporate that in your NEPA 2.0 rulemaking. Correct?

Ms. MALLORY. Correct.

Mr. HUFFMAN. There are also provisions about the timelines for when agencies can tier to an existing programmatic analysis. That is in there, too?

Ms. MALLORY. Correct.

Mr. HUFFMAN. Provisions about agencies using categorical exclusions. That is in there, too?

Ms. MALLORY. Correct.

Mr. HUFFMAN. Although you have added some common-sense sideboards, no one would suggest you can use a categorical exclusion from another agency that is not similar to the project you are considering. And you have addressed that, right?

Ms. MALLORY. Correct.

Mr. HUFFMAN. There is a provision that permits contractors and project applicants to prepare their own environmental reviews. And you haven't done any violence to that in your NEPA 2.0.

Ms. MALLORY. Correct.

Mr. HUFFMAN. There is a clarification about the continued applicability of conflict of interest requirements subject to agency approval. That is all in there, too?

Ms. MALLORY. Correct.

Mr. HUFFMAN. And then there is the question of major Federal action. And the bottom line is there is nothing in implementing these various provisions from the Fiscal Responsibility Act that says you can't do anything else in your NEPA 2.0 rulemaking, right?

Ms. MALLORY. That is correct.

Mr. HUFFMAN. It doesn't say you can't consider environmental justice, you can't go back and fix illegal or inappropriate guidance that the Trump administration had issued.

Tell us a little bit more about how your NEPA 2.0 rulemaking actually complies with the Fiscal Responsibility Act, but also cleans up some other messes.

Ms. MALLORY. Yes, thank you for that. And I think you just went through a number of the key points that were in the Fiscal Responsibility Act. And we were very intentional about making sure that all of those are there, they are incorporated into the program.

We felt like we had to deal with accelerating the timelines. We had to deal with accelerating the process. We did that. The Fiscal Responsibility helps us.

We had to actually make sure that one of the key environmental problems that we are facing today, which is climate change, is recognized in the rules and incorporated.

And, similarly, environmental justice areas are a place where we know that we have failed our environmental programs, and we had to make sure that that was included.

But then finally, there were several provisions that we thought put the agencies at risk because the previous administration had put in place provisions that were uncertain. They created greater uncertainty and flexibility, and we removed those.

The CHAIRMAN. All right. Thank you, Madam Chairman.

I yield back.

The CHAIRMAN. The gentleman yields back. The Chair now recognizes the Chairman of the Subcommittee on Federal Lands, Mr. Tiffany from Wisconsin.

Mr. TIFFANY. Thank you very much, Mr. Chairman. I would just gently chide my colleague from California. It seems there are a lot more members on this side of the dais than there are the other. I am not sure where the criticism is coming from.

I want to know what that trick is, Chair Mallory. I want to know what that trick is that the gentlelady from Alaska has to be able to get people from this Administration to be able to come to our districts and listen to what is happening in rural America.

With the agencies that you work with and the people that you work with, do you say to them, "Make sure that you are coordinating with local and state municipalities?"

Ms. MALLORY. Yes, well, that is actually sort of a very key part of what the National Environmental Policy Act envisions.

Mr. TIFFANY. Yes. Are the agencies doing that?

Ms. MALLORY. I believe that they are, generally. I can't speak to any specific circumstance, but I believe that we all are operating on the assumption that the closer you are to the ground, the better you are in terms of getting the kind of information that is important.

Mr. TIFFANY. Let's go to the gentlelady from Alaska with her example. Do you think that they coordinated with those tribes?

And think about it, this Administration, and we were here yesterday with a couple of members of the Administration that said, oh, we do everything to work with tribes, we have elevated it, we make sure that we work with tribes. You are not working with the tribes up in Alaska is what we are hearing, including from the other side of the aisle.

Ms. MALLORY. I appreciate the Congresswoman's comment. I know I personally met with the folks from the North Slope. I know that the Department—

Mr. TIFFANY. They asked for an extension, Chair Mallory, and they were not given it. Do you go back to these people at Interior and say to them, hey, and it is obvious, you are very well spoken in regards to NEPA and understanding the coordination requirement. They are not doing it, are they?

Ms. MALLORY. I actually can't agree with that, Congressman. I know that they actually reached out and met with folks on that matter.

The CHAIRMAN. Did they sit down and treat them as equals at the table?

Ms. MALLORY. I can't speak to what happened in the settings.

Mr. TIFFANY. You can tell they didn't treat them as equals because they went and shut off more land in Alaska that these people, the Native tribes, did not want to have. They clearly did not coordinate.

Ms. MALLORY. Well, Congressman, I think you have to recognize we were also hearing from people in Alaska about subsistence protections.

Mr. TIFFANY. No, you are hearing—

Ms. MALLORY. That is also part of that.

Mr. TIFFANY. You are hearing from the tall office buildings of the corporate environmentalists in San Francisco.

Ms. MALLORY. We are hearing from people on the ground.

Mr. TIFFANY. That is who you are hearing from.

Ms. MALLORY. No, we are hearing from people on the ground.

Mr. TIFFANY. And the people who fund those campaigns on that side of the aisle.

Ms. MALLORY. People on the ground.

Mr. TIFFANY. Are you doing a review of how many endangered species are being killed by wind turbines and solar panels as part of the NEPA process when those are going up on Federal lands?

Ms. MALLORY. I think when the windmills are being analyzed, that part of the analysis will include impacts to species.

Mr. TIFFANY. You think or you know?

Ms. MALLORY. I mean, I am sure that would be normal, if there were species that are present.

Mr. TIFFANY. And it is OK to be killing endangered species.

Ms. MALLORY. It is not OK. There is a process to examine that and determine what is appropriate.

Mr. TIFFANY. But that is what is happening.

Ms. MALLORY. Well, we can talk about specific circumstances if you want, but I know that the agencies are working so that that is not happening.

Mr. TIFFANY. In your written testimony you said, "We must slash the greenhouse gas emissions that are warming our climate and the toxic pollution that imperils our communities." What percentage of global emissions come from the United States?

Ms. MALLORY. I actually don't have that in front of me.

Mr. TIFFANY. And that is fine. I will share the answer. It is less than 15 percent.

Do your rules apply to China?

Ms. MALLORY. No.

Mr. TIFFANY. Does China play by our rules of the Western world?

Ms. MALLORY. As we saw just this week, the President believes that they are not, and has taken some steps to address that.

Mr. TIFFANY. Has China failed at environmental justice?

Ms. MALLORY. I am not tracking China's behavior.

Mr. TIFFANY. So, why should we diminish America, as what is happening, whether it is mining, whether it is drilling for oil, natural gas, agriculture is in the crosshairs at this point, why should we diminish America when China does not have to play by the rules? Doesn't that ultimately lead to a decline in America?

Ms. MALLORY. Yes, I mean, Congressman, we are very much focused on trying to position ourselves so that we can actually compete with China.

Mr. TIFFANY. I will just close with this, Mr. Chairman. This is a war on rural America that is going on with the Biden administration. We see it every day. And we are deciding right now, in the 2020s, is the 21st century going to be a Chinese century or an American century? With these types of actions that are going on, I am not real optimistic. I yield back.

The CHAIRMAN. The gentleman yields back.

Ms. KAMLAGER-DOVE. Mr. Chair, I ask unanimous consent to enter into the record a list of a dozen court cases that clearly say the National Environmental Policy Act requires the Federal Government to consider the impacts of climate change for proposed projects. The Trump administration ignored this legal obligation and lost case after case and CEQ's Phase 2 rule updates CEQ's NEPA regulations to reflect this case law.

The CHAIRMAN. Without objection, the court cases can be added.

[The information follows:]

12 Climate Wins From the National Environmental Policy Act

The National Environmental Policy Act requires the federal government to consider the impacts of climate change for proposed projects. The Trump administration has dismissed this condition—and it has come back to haunt them in the courts.

Center for American Progress, May 29, 2019 by Christy Goldfuss, Sally Hardin, and Marc Rehmann

<https://www.americanprogress.org/article/12-climate-wins-national-environmental-policy-act/>



New Mexico's Chaco Culture National Historic Park, May 2015. (Getty/Mladen Antonov/AFP)

In March 2017, President Donald Trump directed the White House Council on Environmental Quality (CEQ) to rescind its previous guidance that showed federal agencies how to consider the effects of climate change in their decision-making. The Obama administration's CEQ issued this climate guidance in 2016 in response to court decisions that determined that the National Environmental Policy Act (NEPA) required agencies to calculate changes in carbon pollution that would result from major federal projects. Rescinding this guidance was typical of Trump's pro-fossil fuel, anti-climate agenda, which has since included withdrawing the United States from the Paris climate agreement, rolling back the Clean Power Plan, and undermining common-sense clean car standards.

But now, more than two years and at least 12 court losses later, it's clear: Rescinding the CEQ's climate guidance was misguided, ineffective, and ironically counterproductive to the Trump administration's professed "energy dominance" agenda. In their effort to cut through what they perceived as red tape, the Trump administration merely created more uncertainty in federal permitting for industry, which has ultimately slowed fossil fuel development across the country.

This column first discusses the history of NEPA, the bedrock environmental law that requires that climate effects be considered in federal decision-making. It then includes a brief summary of 12 court cases during the Trump administration in which NEPA upheld the requirement for federal agencies to consider projects' environmental consequences. These cases all point to one thing: The federal government needs to issue new guidance on how to consider climate impacts under NEPA.

Climate consideration under NEPA

With the passage of NEPA in 1969, Congress recognized the "profound impact of man's activity" on the natural environment. For the first time, there existed a mandate for how people and nature could "exist in productive harmony" for current and future generations. NEPA is also one of the only statutes that allows for public participation and input into major federal decisions, and it remains a critically important way for communities to have their voices heard.

Under NEPA, federal agencies are required to consider and disclose the potential effects of their actions on the surrounding environment. Thanks to court rulings centering on NEPA's climate consideration requirements, the Obama administration issued climate guidance in 2016 to supplement how federal agencies conduct environmental reviews as required under NEPA. This guidance sought for the first time to clarify, for the suite of federal agencies, how to consider potential greenhouse gas emissions from federal projects under the NEPA process and to provide a consistent approach across agencies. Prior to the guidance's existence, each agency considered changes in carbon pollution differently, and some did not consider it at all. With the guidance, however, industries applying for federal permits—such as the oil and gas industry—could be sure that agencies were taking a consistent approach in their environmental review.

Upon entering office, President Trump rescinded this guidance in a sweeping executive order designed to stop federal agencies from disclosing how the government's actions contribute to climate change. Since this decision, however, federal courts have repeatedly held that NEPA does require the federal government to consider the effects of a project's carbon pollution when proceeding with major federal actions such as leasing public lands for drilling to oil and gas companies or issuing permits to industry to build pipelines.

As the Trump administration continues its efforts to bolster fossil fuels as part of its “energy dominance” agenda, NEPA has been one of its strongest legal roadblocks. Recently, for example, former oil and gas lobbyist and current U.S. Secretary of the Interior David Bernhardt begrudgingly conceded to members of the House Committee on Natural Resources that NEPA requires his agency, among others, to consider the effects of climate change.

When President Trump withdrew the CEQ climate guidance, his administration set itself up to fail in the courts—and that's exactly what has occurred. Even the fossil fuel industry has asked for the guidance. Time and time again, courts are ordering agencies to consider the effects of climate change in their environmental reviews. Now, the Trump administration is trying to quietly reissue climate guidance because, quite simply, the courts will not let them ignore climate change.

12 court cases that affirm NEPA's climate review role

Since President Trump took office, NEPA has upheld the federal requirement to consider climate—specifically greenhouse gas emissions—at various levels in courts across the country at least 12 times. Below are brief summaries of each of those cases, starting with the most recent decision through the oldest.

1 Oil and gas leases in New Mexico (*Dine Citizens Against Ruining Our Environment v. David Bernhardt*): In May 2019, the court held that NEPA had been violated because climate impacts were not considered when the U.S. Department of the Interior (DOI) issued oil and gas leases around New Mexico's Chaco Canyon in the San Juan Basin.

2 Federal coal moratorium (*State of California v. U.S. Department of the Interior*): In April 2019, the court held that the Trump administration's rescission of a DOI moratorium on all new federal coal leases constituted a major federal action sufficient to trigger NEPA analysis.

3 Leases in Wyoming, Utah, and Colorado (*Wildearth Guardians v. Ryan Zinke*): In March 2019, the court held that oil and gas leases in Wyoming, Utah, and Colorado included an inadequate NEPA analysis because “NEPA required more robust analyses of GHG [greenhouse gas] emissions from oil and gas drilling and downstream use.”

4 Master Development Plan in Colorado (*Citizens for a Health Community v. U.S. Bureau of Land Management*): In March 2019, the court held that the Bureau of Land Management (BLM) violated NEPA when it attempted to rely on production estimates when permitting an oil and gas project in Colorado but refused to rely on the projected greenhouse gas emissions from those same estimates.

5 Pipeline in Virginia (*National Parks Conservation Association v. Todd T. Semonite*): In March 2019, the court held that the U.S. Army Corps violated NEPA when it granted a permit allowing a utility company to build a series of electrical transmission towers across the James River without taking a hard look at the transmission project's environmental impacts.

6 Mining expansion for Montana's Spring Creek Mine (*Wildearth Guardians v. Ryan Zinke*): In February 2019, the court held that the Office of Surface Mining Reclamation and Enforcement's (OSM) decision not to prepare an environmental impact statement under NEPA was arbitrary and capricious because the OSM didn't fully analyze certain environmental impacts, including greenhouse gas emissions.

7 Appalachian Trail pipeline across the Southeast (*Cowpasture River Preservation Association v. U.S. Forest Service*): In December 2018, the court held that the U.S. Department of Agriculture's Forest Service violated NEPA by failing to consider the effects—including those related to climate—of authorizing a 600-mile natural gas pipeline that crossed two national forests and part of the Appalachian Trail.

8 Keystone XL pipeline across the Great Plains (*Indigenous Environmental Network v. U.S. Department of State*): In November 2018, the court held that the U.S. Department of State failed to complete an adequate environmental review under NEPA when it disregarded prior factual findings related to the Keystone XL pipeline and climate change.

9 Colorado River Valley Resource Management Plan in Colorado (*Wilderness Workshop v. U.S. Bureau of Land Management*): In October 2018, the court held that the BLM violated NEPA when it attempted to apply an environmental impact statement that did not consider the impacts of greenhouse gas pollution to a resource management plan.

10 Coal leases in Montana (*Western Organization of Resource Councils v. U.S. Bureau of Land Management*): In March 2018, the court held that the BLM failed to consider reasonable alternatives for coal leasing by failing to calculate greenhouse gas emissions resulting from the coal leases, as required under NEPA.

11 Southeast Market Pipelines Project across the Southeast (*Sierra Club v. Federal Energy Regulatory Commission*): In March 2018, the court held that the Federal Energy Regulatory Commission's environmental impact statement for the Southeast Market Pipelines Project failed to adequately take into account greenhouse gas emissions that would result from burning the natural gas carried by the pipeline.

12 Mining modification in Montana's Bull Mountains (*Montana Environmental Information Center v. U.S. Office of Surface Mining*): In November 2017, the court held that the OSM failed to adequately consider the need for an environmental impact statement and to take a hard look at the indirect, cumulative, and foreseeable effects of a proposed coal mine expansion in central Montana. The court went so far as to suggest the use of the social cost of carbon protocol tool from the Obama administration's 2016 NEPA climate guidance.

Conclusion

The courts have made it eminently clear that the Trump administration must consider greenhouse gas emissions when conducting the environmental review of a federal project under NEPA. Recently, the DOI responded to one of these court-mandated environmental reviews by releasing a haphazard, insufficient analysis with a deeply truncated public comment period of just 15 days. Given recent national and international reports on the dire nature of the climate crisis, the CEQ should now issue robust guidance consistent with the 2016 version, lest Trump administration agencies continue to ignore or rush court-mandated environmental reviews. This would require, for example, codifying that iteration's social cost of carbon tool, to be used in calculating the climate effects of a given project.

Whether by intention or not, NEPA has become the strongest climate policy in the Trump era. Congress should protect it—even if and when they develop more targeted climate legislation—and in the meantime; the CEQ must issue its climate guidance for federal agencies as soon as possible.

The CHAIRMAN. The Chair now recognizes the gentleman from Arizona, the Chair of the Subcommittee on Oversight and Investigations, Mr. Gosar.

Dr. GOSAR. Thank you, Ms. Mallory, for being here today. I have a couple of real quick questions, and then I will have a follow-up.

Can you push the advancement of scientific discovery? Can you actually force us to become a discovery? Yes or no.

Ms. MALLORY. Sorry, my mic is off. No.

Dr. GOSAR. Thank you, I appreciate that. Could you also provide us an idea of what mine you would support in the United States?

Ms. MALLORY. Thank you, Congressman. We have supported a number of mines over the last few years.

Dr. GOSAR. Give me just one name.

Ms. MALLORY. There is a vanadium mine, I believe it is in Nevada. We supported a cobalt mine, I am not real sure what state it was in. We have supported a lithium mine going forward. There are a number of mines that are in progress.

Dr. GOSAR. Just wanted to make sure. OK. Now, I am going to change gears here a little bit.

On November 30, 2022, the Council on Environmental Quality and the Office of Science and Technology issued guidance for Federal departments and agencies on Indigenous knowledge. I represent several well-known, large tribes, so I would like to get a bit of clarity on this issue. Tribes have spent a lot of time ensuring that they have the right to consultation. Making a choice to include or not to include Indigenous knowledge in a Federal decision-making process, that is not a substitute for consultation or any other scientific process, for that matter.

Question: What specific area of tribal knowledge are agencies being encouraged to look for and review?

How will this knowledge be utilized?

Ms. MALLORY. Thank you, Congressman, for that question. I mean, that was an effort that we undertook because we were hearing from lots of tribes through the consultation process that we had done that their knowledge, their understanding of their areas wasn't being recognized appropriately. So, we were trying to create a mechanism to ensure that, as agencies go through their processes, that they create a space for tribes to contribute Indigenous knowledge if they have something they want to share. It is their knowledge.

And there are times that they don't want to share, so we had to recognize that——

Dr. GOSAR. I think, the key there is if they want to share, right?

Ms. MALLORY. Correct.

Dr. GOSAR. OK. Now, on page 5 of the guidance in Section 3 titled, "Illustrative List of Federal Statutes Where Indigenous Knowledge May be Relevant," several of the statutes included NEPA, the Marine Mammal Protection Act, and the National Historic Preservation Act. These and several other statutes already require that agencies seek tribal input.

By providing this additional opportunity for tribal input on top of what is already required for the consultation, will tribal organizations now be afforded more weight in a Federal decision-making than potential stakeholders such as state and local governments?

Ms. MALLORY. No, that was not the intention. The intention was to just make sure that this particular kind of knowledge, which I think tribes were telling us was not getting recognized, is included.

Dr. GOSAR. We were making sure that that won't be a higher standard for them. It will be very similar to state and local governments, right?

Ms. MALLORY. And other information.

Dr. GOSAR. OK, thank you. Prior to this guidance, have there been instances where agencies were deliberately ignoring Tribal Nations and tribal members when they were affected communities, that the consultation process would not be resolved?

To say this perhaps a little clearer, what problem are we looking to solve here?

Ms. MALLORY. Yes, as I said, we went through a consultation process and were hearing from the tribes that they felt like there were situations in which their knowledge was not being recognized, or they weren't given the opportunity to actually participate. So, we were trying to address that.

Dr. GOSAR. OK. When we talk about the input of affected communities, how does that work in the NEPA process when reconciling disagreements between communities and the findings of agencies conducting the report?

How do you resolve those?

Ms. MALLORY. Yes, I mean, I think in the end, obviously, the decision maker has to weigh all of the information that they are getting from a variety of sources and the goals that they are trying to meet. So, all of that is part of the decision process.

Dr. GOSAR. Does this guidance change the way that agencies will review different perspectives and how they determine their findings?

Ms. MALLORY. No.

Dr. GOSAR. OK. In Appendix C of the guidance, agencies are advised on potential ways to verify information obtained from tribes using an example from the U.S. Global Change Research Program. Can you walk the Committee through the suggested process for verifying this information?

Ms. MALLORY. Actually, I just don't remember that particular appendix. But the idea behind the effort was to make sure that, if there were questions about the validity of information, that the agencies and their agency science staff were evaluating that.

Dr. GOSAR. Is there any other type of guidance similar to this one that CEQ is planning to be issuing this year?

Ms. MALLORY. We haven't talked about any further guidance, no.

Dr. GOSAR. OK. And if you could refine that previous question a little bit more, we would love to have that. Thank you.

I yield back.

Ms. MALLORY. The gentleman yields back. The Chair recognizes Ms. Velázquez for 5 minutes.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Thank you, Chairwoman Mallory, for your testimony before the Committee today.

Every person, regardless of their zip code, deserves to live, work, and go to school in an environmentally thriving and unpolluted community. And as you know, the Council on CEQ places a key role in ensuring this through the Justice40 Initiative. As the Representative of New York's 7th Congressional District, which includes many historically underserved environmental justice

neighborhoods like Ravenswood, Queensbridge, and Cypress Hill, I know how important the Justice40 Initiative is for local communities.

Can you please briefly highlight any of the benefits environmental justice communities are seeing from the implementation of the Justice40 Initiative?

Ms. MALLORY. Thank you so much, Congresswoman, for that question.

Yes, I think that, obviously, the anchor focus of all of our work in environmental justice, as in other areas, is ensuring that all communities have the opportunity to have access to clean air, clean water, and a healthy environment. Some of the, I think, cleanest examples of how this is helping is electric school buses. Well, among the programs under Justice40 that is actually having a benefit right now are the electric school buses that are going all across the country.

The cleaning up of Superfund sites, that is an absolute example of where it is not only making a difference in getting rid of the pollution, it is also allowing opportunities to open up areas that had been blighted to further development.

The Department of Agriculture has a program that is called the Urban Forestry, and it is an example where communities are able to plant trees, maintain trees, and all of this is really important not only for the beauty of trees, but also for helping to reduce air pollution, for helping to reduce flooding, and dealing with heat.

Those are just three examples of things where it is at work now, and the Urban Heat was an example of a program that was entirely Justice40 programs.

Ms. VELÁZQUEZ. Thank you for that. Chair Mallory, can you explain why CEQ has the authority to include environmental justice in the Phase 2 NEPA regulations?

Ms. MALLORY. Yes, absolutely. When you look at CEQ's statute, and in particular the portions that talk about what are we trying to achieve, what are the goals of the National Environmental Policy Act, it really talks about ensuring that all communities actually have a healthy environment, healthy benefit, that the idea is to make sure that the Federal Government is doing its part to ensure that it is considering how the environmental impacts are going to affect communities and affect all people. So, that is very much a part of our authority.

Ms. VELÁZQUEZ. Thank you. And how is CEQ supporting the objectives in the framework, especially those to help communities proactively integrate nature-based solutions into their infrastructure, which is particularly important in denser cities like New York?

Ms. MALLORY. Yes, absolutely. The nature-based solutions, part of our America the Beautiful initiative, very much recognizes that for some communities there is, like, a dearth of green space. And that is very important for heat reduction. We know that. We know that there can be as much as a 17 degree difference in communities, depending on the number of trees. So, we have been working across the Administration to ensure that our programs are incorporating that opportunity into the funding.

Ms. VELÁZQUEZ. Thank you. And can you also comment briefly on why it is important to have such an ambitious, overarching framework to guide how we modernize our Federal programs and policies to strengthen climate resiliency?

Ms. MALLORY. Yes, absolutely. We know that the lower-income communities, often rural communities, tribal communities, these are communities that are kind of hit first and hardest by the climate change impacts. So, any solution to addressing climate change really has to also address the folks who are most vulnerable. And that is the essence of our program.

Ms. VELÁZQUEZ. Thank you very much.

Mr. Chairman, I yield back.

The CHAIRMAN. The gentlelady yields back. The Chair recognizes the gentleman from Louisiana, Mr. Graves.

Mr. GRAVES. Thank you, Mr. Chairman.

Chair Mallory, thank you for being here again. Could you give a quick update on where you are with the e-NEPA?

Congresswoman Hoyle and I included language in the legislation last year that was enacted.

Ms. MALLORY. Yes, absolutely. We have been working over the course of the past year through a variety of different mechanisms to create the report that I think Congress asked for, identifying opportunities for technology uses in the NEPA process. I believe our deadline is coming up, something like June 2, and we are working towards that deadline.

Mr. GRAVES. Yes, I believe it is that first week in June. And you think you are going to be on track for that?

Ms. MALLORY. I think we are.

Mr. GRAVES. OK, great. Thank you.

The next question, there has been a lot of discussion about the Fiscal Responsibility Act and the changes in NEPA. Did you participate in those negotiations?

Ms. MALLORY. I did not directly.

Mr. GRAVES. OK, thanks. When I go through the Phase 2 regs I can't help but see how it appears that CEQ has taken what was an information decision tool and actually changed it into a decision tool. So, instead of informing decisions among other issues that would inform decisions, other criteria and data-informed decisions, it appears that there has been sort of this conversion there to where it is actually trying to make decisions.

So, just one question: What does the word "important" mean to you?

Ms. MALLORY. Important?

Mr. GRAVES. Important, yes.

Ms. MALLORY. Important. I don't want to use "significant," I know we were trying to avoid that in the rule. Important is of a higher standard.

Mr. GRAVES. OK, a higher standard. And I want to make sure I heard what you just said. You just said that you all were trying to avoid using the word "significant."

Ms. MALLORY. Well, I think we wanted to make sure that we were leaving "significant" so that it appeared in the regulation in the places where that assessment was being made as to whether or not the project was significant.

Mr. GRAVES. Do you understand that the law actually says “significant,” and you changed it to “important,” which I think is a distinguishing factor? So, the law actually says “significant,” so that was the standard. It is concerning to me there was an intentional effort to avoid the use of the word that was intentionally put in the law to establish a higher standard. That is concerning, and I think it was a deviation, in fact, not just a deviation from the four corners of the law, but it was a deviation from the clear intent of Congress.

Now, speaking of the intent of Congress, would you say that the NEPA law that was enacted last year is a giveaway to big oil, and takes a major bite out of bedrock environmental laws?

Ms. MALLORY. The Fiscal Responsibility last year did not do that.

Mr. GRAVES. OK. Do you consider it a major blow to NEPA?

Ms. MALLORY. The Fiscal Responsibility? I think we have embraced the changes that the President agreed to.

Mr. GRAVES. OK, and you believe that there is some degree of congressional intent that should be applied to your interpretation, is that accurate?

Ms. MALLORY. We definitely applied the——

Mr. GRAVES. Because those two terms that I just used, that was actually a quote from Ranking Member Grijalva, who called the law a major assault on NEPA. And then the other one was from Mr. Huffman, who called it a giveaway to big oil and takes “major bites out of bedrock environmental laws.”

But then Mr. Huffman just recently said in the hearing that there is a disconnect between the hype of FRA and the reality of the changes, because it actually has common-sense sideboards, which I really think, what we are all getting to, Chair Mallory, is that what CEQ has implemented is not what was enacted. It was not what was agreed to in the negotiations.

Significant changes were made by CEQ, which is why now, on a bipartisan basis, there is a Congressional Review Act resolution that was going to be filed, let me say that again, a bipartisan, bicameral Congressional Review Act resolution that will be introduced to repeal your regulations because they are not consistent with the law. And whether it is repealed from the CRA or it is repealed from the courts, it is incredibly frustrating that we spent all this time negotiating that, I am going to say my friend, Mr. Huffman, and my friend, Mr. Grijalva, actually agreed with us that we got it right and we won, but then you, through the rulemaking process, just wrote whatever it was that you wanted to write.

In NEPA, what does the N stand for?

Ms. MALLORY. Congressman, I just have to disagree with that. That is not correct.

Mr. GRAVES. OK, and I hear you, and we are going to let the Congress and the courts decide that.

Ms. MALLORY. Correct.

Mr. GRAVES. But the N in NEPA, what does that stand for?

Ms. MALLORY. National.

Mr. GRAVES. National. So, why in the regulations do you put global all over them, and looking at global effects? Is it the International Environmental Policy Act or is it the National?

Ms. MALLORY. It is the National Environmental Policy Act.

Mr. GRAVES. Yes, so I am struggling with why there are all these global considerations, unless it is the issue that this White House has forced, for every 1 ton of reduction we have done in emissions in the United States, China has gone up by 5, and that is going to continue happening under this regulation because it doesn't properly comply with the law that was put in place. Very frustrating.

I have a number of other questions I will be doing for the record, Mr. Chairman.

I yield back.

The CHAIRMAN. The gentleman yields back. The Chair recognizes the gentleman from Hawaii, Mr. Case, for 5 minutes.

Mr. CASE. Thank you, Mr. Chair. Good to see you.

Ms. MALLORY. Good to see you.

Mr. CASE. Thank you so much for a lot of really great work, I think, contrary to some of the questions here, incredible work. I certainly appreciate your work on the America the Beautiful challenge. I would be happy to give you time to talk about that a little bit more.

But the area that I think just gets neglected all the time is our oceans, because we spend a lot of time talking about protecting our lands and our air. And I value all of that, but sometimes in the debate our oceans are left behind. And you have done some really incredible work in this Administration on the Ocean Climate Action Plan, oceans, justice strategy, ocean acidification, coral reefs, protection of some of the most valuable resources in our entire world, moving towards some kind of a greater protected status.

I, of course, am personally interested in the Pacific remote islands and getting a status report on that, but I wondered if you might just take the time to lay out what you have been doing on the oceans, and where things stand, what your challenges are, and where we can help you.

Ms. MALLORY. Yes, absolutely. Thank you, Congressman, for that question.

As you noted, the America the Beautiful initiative actually envisioned the work that we are doing kind of across land and water, and Congress actually directed CEQ, along with the Office of Science Technology Policy, to create and stand up our Ocean Policy Committee. And through that Committee, we have been doing inter-agency work on all the issues you identified.

The Ocean Climate Action Plan, the first of its kind for this country, was a really important step, and it was a recognition that our ocean has a really important role in our climate activities, both in terms of recognizing the harm that is caused there that we need to address, but also in taking advantage of the opportunities that are there. So, the work under that in which we identified for every agency work that they can be doing and should be doing in terms of thinking about how they are addressing the ocean, was laid out. And we just issued in the last couple of months kind of the update on where that work is, and I think that is a good place to look to see the work that has occurred over the last year since we put out the Ocean Climate Action Plan.

The Ocean Justice Strategy was part of that. That was called for and, again, a recognition that we often lose sight of some of the communities that are affected most and most directly, particularly on the coast, and that we wanted to just make sure that they are also part of the solution as we are thinking about how we are going to rebuild our coastal areas or shore up our coastal areas. So, that work is really going on.

As you mentioned, the Pacific Remote Island is an area, as well as Chumash Heritage Areas are two sanctuary areas that the Administration has proposals out on. Both of them have unique features that we think are important for kind of ocean protection and ocean coastal work. Those are going through the sanctuary process and are underway.

But I think we are continuing with respect to the ocean to think in terms of making sure, for example, on the climate side, the off-shore wind has really blossomed in this Administration. We have gone from having no permitted facilities to having eight permitted facilities in the last 3½ years because of a recognition of how that can be really important to our climate goals.

Mr. CASE. What are your next steps?

We are back to challenges. Where do you need help from Congress on advancing these goals for our ocean?

Ms. MALLORY. Yes, I think help from Congress, I think, probably comes up in individual circumstances where, for example, I know that Dr. Spinrad is going to be here later today, probably best able to identify where his agency would benefit from additional funding or resources. I think that would be a good place to answer that question.

But as always, just the support in recognizing that this is really important work that really needs Congress' support, as well.

Mr. CASE. How are we being received around the world? Because this is, obviously, not just a United States effort. It has to be with the rest of the world. And we have been participating with the rest of the world. How is it going there?

Ms. MALLORY. Absolutely. And I think the United States presence and its leadership has always been important, and continues to be important in the ocean area, as well.

Mr. CASE. OK. Thank you very much.

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

Mr. LAMALFA. Thank you, Mr. Chairman.

Thanks for appearing with us, Chair, Mallory. A couple of issues on the spending by your organization.

In 2019, the budget was just under \$3 million per year, and your request is to go to about \$4.5 million for 2025. That is about a 62 percent increase. But, also, you mentioned earlier that the Inflation Reduction Act supplied you with about \$62 million. Was that a correct number?

Ms. MALLORY. Correct, \$62.5 million.

Mr. LAMALFA. OK. And I also heard Mr. Bentz asking you about the number of personnel there. There are several dozen he had mentioned. How are you paying for that with a budget that had been between \$2.89 million in 2019 and a figure somewhere south

of the request for \$4.67 million? How are you paying for those personnel?

Ms. MALLORY. The personnel that we have, Congressman, as I said, the \$62.5 million also includes resources for staffing. So, some of the employees that we have are termed to the Fiscal Year 2026 expiration.

Mr. LAMALFA. So, that Inflation Reduction Act is one-time money, so that means you are going to have to cut loose a lot of employees in a year or two.

Ms. MALLORY. We have been hiring them on terms to be consistent with the Fiscal Year 2026 expiration.

Mr. LAMALFA. OK. So, that will be temporary.

In 2022, the agency rolled back NEPA reforms that had been made under the Trump administration which were going to decrease the burden of environmental reviews and the frustration with NEPA. On top of that, Congress passed the Fiscal Responsibility Act we have heard referenced many times today, putting in place a streamlined process for many of the NEPA aspects. Last month, those rules were finalized, and what we see is that your agency only applied those Fiscal Responsibility Act changes to wind and solar projects. Is that how you have interpreted that?

Ms. MALLORY. No, that is not correct. The National Environmental Policy Act regulations apply to all Federal projects.

Mr. LAMALFA. But the reforms you have only applied to wind and solar projects.

Ms. MALLORY. That is not correct.

Mr. LAMALFA. OK, then we will straighten that out. So, anybody applying for other NEPA will be able to enjoy the same streamlining process that was put in place, not just wind and solar.

Ms. MALLORY. Correct.

Mr. LAMALFA. OK, glad to hear it. Do you believe that what Congress passed in 1970 and Richard Nixon signed and many Republicans voted for in 1970 on NEPA is in line today with what was intended back then?

Ms. MALLORY. I do, Congressman. Yes, I do.

Mr. LAMALFA. You do.

Ms. MALLORY. I believe it is in line.

Mr. LAMALFA. OK. Well, we hear some wild things thrown around in this room here, this hearing and many others, about Republicans being big polluters and pro all that when there is a track record of having supported basic good environmental policy. But many of us feel like it has been weaponized now. So, you see where the incredible delays and incredible costs and deterrence to doing projects is right in line with 1970?

Ms. MALLORY. No. I am sorry, I guess I misunderstand your question. I think we have been working as an Administration to address the concerns about timelines and to advance the environmental policy in ways that allow you to do environmental policy and include the public and make sure that we are getting good decisions. I think those are the anchors that we have been using, and those flow directly from the statute.

Mr. LAMALFA. Well, a heap of comments that come from the public at the behest of e-mails sent out by environmental

organizations isn't necessarily great policy, it is just more stoppage. Let me put this on something that is a little more tangible.

In California, our water situation can be very dire year in, year out. We have been blessed in the last years, we have had an incredible amount of rain and snowpack, which have filled most of our lakes. But in that process sometimes, and in a little lesser water year, we will see that the lakes don't fill, and they don't have the ability, when a lake is reaching that point of, conservation level we will call it, that the law requires them to dump water because they don't have updated manuals. These manuals go way back 50-plus years ago of how they have to operate the lakes for flood control. So, we have been waiting for years to get these manuals in place. And the manuals take over 3 years, at least, and there are 29 lakes that are waiting for this process to be done.

And we find that, in practice, when one has been done, 10 percent of additional water was saved. So, if you take over 15 million acre-feet of capacity, 1.5 million acre-feet would mean a lot to people in California that are seeing their water cut in agriculture by 60 percent, and people told in urban areas they have to use only 42 gallons per day. So, what can we do to streamline the revamping of the manuals that they operate their flood control on? Because the NEPA process and CEQ are requiring 3 years to get these done.

Ms. MALLORY. Yes, Congressman. As I was saying, the whole point of our streamlining efforts is to try to ensure that the needed projects actually can occur as expeditiously as possible.

I am not familiar with the particular manuals you are talking about, but the work that we are doing to try to make sure that we are focused on the issues that are most important for decision, I think, will help that effort, as well as others.

Mr. LAMALFA. Well, NEPA requires every single lake——

The CHAIRMAN. The gentleman's time has expired.

Mr. LAMALFA. We need the refinement of that on every single lake, a template.

Thank you, Mr. Chairman, I will yield back.

The CHAIRMAN. All right, the Chair recognizes the gentlelady from New Mexico, Ms. Leger Fernández.

Ms. LEGER FERNÁNDEZ. Thank you, Chairman, and thank you, Chairwoman Mallory, for joining us today. Thank you so much for the work that you do to protect our communities and environment. It is so essential. It is incredibly essential in my district.

I represent a very rural district. And as you know, Federal investments are key in our rural areas. I am very pleased at the fact that during President Biden and the 117th Congress led by Democrats, we had the largest investment in rural America. You are shaking your head yes, because it was so exciting, right? The largest investment in rural America, basically, since the New Deal and electrification.

One of those programs was the World Energy for America Program, or WEAP, which, as you know, provides grants and loans for clean energy and energy efficiency projects on farms and ranches.

We also had a revision of the USDA scoring criteria for WEAP to prioritize projects in disadvantaged and distressed communities

as part of Justice40. Can you speak a bit about why it is both possible and important to be aware of the Justice40 and making sure that we are placing projects in rural areas next to disadvantaged, I don't like to use "disadvantaged," but communities that have faced way too many hurdles and suffered through too many injustices, and have a desire for opportunity.

Ms. MALLORY. Yes.

Ms. LEGER FERNÁNDEZ. How are we doing that, and how are you reconciling those two issues?

Ms. MALLORY. Thank you so much, Congresswoman, for that question. And yes, I think our focus in the Justice40 Initiative and under our environmental justice program in general, are the communities who have been underinvested in, who have suffered from a lot of the burdens of pollution burdens, but have also not had the benefit of the Federal funding that has come through before. So, a very, very high priority.

And we think it is important because, as we are trying to kind of revitalize all parts of this country, we know that places like in rural America, on tribal lands, in poorer communities, in some of our urban areas we know these are the places in which if we can add a spark of industry to those areas, it will allow for communities to thrive. And that is really the focus of all of the programs that the President has been advancing.

Ms. LEGER FERNÁNDEZ. And I think when we add that spark, we need to make sure it is not a spark that is also dirty, right, or that burns things down. We were a little worried about sparks in my district because of our forest fires.

Ms. MALLORY. Oh, yes, sorry.

Ms. LEGER FERNÁNDEZ. And the ability of ranchers and farmers to layer income streams, I think, is another really important thing that I hope you all keep in mind as we think about this.

I want to really talk about the issue also of PFAS contamination. These forever chemicals have been found in the groundwater outside of probably every single air force base. I have one of those air force bases, the Cannon Air Force Base in Clovis, New Mexico. In 2018, the PFAS was found. It is in the drinking water. One dairy farmer was forced to euthanize 5,000 cows. That dairy farm itself is no longer a viable place because he used the PFAS-tainted water to irrigate, and we still don't have a remediation plan, and the Air Force is being difficult. USDA needs to do better.

And while I appreciated the new standards coming out, we also don't have a plan to how we are going to help our smaller municipalities address the removal of PFAS. So, what is CEQ doing to improve our understanding of PFAS and how best to remove it from our communities, and then how to help them get that done?

Ms. MALLORY. Yes. Thank you so much for that. And, actually, the PFAS issue is quite a significant and widespread issue, as you described. And this President has devoted more funding to the PFAS than has been done in the past. But we know that we are going to need more dollars. There were like \$9 billion that were focused on PFAS and other emerging chemicals from the Inflation Reduction Act.

But the questions that you are asking about I think have to do with the implementation. And I think that we are working with the

agencies kind of across the Administration to try to make sure that each agency is taking the steps that it can in the places that it has some authority. And USDA is very focused on farmers and on some of the impacts that have been experienced by the farming community.

When EPA issued its Safe Drinking Water Act regulation just a few weeks ago, they also released \$1 billion in funding to try to help some of these smaller entities, actually municipalities, to deal with the changes that are going to be necessary, or the review that is necessary.

But more dollars are needed, and I think that we are serving as technical assistance—we, being EPA, serving as technical assistance, to try to help communities identify where there is additional funding that is possible, and how they can work together.

Ms. LEGER FERNÁNDEZ. Thank you very much, and keep putting some pressure on the DOD, because they need to be a lot more responsive.

With that, Mr. Chairman, I yield back.

The CHAIRMAN. The gentlelady's time has expired. The Chair recognizes the gentleman from Idaho, Mr. Fulcher, for 5 minutes.

Mr. FULCHER. Thank you, Mr. Chairman.

Chair Mallory, thank you for being here today. Earlier in this hearing, Chairman Bentz from Oregon mentioned a letter that he had sent you in February 2024. And it is in regard to the Columbia River system. And you had responded back to his letter, and I will just read a quote from that.

In your response, you said, "The U.S. 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 commitment to Tribal Nations, delivering affordable and reliable clean power, and supporting local regional economies in meeting the many resilience needs of stakeholders across the region through mediation." That is a long sentence, but there is a lot said in there.

And in regard to the lower Snake River dam situation, this is a critical part of that region's electrical grid, with many other uses, as well.

And I was reminded here by a note from the Bonneville Power Administration that there was an Arctic blast last January. And according to the Bonneville Power Administration, the Lower Snake River Dams made a major, this is a quote, "made a major contribution to the efforts to keep the lights on for that region."

Now, while this is all going on, we have organizations like the Pacific Northwest Utilities Conference Committee that recently made a statement that the projected electricity demand is going to increase more than 30 percent for the region over the next decade.

I communicate all that to lay the basis for a question, which is, of course there is the breaching issue, and this is what a recommendation and result came from through CEQ. And I just need to ask you, how would breaching or undermining the operability of the Lower Snake River Dams limit the region's ability to respond to things like this Arctic blast in the last bit of January, or deal with the growing needs in the area?

Ms. MALLORY. Thank you, Congressman, for that question. And just to be clear, there has been no breaching recommendation from CEQ or any other Federal agency——

Mr. FULCHER. I think we both know exactly where CEQ was going in this whole——

Ms. MALLORY. What we know is that Congress is the only entity that can make the determination about breaching.

Mr. FULCHER. And what we know is your role, through CEQ for, in essence, promoting that. So, I would still like an answer to the question, which is how would the breaching—OK, let's just take that. That is where the recommendation wound up. But if those were breached, how do we backfill some of that power source?

Ms. MALLORY. Yes. As I said, there was no breaching recommendation.

I think what we are doing right now——

Mr. FULCHER. We know where you are, yes, and we can disagree on semantics.

Ms. MALLORY. We can disagree.

Mr. FULCHER. But we know very, very well the role CEQ played in promoting that.

Ms. MALLORY. We are not promoting that.

Mr. FULCHER. Yes, you are.

Ms. MALLORY. But let me just say this. What we had was a historic settlement in December. And among the things that we have authorized is an energy study that would actually provide the information that is being done by one of DOE's labs to look at the kind of energy mix and the energy portfolio in the Pacific Northwest to see what opportunities would exist if that was a decision that Congress made.

Mr. FULCHER. The hydropower source that comes from those dams is extremely clean, extremely efficient, and extremely needed for that region.

In August 2022, Senator Patty Murray and Governor Jay Inslee released the Lower Snake River Dams Benefit Replacement Report, and they stated in that report that replacing the services provided by the dams could range from a cost of somewhere between \$10.3 billion and \$31.3 billion. So, if that were to be needed, where would those funds come from?

Ms. MALLORY. That literally is part of the analysis that is being done now, as a result of the settlement we were able to achieve.

Mr. FULCHER. Well, the answer to that is it would have to come through taxpayers. That is where this would ultimately need to come from, and ratepayers.

Ms. MALLORY. I don't think that is necessarily true, but that is what the study is looking at.

Mr. FULCHER. Well, that is where this is going to go. And at the same time, that source is going to be degraded, so I wanted to point that out. And as a result of that, we are going to have further impact on the regional economy, and that was also addressed in your letter.

At the hearing in this Committee back in December, before the final settlement agreement was announced, we heard from several stakeholders who expressed frustration with how the Administration pursued the settlement agreement. What do you say to the

stakeholders who feel that they were not given an opportunity to be heard by CEQ?

Ms. MALLORY. Yes, actually, we had certain parties who were part of the litigation that was being settled that were part of a mediation, but we took a number of steps to try to make sure that the views of stakeholders who were not parties to the litigation could be included, which included listening sessions, it created a special kind of comment box where people could provide their information, and all of that was provided to the mediators and the mediation parties.

Mr. FULCHER. Well, we are out of time, but I just want to close by saying that the Chairman referenced the initial mission of CEQ, and that was overseeing NEPA compliance. We have strayed far, far from that mission. Thank you, Chair Mallory.

I yield back.

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

Ms. HOYLE. Thank you. I yield my time to Mr. Huffman.

Mr. HUFFMAN. I thank the gentlelady from Oregon.

Chair Mallory, I want to get back to cleaning up a few things that have been covered in some of the Republican questioning. And my colleague from Louisiana spent a lot of time with you on this issue of the word "significant" that he claims was used in a very meaningful way in the Fiscal Responsibility Act, and the word "important" that apparently appears in some of your rulemaking under your NEPA 2.0 process. He suggested that you have done a bait and switch, that you have essentially deliberately ignored that word, and created a whole new standard through the rulemaking.

We have been doing a little scavenger hunt here for the last few minutes since that questioning to try to find some place where the word "significant" was replaced by the word "important" as between the FRA and your rulemaking. We can't find it. We really have no idea what the gentleman is talking about. Do you have any idea what this accusation pertains to, and can you shed a little light on it?

Ms. MALLORY. Yes, thank you, Congressman, for that question.

I mean, as he was asking it I could not think of where we had intentionally replaced the word. That was out of the statute. I think we tried to veer very close to the statute, but I was not aware of a specific place where we made that choice.

Mr. HUFFMAN. All right. And then, with respect to the Lower Snake River Dams, which you were just asked about quite a bit, can you just remind us all of the things that would need to happen between now and, of course, the study that is in process, and any actual breaching of those Lower Snake River Dams?

And by the way, it is my understanding that not only would an Act of Congress be necessary, but there would have to be replacement power for any power lost, which is something that the gentleman neglected to mention. But please remind us.

Ms. MALLORY. Yes, thank you so much for that. I think the key is that we and the Federal Government have faced many decades of litigation that have been around the operations of the dams. And we tried in this Administration to kind of create a space in which we would be able to focus on getting the information that is

necessary to be able to enable Congress to even have a conversation about that. So, we have created, through the settlement, a 10-year kind of reprieve in which we are doing a number of studies that look at the energy needs, that look at the agricultural needs, that look at the recreational needs, all of the needs that the dams actually replace so that people could talk about whether or not there is a need or desire to go forward. And that is all underway.

Mr. HUFFMAN. All right, thank you. Last bit of cleanup from the questioning. Some of my own quotes after the Fiscal Responsibility Act passed were mentioned. While I think that these were largely paper cuts when it comes to the Republican agenda of dismantling NEPA, I certainly resented the fact that they were even on the table in the context of a debt default crisis. The fact that they were used as ransom in taking the global economy hostage was a disgrace. I was talking a lot about that, and I was also talking about another really awful provision in the Fiscal Responsibility Act that greenlighted the Mountain Valley pipeline. We didn't ask you about that, because that is not part of your NEPA 2.0. But I find that to be probably the worst part of what came out of that legislation.

Now, I want to change subjects and ask you about IUU fishing. This is something I work on a lot. The terrible IUU fishing practices that we know about on the high seas are bad for our fishermen because they have to compete with bad actors around the world, and it is terrible for the marine ecosystem. And the more we understand about it, we know that there are also terrible human rights and slave labor and other impacts associated with this, and we do not even understand where a lot of our seafood comes from.

I have been working on this for quite some time, and there are so many different Federal agencies that have a piece of it, and it is just infinitely frustrating to try to talk to them and have them each point at the other. I know one of your roles, Chair Mallory, is to sort of be air traffic control for Federal agencies when it comes to these situations, get everybody applying the same standards, working in a coherent way.

Can you talk at all about the extent to which your agency has been involved in, for example, implementing the President's 2022 memorandum that identifies this as a threat to American competitiveness and national security, and also a problem for our fishing industry and climate change?

We have had 2 years since then. I am not getting anywhere with the other agencies. Can you give me some reason to believe that we are on the right track on this issue?

Ms. MALLORY. I am sure we are on the right track, but it is an effort that is being run by the National Security Council, and we are working with them. I mean, we are happy to get any information on updates on where things specifically are, but my team is very much a part of the effort that the National Security Council is leading, along with the Office of Science Technology Policy.

Mr. HUFFMAN. All right. I will look forward to following up with you separately on that.

Ms. MALLORY. OK.

Mr. HUFFMAN. And again, thanks for your testimony.
I yield back.

The CHAIRMAN. The gentleman's time has expired. The Chair recognizes the gentleman from Montana, Mr. Rosendale, for 5 minutes.

Mr. ROSENDALE. Thank you very much, Mr. Chair. As this hearing is supposed to be focused on the budget review for CEQ, I would like to at least start off with some questions about the actual budget and how the money is being spent.

But I think it is first really important to clarify for the people that are listening out there in the general public that the CEQ started at pre-COVID numbers at \$2.89 million for their annual budget. And while the request now is at nearly double that, \$4.67 million, they need to understand government creep. They need to understand the expansion of government. So, that is just a minuscule amount as compared to what the agency is actually receiving or has already received.

According to my numbers, we are looking at another \$163 million in either transfers and unexpired, unobligated funds that is going to go to CEQ between now and the end of fiscal 2025, most of that as a direct result of the so-called Inflation Reduction Act, which has been documented by economic experts to have contributed dramatically to the historic inflation under the Biden administration.

So, while you are requesting \$4.67 million, that is not an accurate description of what the agency is actually going to have access to, and how they can expand. As a matter of fact, when you look at it, \$63 million has been provided. You are going to have another \$58 million provided in Fiscal Year 2024, and another \$42 million provided in Fiscal Year 2025. If you add all that up, that is 35 years worth of what the budget would be under the inflated number that the President is asking for now. Under the pre-COVID number of \$2.89 million a year, that would run your agency for 56 years, 56 years. And people wonder why we have inflation, and people wonder why government is out of control.

That is an obscene amount of money to be sent to your agency. No offense to you, Chair Mallory, but it is an obscene amount of money that is being sent to your agency to basically be utilized to attack business and industry across our nation, which has been demonstrated by the questions that have been asked here today.

You stated that the Administration has invested \$1 billion in permitting capacity, yet there has been a significant slowdown in permitting and leasing under this Administration. Could you provide clarity on exactly where this \$1 billion has been allocated?

Ms. MALLORY. Thank you so much for that question. I would say, to start off with, the President asked for the \$4.6 million because of the work that he has directed us to do—

Mr. ROSENDALE. Please go to my question, Ms. Mallory. I have these numbers. Again, it is a grotesque amount of money that your agency is receiving, \$163 million between what you have already received and what you are going to receive over the next 2 years on an agency that Congress thinks and looks on paper and sees that the request of \$4.6 million—let's go back to the \$2.89 million. It is an obscene amount.

Ms. MALLORY. Yes.

Mr. ROSENDALE. Where has this \$1 billion been allocated?

Ms. MALLORY. The \$1 billion actually did not come directly to CEQ. The \$1 billion went to the multiple agencies who have a permitting role. That is the \$1 billion that everyone has been referring to. And that is to help each of the agencies——

Mr. ROSENDALE. It is referred to in your testimony, as well, though.

Ms. MALLORY. It is in my testimony, \$1 billion that went to agencies.

Mr. ROSENDALE. Yes.

Ms. MALLORY. It didn't come to CEQ. It went to a number of different agencies who have a role in permitting.

Mr. ROSENDALE. But the permitting has been slowed down. In your testimony, you note that the bipartisan permitting reform implementation rule will accelerate the review of all projects. Yet, when you listen to the type of projects that will be accelerated, I can't help but notice that the baseload energy projects, which are critical, have been left out.

When the potential capacity of electric generation is cited by you or by other documents or other people that come in here, it is very misleading. When most of the power is unreliable or intermittent at best, most wind farms are rated somewhere between 35 and 40 percent of full capacity, OK, full capacity at 35 to 40 percent of the time. And solar energy is even lower than that.

So, what is necessary for us as a population to provide backup when these intermittent or reliable sources are not available?

Ms. MALLORY. I am not even sure what you are asking me.

Mr. ROSENDALE. When the intermittent or unreliable sources such as solar and wind are not available, because they are only available 35 to 40 percent of the time at full capacity, what is necessary to provide that energy?

Ms. MALLORY. I guess what I would say, Congressman, is that we don't accept your premise that these things are being managed in a way where there is going to leave the American public without energy. We are very focused on the transition.

Mr. ROSENDALE. Chair Mallory, I am asking you what is going to provide that energy, because it is a fact that that energy is only available 35 to 40 percent of the time.

The CHAIRMAN. The gentleman's time has expired. You can submit more questions for the record.

Mr. ROSENDALE. Thank you, Mr. Chair. I yield back.

The CHAIRMAN. The Chair now recognizes the gentleman from California, Mr. Duarte, for 5 minutes.

Mr. DUARTE. Thank you, Mr. Chairman, I appreciate it.

Thank you, Chair Mallory, for being here today. I appreciate you being here. A couple of specific things I would really like your help with in my district.

I live in the San Joaquin Valley and represent the San Joaquin Valley of California, where water scarcity has really devastated our local communities. And we can talk about social environmental justice in that sense from a different perspective.

We have the Fish and Wildlife Service that regulates the Endangered Species Act for the most part, and is concerned with irrigated landscapes, habitat, estuaries, and restoration across many terrestrial species that regulates most of what we do. But when it comes

to salmon and anadromous fish, which are salmon, trout, things that go from rivers to oceans and back again, or might go from rivers and oceans to back again, it is regulated through the Department of Commerce under NMFS, the National Marine Fisheries Service.

We are allowing gargantuan amounts of our precious water resources to go out to the ocean in attempts to use river flow as a single tool to re-establish the anadromous fish populations. It is not working. It is not working at all, and it is having very serious environmental and economic effects up and down my district in many parts of the West. We have irrigated landscapes and farming being depleted. We have our energy resources being lost. We have the inability to sustain some of our natural restoration ecosystems, grasslands, marshes, and wetlands.

I would really ask, have you engaged this? Have you looked at this disconnect? Because one of our pieces of legislation of this Committee this year simply says, it is the Ken Calvert's FISH Act, which just takes the authority for the restoration of an anadromous fish, and puts it with Fish and Wildlife, where efforts to re-establish these species can be balanced with other needs more clearly.

Ms. MALLORY. Thank you, Congresswoman. I have not studied the kind of overview that you just described. I know that the salmon is a particularly complex species in terms of the issues that it intersects with, and I also know that the Administration is very focused on trying to make sure that we are looking at how climate change is impacting all of these issues in ways that will allow us to meet our water needs in the West.

Mr. DUARTE. I appreciate that. And as you look at climate change and salmon, the salmon populations that flow out through the Delta and the San Francisco Bay are the southernmost substantial salmon populations on the West Coast.

Ms. MALLORY. Yes.

Mr. DUARTE. And if we are going to accept that climate change is a fact, re-establishing these to historical levels under different climate regimes may simply be unrealistic and have inordinate impacts on other ecosystems and other water needs that we have in the West. And we have scarcity. That is a given. So, thank you for that.

I would also ask, green energy is an issue here, and you are here to help kind of quarterback and balance a lot of concerns. If you look at the frontiers of our economic development, of course, you have heard a lot of it today. I watched it on the screen as much as in person. You have heard a lot about how rural communities are being affected, and rural jobs are being affected by resource decisions throughout the country. A lot of it comes back to your office, and I would really ask you to look seriously at it.

I think Mrs. Peltola did an excellent job walking through the disengagement between her constituents and the rules surrounding the North Slope oil drilling permits that should be issued.

But I would also ask you to look at the energy needs of America not as static. We have been draining the Strategic Oil Reserve through this Administration. We haven't replenished it. So, we are not meeting our needs as is. We have AI, which is going to require

huge server farms. We have Bitcoin mining, which I disagree with on some levels. But if we are going to be relevant in that area, we are going to need huge server farms. Everything that we are looking at in the future for repatriating microprocessors is going to take huge amounts of electrons to meet the energy needs.

Our rural constituents are already seeing in my district \$0.35 to \$0.50 kilowatt hours to air condition their homes after working or, in many cases when there is drought, not working on the farms. We are a long way from meeting our current and future energy needs, and green energy simply will not do it.

I beg you to look at, among the things you are quarterbacking, get nuclear energy on-line in a realistic way as soon as possible. We are going to devastate our economy, our rural people, and our geopolitical relevance if we do not have a serious, all-approaches energy policy, and we are not even close. Windmills and solar will not do it.

So, I thank you for being here today, and I sincerely ask your help on these issues.

Ms. MALLORY. Thank you.

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

Ms. PORTER. Chair Mallory, one of the many permitting reform bills we have voted on actually became law, and it directly affects your agency. Chair Mallory, do you know what bill that is?

Ms. MALLORY. The Fiscal Responsibility Act.

Ms. PORTER. Correct, the Fiscal Responsibility Act. That bill raised the debt ceiling. What did it do exactly under your purview?

Ms. MALLORY. Thank you so much. The bill included a number of permitting efficiencies. It basically directed us to have specific deadlines. It directed us page limits on the environmental impact statements and environmental assessments. It required us to have a lead agency for the environmental review process who is coordinating with various other cooperating agencies, and provided some definitions there. It included categorical exclusions and a sharing of categorical exclusions across agencies, among other things.

Ms. PORTER. When I listen to you, what I hear you describing is a permitting reform passed by this Congress, by this Republican-led Congress, focused on efficiency, clarity, being able to deliver a more clear, efficient process so that we can move major environmental projects through the National Environmental Policy Act, NEPA, in a clear and successful way. So, the rule fully implements the Fiscal Responsibility Act.

Ms. MALLORY. Yes.

Ms. PORTER. So, it is so weird to me that so many of my Republican colleagues have accused CEQ of not implementing NEPA reforms as passed in the Fiscal Responsibility Act. So, I want to try to understand.

Is it accurate that the final rule, the Phase 2 rule, reflects the changes made to NEPA?

Ms. MALLORY. 100 percent.

Ms. PORTER. So, for instance, as you mentioned, the rule makes agencies condense environmental assessments into a single document.

Ms. MALLORY. Correct.

Ms. PORTER. So, what exactly is the problem here on the other side of the aisle?

You are fully complying with the Fiscal Responsibility Act, a bill passed by this Republican-led House, and yet my colleagues, the Republican colleagues in this very Committee, are accusing you of breaking the law. Chair Mallory, I read the rule, and it sounds like my colleagues are, to be generous, dead wrong. But I wonder why they are really upset in the first place. They are big mad. You are following the law. What could they be big mad about? What does the CEQ do?

Ms. MALLORY. We manage the Environmental Policy Act, and we advise the President and his senior advisers on environmental policy.

Ms. PORTER. So, you implemented a bunch of items that reflect the climate realities that we face, requiring projects, for example, to disclose greenhouse gas emissions.

Ms. MALLORY. Correct.

Ms. PORTER. You can't know their motives, but is it possible that is what they are mad about, that you are doing your job to safeguard our environment?

I think that is exactly what it is. Because if they wanted to, if Republicans wanted to, they could have limited CEQ's role in protecting the environment. They could have done that in the Fiscal Responsibility Act. They could have put in place a different set of rules for permitting reform and for NEPA in the Fiscal Responsibility Act. But they didn't. They put in exactly what they did. You did exactly what the law directed you to, and then they are big mad. And now they are lying to the American people by making false allegations about you and how you lead your agency.

I would have hoped, if there were an issue about actual compliance with the law, we could have had a meaningful discussion rooted in facts. But in this Committee we don't because, frankly, my Republican colleagues are trying to blame you rather than themselves, and I guess it is just easier for them that way.

I yield back.

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

Mr. MOYLAN. Thank you, Mr. Chairman, and thank you for allowing me the opportunity to speak today about the harmful impacts this Administration's policies have on my district.

Mr. Chairman, in yesterday's Subcommittee on Federal Lands' Fiscal Year 2025 oversight hearing we heard the Administration officials detail their commitment to collecting local and Indigenous input on protecting this nation's natural beauty. This is misleading at best, and at worst it is an outright lie because the Pacific Remote Island Marine National Monuments and the proposed sanctuaries restrict fishing activities in these areas, unfairly impacting the development of industries in the Pacific territories, while stripping away the ability of Indigenous peoples to take care of the environments we have known for millennia.

The Chamorro people of the Marianas have inhabited the islands for over 4,000 years. This Administration has continued policies of

Federal overreach, impeding the ability of locals to take care of their own environments.

Mr. Chairman, I ask unanimous consent to enter four documents into the record. First, comments from the Guam Fishery Co-op regarding proposal PRI Sanctuary dated June 2, 2023.

The second, the article titled, "Marine Sanctuary Expansion Alarms Pacific Governors," published in the Marianas Variety on May 2, 2023.

Third, the letter by the Hawaiian Long Line Association regarding proposed PRI Sanctuary dated June 1, 2023.

And finally, the article titled, "Disavowing the Doctrine of Discovery," written by Angelo Villagomez.

The CHAIRMAN. Without objection, so ordered.

[The information follows:]

GUAM FISHERMEN'S CO-OP

June 2, 2023

NOAA/ONMS
c/o Hoku Kaaekuahiwi Pousima
76 Kamehameha Ave.
Hilo, HI 96720

Re: PRI-Proposed Sanctuary

Hafa adai,

I am writing to express deep reservations regarding designation of the Pacific Remote Islands National Marine Sanctuary.

A sanctuary is supposed to be manageable. But this proposed sanctuary is *unprecedented* in size. It is more than 50 times larger than any previously-designated sanctuary. A sanctuary is also supposed to comprise a discrete area. There is nothing discrete about what would be created here. The sanctuary would include five separate designated areas, with the sanctuary extending all the way to the EEZ for each area.

Sanctuaries should be based on ecosystem and ecosystem function, not on legal boundaries like the current proposal. The Western Pacific Fishery Management Council conserves and manages fisheries using an ecosystem-based approach and NOAA should be allowing the Fishery Management Council to take the lead in recommending conservation and management measures.

This sanctuary process should be driven by science, not politics. Scientists have criticized the use of MPAs to protect biodiversity because of the highly mobile nature of ocean biodiversity in the region. If anyone will benefit from the sanctuary, it will be foreign fishermen fishing just outside the sanctuary boundaries.

Any sanctuary should not ban fishing. Such a ban is not required in a marine sanctuary and, in fact, most sanctuaries do not completely ban fishing. Based on our experience with the Marianas Trench Marine National Monument, it is likely that the refuge that is supposedly created will be no refuge at all, because NOAA will not prohibit Defense Department activities in a marine reserve.

Finally, at the public hearing, I asked for an extension of the time to submit comments. As I write this, most of the people in Guam are without water or power, let alone reliable internet service. Not providing an extension under these circumstances exposes the failure of NOAA/ONMS to provide a meaningful way for our community—which is made up primarily of Indigenous people and ethnic minorities—to participate in this process.

Thank you very much for the opportunity to submit these comments.

MANNY DUENAS,
President

Marine sanctuary expansion alarms Pacific governors

Marianas Variety News, May 2, 2023 by Emmanuel T. Erediano

https://www.mvariety.com/news/marine-sanctuary-expansion-alarms-pacific-governors/article_123e3826-e810-11ed-b65a-23fa87eef83d.html



Acropora corals grow toward the sunlight to form beautiful, massive tables at Palmyra Atoll, part of the Pacific Remote Islands Marine National Monument. Photo by Jeff Milisen/NOAA

The prospect of expanding a marine sanctuary has alarmed CNMI Gov. Arnold I. Palacios, Guam Gov. Lourdes Leon Guerrero and American Samoa Gov. Lemanu Peleti Mauga.

In their joint letter to President Joseph Biden, the three governors requested a meeting “at your earliest convenience.”

“We are alarmed and concerned over the prospect of expanding potential fishery closures through designating a marine sanctuary within the full U.S. economic exclusive zones of the Pacific Remote Island Areas which already include a Marine National Monument,” Palacios, Leon Guerrero and Mauga told the president in a letter.

They said further closures of waters around the U.S. Pacific islands would be devastating to the local tuna economy of American Samoa and deprive the Pacific territories of economic development opportunities into the future.

The governors said fisheries are the leading source of economic development that binds them to neighboring Pacific islands.

They said further closures would be in direct conflict with the Biden administration’s Indo-Pacific Economic Framework and run counter to the principles of equity and environmental justice as outlined in Executive Orders 13984 and 14008.

“Our already disadvantaged and marginalized communities carry a disproportionate burden for meeting national conservation goals. We do not believe taking further action to fully close waters around the Pacific Remote Island Areas [is] necessary to fulfill the aspirations of your ‘America the Beautiful’ initiative,” the governors said.

They requested further consultation on the matter before any decision is made, “because our communities and constituents inhabit islands in proximity to the Pacific Remote Island Areas. Please have your staff reach out to us and arrange a meeting, either in person or virtual.”

HAWAII LONGLINE ASSOCIATION

June 1, 2023

Nicole R. LeBoeuf, Assistant Administrator
 NOAA National Ocean Service
 1305 East-West Hwy
 Silver Spring, MD 20910

Dear Ms. LeBoeuf:

On behalf of the Hawaii Longline Association (HLA), thank you for the opportunity to provide scoping comments on the proposal to designate the Pacific Remote Islands (PRI) as a National Marine Sanctuary including expanding boundaries and no fishing prohibitions around Palmyra and Howland/Baker Islands.

HLA was established in 2000 to ensure the long-term continuity of the Hawaii longline fisheries (deep-set targeting bigeye tuna; shallow-set targeting swordfish) and associated seafood industry. HLA members include all active Hawaii-based longline vessels and the daily Honolulu Fish Auction. The Hawaii longline fisheries contribute over 85% of Hawaii's commercial fish landings, making it Hawaii's largest commercial fishing sector. With approximately 30 million pounds landed annually—worth around \$120 million in dockside value—the Hawaii longline fleet is Hawaii's largest food producer by volume and value.

General Comments

The United States is a global leader in fisheries management. Under a range of federal laws, overfishing is prevented, bycatch minimized, and fisheries are not allowed to jeopardize endangered species populations. Even with comprehensive fisheries management regimes, no country has closed as much of its national waters to commercial fishing as the United States. Nearly 1.2 million square miles of ocean—roughly one third of the total land area of the United States including Alaska—has been set aside and protected (and much of it within past 10 years).

The closure of US waters has been disproportionately focused in the Pacific Islands region, where 96% (by area) of all US Marine Protected Areas (MPA) have been established. Furthermore, these MPAs have not only been established for vulnerable coral reef ecosystems, but additionally for vast, blue-water pelagic environments around Hawaii, American Samoa, Northern Mariana Islands and the PRI—permanently closed to highly monitored commercial fishing for migratory species such as tuna.

The proposed PRI National Marine Sanctuary designation would expand the fishing closures to the full extent of the US Exclusive Economic Zone (EEZ) around Howland/Baker Islands and Palmyra Atoll/Kingman Reef. The result would achieve President Biden's 30 x 30 America the Beautiful Initiative with respect to the marine environment by closing 30% of the Nation's EEZ waters to commercial fishing. This begs the question: is this proposal necessary for marine protection or does it fulfill a political agenda?

Full closure of these US waters to highly monitored, comprehensively regulated US fishing fleets does not strike a balance between resource protection and sustainable use. Whether it's the need to support local businesses, promoting US Pacific Island food self-sufficiency, or countering China's influence, permanently closing pelagic EEZ waters of the United States harms US strategic interests in the region more than it helps.

Unfortunately, there are significant differences in views on the benefits of closing all US waters of the PRI to fishing. Proponents argue protection is needed to build resiliency against climate change, promote cultural connections to these places, and to provide a refuge for marine species. HLA supports these objectives but does not agree that closing all US waters of the PRI is necessary or representative of a balanced marine resource management regime.

One area of controversy is whether these MPAs have spillover benefits to tuna stocks. Proponents are touting research published late last year that ostensibly concludes Papahānaumokuākea Marine National Monument expansion produced, in just two years, significant tuna spillover benefits to immense populations of bigeye and yellowfin tuna and resulted in higher catch rates in the Hawaii longline deep-set fishery. That research was promptly renounced as flawed and debunked by

leading tuna stock assessment scientists.¹ As fishermen, we know that the ocean is dynamic, especially the pelagic environment where we fish. While advocacy science may make such claims, discrete, static closures will not have material benefits to abundant tuna stocks or populations of other highly mobile species that range beyond US PRI EEZ boundaries.

Given this understanding, HLA has serious concerns with the claimed benefits of the proposal, especially as they relate to tuna stocks. The Hawaii longline fishery started in 1917 and Hawaii longline vessels have a long history of fishing within the US EEZ waters around Johnston and Palmyra, with some years seeing up to 20% of fishing effort. In 2014, the entire EEZ around Johnston Island was closed to fishing as result of the PRI monument expansion by President Obama. Within the last decade, Hawaii longline vessels have minimally fished in the open area of US EEZ waters from 50 –200 nm around Palmyra. The Hawaii fleet, which lands premium ice-chilled seafood, does not fish in the US EEZ around Howland/Baker Islands due to it being over 1600 nm away from Honolulu. For these reasons, the proposed Sanctuary and expansion will likely result in minor direct impacts to the Hawaii longline fleet; however, the main extent of impacts are cumulative and involve the existing marine monument designations and a newly agreed international convention that, among other things, establishes a framework for the designation of MPAs on the high seas (BBNJ).²

Approximately 65% of US EEZ waters around the Hawaii Archipelago are permanently closed to commercial fishing. Currently, around 80% of Hawaii longline fishing effort occurs in the high seas, which has increased from historical levels due area closures. On the high seas, Hawaii longline vessels fish along-side poorly monitored, subsidized foreign vessels. One must ask, then, if closing US waters to commercial fishing does not benefit tuna stocks or other abundant, mobile pelagic species, then why is it in the US national interest to subject its fishing fleets to foreign competition on the high seas?

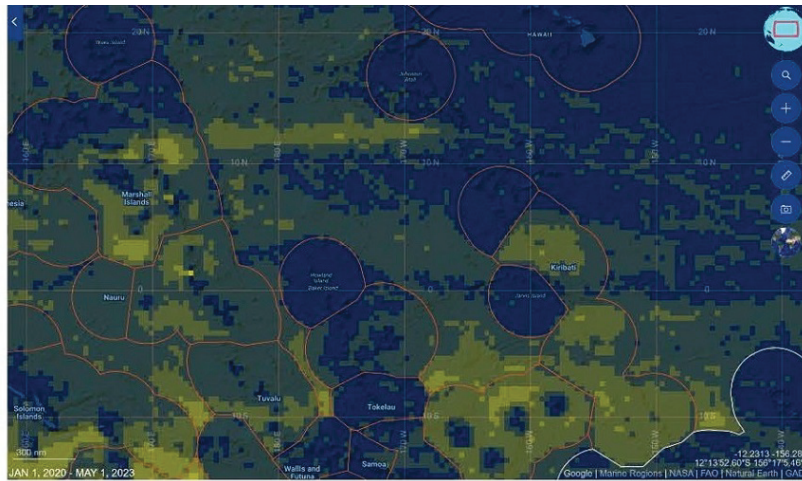
Closing all US waters in the PRI is not consistent with NOAA's National Seafood Strategy or the United States Indo-Pacific Strategy which aims to counter China's rapidly growing influence in the Pacific Islands region.³ China's closest partner in the region is Kiribati, which happens to have the largest EEZ in the Pacific Ocean and its waters produce the highest total tuna catch of any nation globally.⁴ Chinese flagged vessels fish unfettered within EEZ waters of Kiribati (Figure 1). Three out five of the PRI (Palmyra, Howland/Baker, Jarvis) are adjacent to the Kiribati EEZ.

¹ <https://sustainablefisheries-uw.org/mpa-spillover-hawaii-tuna-medoff/>

² Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction. 2023.

³ <https://www.fisheries.noaa.gov/s3/2023-02/National-Seafood-Strategy-Final-Draft-Public-Comment.pdf#:~:text=The%20National%20Seafood%20Strategy%20focuses%20on%20NOAA%20Fisheries%E2%80%99,climate%20change%2C%20market%20disruptions%2C%20and%20new%20ocean%20uses;> <https://www.whitehouse.gov/wp-content/uploads/2022/02/U.S.-Indo-Pacific-Strategy.pdf>

⁴ <https://www.forbes.com/sites/jillgoldenzel/2022/07/22/kiribatis-liaison-with-china-threatens-sushi-and-security/?sh=47b2ea2f6ec0>

Figure 1: Chinese fishing effort in Pacific Islands region (2020–2023)

Source: Global Fishing Watch

The proposed Sanctuary overlay and expansion signals that the United States is willingly ceding fisheries influence in the region to China. Tuna fishing is the largest economic driver for many Pacific Small Island Developing States. For example, over 70% of the Kiribati Gross Domestic Product is from selling fishing access to its EEZ to foreign vessels.⁵ China's offshore fishing fleets are heavily subsidized, with tuna fishing a clear pathway to influencing Pacific Island governments. This alone should give pause to the United States with respect to the proposal.

Another key geopolitical issue generating foreseeable cumulative effects is the recently agreed BBNJ framework to establish high seas MPAs. Because many Pacific Island countries receive critical economic benefits from foreign fishing access agreements, closing large areas of the high seas in the Western and Central Pacific Ocean supports their economic interests. The combination of permanently closed US waters and high seas MPAs, that either close existing fishing areas for our fleet or displace and concentrate fishing effort into open areas, will have significant impacts on the Hawaii longline fishery, negative impacts to Hawaii's food self-sufficiency, and the broader National interest. Foreign flagged longline vessels typically transship their frozen catch on the high seas and stay on the fishing grounds for at least 6 to 12 months per trip, whereas Hawaii longline vessels return to port every 3 weeks (landing ice chilled fish for the local Hawaii market). High seas transshipment activity is unmonitored, and this operational disparity will result in foreign vessels occupying concentrated high seas fishing grounds, leaving little area for the Hawaii-based fleet.

HLA understands that establishing a sanctuary over the PRI monument is for Congressional funding and programmatic purposes, but why not use the Antiquities Act of 1906 to expand the boundaries around Palmyra and Howland/Baker? HLA believes that President Biden chose not to use the Antiquities Act to expand the PRI monument boundaries due to concerns over the legality of such action.⁶ The huge

⁵ Bell, J.D., Sanina, I., Adams, T. *et al.* Pathways to sustaining tuna-dependent Pacific Island economies during climate change. *Nat Sustain* 4, 900-910 (2021). <https://doi.org/10.1038/s41893-021-00745-z>

⁶In 2021, Chief Justice Roberts issued a statement related to the case brought by the Massachusetts Lobstermen's Association regarding Northeast Canyons Marine National Monument (Massachusetts Lobstermen's Association, et al. v. Gina M. Raimondo, Secretary of the Commerce, et al.). Chief Justice Roberts stated: "While the Executive enjoys far greater flexibility in setting aside a monument under the Antiquities Act, that flexibility, as mentioned, carries with it a unique constraint: 'Any land reserved under the Act must be limited to the smallest area compatible with the care and management of the objects to be protected. See § 320301(b). Somewhere along the line, however, this restriction has ceased to pose any meaningful restraint. A statute permitting the President in his sole discretion to designate as monuments "landmarks," "structures," and "objects"—along with the smallest area of land compatible

Continued

PRI monument expansion in 2014 using the Antiquities Act was too much then and the current proposal to permanently close all PRI waters is too much now. Unfortunately, the proposal appears to be more related to the 30 x 30 political agenda rather than meaningful protection.

For the reasons identified herein, HLA strongly believes the United States national interests are best served if there is a balanced management approach that includes both protection and sustainable fishing. HLA would consider supporting the proposal if highly monitored tuna fishing is allowed. Specifically, HLA would support Sanctuary designation if fishing was allowed for highly migratory species by Hawaii longline vessels within the US EEZ around Johnston from 50–200 nm. HLA also supports continued fishing opportunities for the US purse seine fleet in the PRI noting the importance of their landings to American Samoa.

Specific Comments

HLA requests that NOAA ensure the following topics are analyzed thoroughly in the Draft Environmental Impact Statement (DEIS).

1) Disproportionate Conservation Burden

Approximately 96% of no-take MPAs within the United States occur in the US Pacific Islands region. Over 50% of US EEZ waters in the US Pacific Islands Region are closed to commercial fishing from marine monument designations in American Samoa, CNMI, Hawaii, and PRI. This amounts to nearly 25% of all US waters nationally. No other region of the US has been subject to such levels of US waters removed from highly monitored, sustainable commercial fishing. The DEIS should analyze the impacts resultant from the disproportionate conservation burden born on residents and fisheries of the US Pacific Islands including Hawaii from the designation of existing monuments and the proposed sanctuary designation. Preventing the transfer of conservation burdens to Small Island Developing States (SIDS) is an established principle in international law, and similarly, the disproportionate burden placed on fishing communities of Hawaii, American Samoa, CNMI, and Guam should be analyzed in the DEIS.

2) Balancing Protection and Sustainable Fishing Opportunities

The Purpose and Policies section of the National Marine Sanctuaries Act (16 U.S.C. §1431(b)(6)) states: “to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities.” The DEIS should analyze how the proposed designation is consistent with the National Marine Sanctuary Act’s provisions related to balancing protection and multi-use of available natural resources, in particular sustainable fishing activity. The analysis should take into account that currently all US waters (0–200 nm) around Johnston, Wake, Jarvis Islands are closed to commercial fishing, representing nearly 500,000 square miles of ocean. The proposed designation would add an additional 200,000 square miles and effectively close all US waters in the PRIA to commercial fishing. Already the existing size of the PRI monument is larger than all US national parks combined. The DEIS must address how the proposal achieves balancing protection and sustainable use (e.g., highly monitored fishing) of available resources per the National Marine Sanctuaries Act.

3) Impacts to Tuna and Other Highly Migratory Species

The DEIS should analyze the potential impact, or lack thereof, that Sanctuary designation and expansion would have on tuna populations in the region. The DEIS should thoroughly analyze recent studies that indicate MPAs offer little benefit to populations of highly migratory species such as tuna and billfish. A recent paper by Meidoff et al. (2023) purported to find that spillover occurred for yellowfin and bigeye tuna as a result of the Papahānaumokuākea monument expansion. However, this paper was quickly rebutted by world renowned tuna population and stock assess-

with their management—has been transformed into a power without any discernible limit to set aside vast and amorphous expanses of terrain above and below the sea . . . We have never considered how a monument of these proportions—3.2 million acres of submerged land—can be justified under the Antiquities Act. And while we have suggested that an “ecosystem” and “submerged lands” can, under some circumstances, be protected under the Act, see *Alaska v. United States*, 545 U.S. 75, 103 (2005), we have not explained how the Act’s corresponding “smallest area compatible” limitation interacts with the protection of such an imprecisely demarcated concept as an ecosystem. The scope of the objects that can be designated under the Act, and how to measure the area necessary for their proper care and management, may warrant consideration—especially given the myriad restrictions on public use this purely discretionary designation can serve to justify.” https://www.supremecourt.gov/opinions/20pdf/20-97_jiel.pdf

ment scientists as being flawed. The rebuttal is in press, but a summary can be found online.⁷ The DEIS should also include reference to other peer-reviewed publications that find MPAs have produced no discernable benefit to tuna stocks.⁸

4) Impacts to Coral Reef, Benthic and Pelagic Environments

As stated earlier, each of the PRI are either closed to the full extent of the EEZ or from 0–50 nm (Howland/Baker and Palmyra Islands). The DEIS should analyze how expanding the fishing closures will impact each of these environments (i.e., nearshore, deep-sea benthic, pelagic). For example, all of the PRI areas were considered pristine before the closure of US waters to the full extent of the EEZ in 2014. There were no environmental review processes under the National Environmental Policy Act for any monument designation in the Pacific Islands region. The DEIS should conduct a rigorous analysis on the direct and indirect impacts of pelagic fishing for highly migratory species by highly monitored fishing vessels on the affected environment, with particular focus on coral reef, benthic, and pelagic environments.

5) Indirect and Cumulative Impacts

NOAA should comprehensively analyze the indirect and cumulative socioeconomic effects of the proposal on the Hawaii longline fishery, US purse seine fleet, fishing communities and economies of Hawaii, American Samoa, Guam, and Northern Mariana Islands, and US seafood markets. The analysis should also consider the proposal in combination of existing MPA designations with reasonably foreseeable future high seas MPAs under the BBNJ framework.

6) Administrative Costs

NOAA should analyze the anticipated administrative costs of a potential sanctuary overlay and expansion of no fishing areas around Palmyra and Howland/Baker Islands. The analysis should focus on existing levels of Congressional appropriations for the National Marine Sanctuary Program sites and the proposal's administrative costs of enforcement, monitoring, and management.

Conclusion

HLA supports comprehensive fisheries management and science-based marine conservation and protection. We strongly believe there should be an appropriate balance between marine conservation, protection, and sustainable fishing within US EEZ waters. To permanently close off all fishing opportunities in US EEZ waters around the PRI is not in the strategic interest of the United States in supporting the economies of the US Pacific Islands or in deterring China's influence in the region. Moreover, in an increasingly tight Congressional budget appropriations environment, adding a sanctuary overlay and increasing administrative, monitoring, and enforcement costs could take away from other existing or proposed Sanctuary sites and MPAs.

Lastly, the disproportionate conservation burden placed on residents and fisheries of the US Pacific Islands from existing marine monument designations and the 30 x 30 political agenda is unfair and needs to be rectified. Relatedly, allowing highly monitored fishing for tuna within some EEZ waters of the PRI should be allowed and included as a management alternative analyzed by NOAA in the DEIS.

Sincerely,

ERIC K. KINGMA, PH.D.
Executive Director

⁷ <https://sustainablefisheries-uw.org/mpa-spillover-hawaii-tuna-medoff/>

⁸ See: 1) Hampton, J., Lehodey, P., Senina, I., Nicol, S., Scutt Phillips, J., & Tiamere, K. (2023). Limited conservation efficacy of large-scale marine protected areas for Pacific skipjack and bigeye tunas. *Frontiers in Marine Science*, 9, 2817. 2) Gilman, E., Chaloupka, M., Fitchett, M., Cantrell, D. L., & Merrifield, M. (2020). Ecological responses to blue water MPAs. *PLoS One*, 15(7), e0235129.

Disavowing the Doctrine of Discovery: Indigenous Healing, Decolonization, and Implications for Environmental Justice in the Pacific Remote Islands Area

Keywords: Micronesia, ocean conservation, marine protected area, Indigenous consultations, decolonization, Pacific Remote Islands

Abstract

Anti-Micronesian bias and colonialism are harming efforts to protect and manage waters surrounding U.S. overseas territories in the Pacific Islands. The Biden administration's proposal to designate a national marine sanctuary in the Pacific Remote Islands Area (PRIA) would potentially create the largest non-contiguous protected area on the planet. However, the proposal is problematic because it has failed to meaningfully include the Indigenous peoples who live closest to the region and who have the strongest historical and cultural ties to the islands—Micronesians and Samoans. The paper reviews the history and context of the PRIA, who bears the costs and receives the benefits of conservation there, and analyzes the perspectives and concerns of the political and community leaders in the U.S. Pacific territories, who have expressed near universal opposition to the plan. The paper concludes with some recommendations for improving the equity and justice of the proposal, such as engaging in meaningful dialogue, respecting the rights and interests of the Indigenous peoples, and ensuring their input and consultation in the decision-making process and management of the PRIA.

Introduction

President Joe Biden of the United States has issued an ambitious call to action through his “America the Beautiful” initiative to conserve, connect, and restore 30 percent of U.S. lands and waters by 2030¹ (sometimes referred to as 30x30). In terms of the ocean, this means delivering conservation within the United States’ exclusive economic zones (EEZ)—the ocean area that extends 200 miles beyond American coastlines.

The 11.4 million square kilometers of ocean controlled by the United States is vast. The U.S. territories in the Pacific in particular have some of the largest EEZs in the country, making this region critical for delivering conservation and climate goals on the ocean. The U.S. Pacific territories are also the traditional lands and waters of Indigenous Micronesians, Chamorros, Refaluwasch, and Samoans. The combined ocean surrounding the U.S. Pacific territories is 3.3 million square kilometers—nearly twice the land area of Alaska—accounting for 29 percent of the total EEZ of the entire United States.²

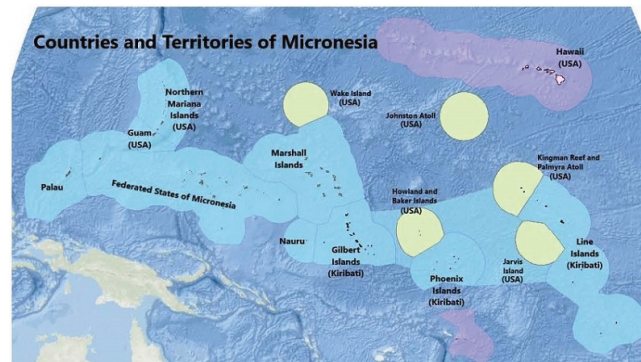


Figure 1: The region of Micronesia stretches from Palau in the west to the Line Islands of Kiribati in the east (highlighted in blue). Six of the seven islands within the Pacific Remote Islands Marine National Monument (Wake, Howland, Baker, Jarvis, Kingman, and Palmyra) lie within Micronesia. Johnston lies between Micronesia and Hawai'i.

¹“America the Beautiful: Spotlighting the work to restore, connect, and conserve 30 percent of lands and waters by 2030,” US Department of Interior, accessed August 30, 2023, <https://www.doi.gov/priorities/america-the-beautiful>.

²“U.S. Maritime Limits & Boundaries,” NOAA Office of Coast Survey, accessed August 30, 2023, <https://sanctuaries.noaa.gov/pacific-remote-islands/>.

The Pacific Remote Island Area (PRIA) consists of seven, mostly uninhabited islands in the western and central Pacific Ocean claimed by the United States. During the 20th century these islands were mostly used for military purposes despite being designated as national wildlife refuges.³ In 2009, President George W. Bush used the Antiquities Act to designate 50 miles of waters surrounding each island as the Pacific Remote Islands Marine National Monument. The marine monument was expanded in 2014 by President Barack Obama and is under consideration for further expansion by President Joe Biden.

On March 24, 2023, President Biden directed the Secretary of Commerce to consider initiating the designation process for a proposed national marine sanctuary in the PRIA,⁴ which would augment protections for the existing marine monument. The proposed sanctuary would expand protections to currently unprotected submerged lands and waters to the full extent of the U.S. EEZ, growing the protected area from 1.3 million sq km to nearly 2 million sq miles,⁵ potentially making it the largest non-contiguous protected area on the planet. The Biden administration has suggested that this action would achieve 30x30 on the ocean for the United States.⁶ The decision was celebrated by leaders in Hawaii.⁷

Disconcertingly, the current campaign to expand and designate the sanctuary in the Pacific Remote Islands has failed to meaningfully include the Indigenous peoples who live closest to the region and who have the strongest historical and cultural ties to the islands—Micronesians and Samoans. Furthermore, while the conservation burden of fishing restrictions is carried by the U.S. Pacific territories,⁸ most of the social and economic benefits have accrued to Hawai'i and the continental United States in the form of conservation prestige, jobs, research, and funding.⁹ This is not an equitable sharing of the costs and benefits of marine protection, and leads to “parachute science and conservation”¹⁰ in the territories.

The Biden administration defines “environmental justice”¹¹ as “the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people: (i) are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and (ii) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.” The people living in the US Pacific territories, many of whom are Indigenous, did not have meaningful involvement in the sanctuary designation process prior to its announcement in March 2023.

³Dan O'Donnell, “The Pacific Guano Islands: The Stirring of American Empire in the Pacific Ocean,” *Pacific Studies*, 16 (1993): 17-17.

⁴“Memorandum on Conserving the Natural and Cultural Heritage of the Pacific Remote Islands,” The White House, accessed January 26, 2024, <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/03/24/memorandum-on-conserving-the-natural-and-cultural-heritage-of-the-pacific-remote-islands/>.

⁵“Proposed Designation of Pacific Remote Islands National Marine Sanctuary,” National Oceanographic and Atmospheric Administration, accessed August 30 2023, <https://sanctuaries.noaa.gov/pacific-remote-islands/>.

⁶“FACT SHEET: Biden-Harris Administration Takes New Action to Conserve and Restore America's Lands and Waters,” The White House, accessed August 30, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/21/fact-sheet-biden-harris-administration-takes-new-action-to-protect-and-restore-americas-lands-and-waters/>.

⁷“Press Release: Case Applauds President Biden's Commencement of Marine Sanctuary Designation Process for U.S. Pacific Remote Islands Waters,” Office of Representative Ed Case, accessed September 18, 2023, <https://case.house.gov/news/documentsingle.aspx?DocumentID=2098>.

⁸Sullivan-Stack, Jenna, Octavio Aburto-Oropeza, Cassandra M. Brooks, et al. “A scientific synthesis of marine protected areas in the United States: status and recommendations.” *Frontiers in Marine Science* 9 (2022): 849927.

⁹Angelo Villagomez. “U.S. Pacific Territories and the America the Beautiful Initiative Can Deliver Ocean Climate Solutions,” *Center for American Progress*, November 28, 2022, <https://www.americanprogress.org/article/u-s-pacific-territories-and-the-america-the-beautiful-initiative-can-deliver-ocean-climate-solutions/>.

¹⁰Ahmadia, Gabby N., Samantha H. Cheng, Dominic A. Andradi-Brown, et al. “Limited progress in improving gender and geographic representation in coral reef science.” *Frontiers in Marine Science* 8 (2021): 731037.

¹¹Executive Order 14096, The White House, accessed January 27, 2024, <https://www.federalregister.gov/documents/2023/04/26/2023-08955/revitalizing-our-nations-commitment-to-environmental-justice-for-all>

As a result, political and community leaders in the U.S. Pacific territories have proclaimed near universal opposition to the plan.^{12,13} American Samoa Governor Lemanu Peleti Mauga said of the proposal, “The misinformation that has been circulated by the proponents of this sanctuary is insulting and misconstrues the reality of the importance of these waters to our territory.”¹⁴ A letter co-signed by Northern Mariana Islands Governor Arnold I. Palacios, Guam Governor Lourdes Leon Guerrero, and governor Lemanu read, “Our already disadvantaged and marginalized communities carry a disproportionate burden for meeting national conservation goals.”¹⁵

This course of action is neither equitable nor just, and antithetical to the America the Beautiful Initiative¹⁶ and the UN Declaration on the Rights of Indigenous People’s principle of Free, Prior, and Informed Consent.¹⁷ For example, no government representatives from the territories were invited to participate in the March 24, 2023 White House event where the proposed sanctuary was announced,¹⁸ nor were they informed ahead of time that a sanctuary announcement was taking place,¹⁹ nor were they involved in designing the first public comment period,²⁰ or organizing federal public hearings on their own islands.²¹ Months later, in September 2023, a sanctuary designation workshop co-hosted by NOAA and the American Samoa government was held, but issues of consent had not been yet addressed as Governor Lemanu issued a memorandum directing participating government staff to support “the Governor’s staunch opposition to the marine sanctuary designation.”²² Micronesians, Chamorros, Refaluwasch, and Samoans should have input and consultation in every step of the decision-making process and management of the Pacific Remote Islands, and any proposals to change them, not after announcements are made.

The United States needs to do a better job of engaging with Indigenous people in the U.S. Pacific territories, and backing their ideas to manage their waters, rather than forcing ideas on them.^{23,24} Ultimately, these may be the same ideas, but the process and the people involved matter.

The Biden administration must reassess the proposed plan as it was developed without input from the Indigenous peoples living in the U.S. territories. Without meaningful dialogue, a designation has the potential to violate many of the conservation commitments the administration has made towards Native peoples and

¹²Joyetter Feagaimaali’l, “Public Hearing in American Samoa Underscores Opposition to Marine Sanctuary Plan,” *Benar New*, June 2, 2023, <https://www.benarnews.org/english/news/pacific/pacific-marine-sanctuary-samoa-06022023013620.html>.

¹³Chrystal Marino, “Pacific Voices Being Disrespected; Process is Not Pacific Way,” *Saipan Tribune*, May 22, 2023, https://www.saipantribune.com/news/local/pacific-voices-being-disrespected-process-is-not-pacific-way/article_ba94c5f2-4f12-5f22-8114-bf0813215cee.html.

¹⁴“Pacific Islands Fishery News,” Western Pacific Regional Fisheries Management Council, accessed September 5, 2023, <https://www.wpcouncil.org/wp-content/uploads/2023/09/1-Council-and-AS-Leaders-Frustrated.pdf>.

¹⁵Emmanuel T. Erediano, “Marine sanctuary expansion alarms Pacific governors,” *Marianas Variety*, May 13, 2023, https://www.mvariety.com/news/marine-sanctuary-expansion-alarms-pacific-governors/article_123e3826-e810-11ed-b65a-23fa87eeff83d.html.

¹⁶“America the Beautiful: Spotlighting the work to restore, connect, and conserve 30 percent of lands and waters by 2030,” US Department of Interior, accessed on August 30, 2023, <https://www.doi.gov/priorities/america-the-beautiful>.

¹⁷“United Nations Declaration on the Rights of Indigenous Peoples,” UN General Assembly, accessed on September 18, 2023, <https://www.refworld.org/docid/471355a82.html>.

¹⁸Mar-Vic Cagurangan, “The Burden of Territorial Status,” *The Pacific Island Times*, May 2, 2023, <https://www.pacificislandtimes.com/post/the-burden-of-territorial-status>.

¹⁹Derrick Malama, “Concern Raised Over Biden’s Marine Sanctuary Initiative,” *Hawai’i Public Radio*, March 27, 2023, <https://www.hawaiipublicradio.org/pacific-news-minute/2023-03-27/pacific-news-minute-concern-raised-over-bidens-marine-sanctuary-initiative>.

²⁰Emmanuel T. Erediano, “Governor Urges NOAA to Meaningfully Engage with Marianas Community,” *Marianas Variety*, June 1, 2023, https://www.mvariety.com/news/governor-urges-noaa-to-meaningfully-engage-with-marianas-community/article_f16a79b4-ffb8-11ed-9667-532d5d183d84.html.

²¹Jolene Toves, “Guam Residents Can Provide Input on Proposed National Marine Sanctuary,” *The Guam Daily Post*, May 15, 2023, https://www.postguam.com/news/local/guam-residents-can-provide-input-on-proposed-national-marine-sanctuary/article_1fac92c4-f1c4-11ed-8e72-b782c1fee5f7.html.

²²“General Memorandum No. 223-23,” Governor of American Samoa, September 8, 2023, https://www.americansamoa.gov/files/ugd/4bfff9_54b682741e8540d1b6f4dfe7fd01cadb.pdf.

²³Laurie Richmond and Dawn Kotowicz, “Equity and access in marine protected areas: The history and future of ‘traditional Indigenous fishing’ in the Marianas Trench Marine National Monument,” *Applied Geography* 59 (2015): 117-124.

²⁴Leonard, Kelsey, Pier Luigi Buttigieg, Maui Hudson, et al. “Two-eyed seeing: Embracing the power of Indigenous knowledge for a healthy and sustainable Ocean,” *Plos Biology* 20, no. 10 (2022): e3001876.

will ultimately harm conservation efforts in the region in the long term. Understanding the history, culture, and context of these islands and surrounding waters is critical for developing conservation policies that benefit local people, and this is missing from the existing proposal. This essay examines some of that context and offers a pathway towards Indigenous led conservation that truly engages the Native people who have lived in the Pacific for millennia, heals contemporary intra-Pasifika harm, and concludes with the goal of decolonizing conservation in the Pacific Remote Islands Marine National Monument.

Understanding Place and People in Historical Context

The specifics of how the Pacific Ocean basin, which occupies a third of the earth's surface, was populated have been lost in time, but cultural and linguistic studies have pieced together how voyagers over centuries traversed thousands of kilometers of open ocean in dugout canoes using only the stars, waves, and biological cues as their guides.²⁵ Recent Archaeological²⁶ and paleoenvironmental²⁷ evidence suggests humans reached the Mariana Islands, the first islands to be populated, about 3,500–4,300 years ago, and from there populations spread eastward across the Pacific. Traditionally, the lines between Micronesia, Melanesia, and Polynesia never existed,²⁸ as territories, cultures, and trade overlapped over distances of thousands of kilometers.²⁹

Over the last few centuries political borders in the Pacific Islands were repeatedly redrawn and geographies renamed as the islands were colonized, dominated, and ruled by foreign, often Western, countries. Colonization goes back more than 500 years to when Magellan visited the Marianas and committed the first act of European genocide in the Pacific.³⁰ Colonial rule of the region existed under Spanish, German, Dutch, Japanese, British, and American empires. In 1893, the U.S. Government backed and supported an illegal overthrow and annexation of the Kingdom of Hawaii. Following World War II, many of the islands in Micronesia were part of the Trust Territory of the Pacific Islands, a United Nations trust territory administered by the United States. Today, politically, Micronesia is politically organized as a constellation of sovereign countries and U.S. territories. Some islands were taken as a spoil of war or broke off from the Trust Territory of the Pacific Islands to become what they are today. The Republic of Palau, the Federated States of Micronesia, Republic of the Marshall Islands, Commonwealth of the Northern Mariana Islands, the Territory of Guam, and several of the PRIA islands (described in detail in the following paragraphs) are either owned by or have compacts of free association³¹ with the United States; They all use US postal system and the US dollar as their currency. Republic of Nauru and Republic of Kiribati have closer political and economic ties with Australia. Guam is the largest and most developed island in the region. All the islands in Micronesia have their own unique cultures and history of colonization, with at least 20 Indigenous languages still spoken across the region.

The Pacific Remote Islands, specifically, are all part of the American empire as a result of a mid-nineteenth century law called the Guano Islands Act of 1856,³² which was passed to help meet America's demand for fertilizer to feed its growing population. The Guano Island Act allowed that, "Whenever any citizen of the United States discovers a deposit of guano on any island, rock, or key, not within the lawful jurisdiction of any other government, and not occupied by the citizens of any other

²⁵ David Lewis, **We, the Navigators** (Honolulu: The University Press of Hawaii, 1972), 15-41.

²⁶ Irina Pugach, Alexander Hubner, Hsiao-chun Hung, et al, "Ancient DNA from Guam and the peopling of the Pacific." *Proceedings of the National Academy of Sciences* 118, no. 1 (2021): e2022112118.

²⁷ Stephen J Athens, Michael F. Dega, and Jerome V. Ward, "Austronesian colonization of the Mariana Islands: the paleoenvironmental evidence," *Bulletin of the Indo-Pacific Prehistory Association* 24 (2004): 21-21.

²⁸ Adam Keawe Manalo-Camp, "There Are Many Ties Between Hawaiians and Micronesians," *Honolulu Civil Beat*, September 28, 2018, <https://www.civilbeat.org/2018/09/there-are-many-ties-between-hawaiians-and-micronesians/>.

²⁹ Aymeric Hermann, Pamela Gutierrez, Catherine Chauvel, et al, "Artifact geochemistry demonstrates long-distance voyaging in the Polynesian Outliers," *Science Advances* 9, no. 16 (2023): eadf4487.

³⁰ Don A. Farrell, *History of the Mariana Islands to Partition* (Public School System, Commonwealth of the Northern Mariana Islands, 2011), 119-122.

³¹ "Compacts of Free Association," Department of Interior, accessed on January 22, 2024, <https://www.doi.gov/oia/compacts-of-free-association>.

³² Andrew Thaler, "How Millard Fillmore Reshaped the Oceans in a Quest for Guano," *Southern Fried Science*, January 10, 2017, <https://www.southernfriedscience.com/how-millard-fillmore-reshaped-the-oceans-in-a-quest-for-guano/>.

government, and takes peaceable possession thereof, and occupies the same, such island, rock, or key may, at the discretion of the President, be considered as appertaining to the United States.”

Geographically, Wake Island lies northwest of what is today the Republic of the Marshall Islands. Howland and Baker border the Phoenix Islands archipelago, while Kingman Atoll, Palmyra Atoll, and Jarvis Island are part of the Line Islands. These political lines and place names are all modern inventions; they have changed in recent history and may change again. Midway Atoll, for example, was first claimed by the United States using the Guano Islands Act, was considered part of the PRIA for many years, but is now considered part of the Northwest Hawaiian Islands.

Another example is Palmyra in the Line Islands, which was claimed by the U.S. in 1859, but was later given up when no guano was found. The island was later claimed by the Kingdom of Hawai‘i in 1862. When the US illegally overthrew the Kingdom of Hawai‘i in 1893, Palmyra became part of the Republic of Hawai‘i, and then the Territory of Hawai‘i in 1898. But when Hawai‘i became a state in 1959, Palmyra remained a territory, which is why it is the only incorporated U.S. Pacific territory, meaning it is part of the United States; as opposed to the other territories, which are all owned by, but not part of, the United States. The Nature Conservancy purchased the island from the Fullard-Leo family in 2000 for \$37 million.³³

The United States and the Republic of the Marshall Islands both claim Wake Island. In 2016, the Marshalls made their claim formal when they filed maritime coordinates with the United Nations.³⁴ The Marshallese people have ancient cultural ties to the island. UN Ambassador Doreen de Brum once told this author the story of how her ancestors named the island Enen-Kio—the island of the orange flower.

With the 1979 Treaty of Tarawa, the US gave up claim to several islands which today are part of the Republic of Kiribati. While this treaty recognized Kiribati’s sovereignty over 8 Phoenix Islands and 6 Line Islands, the US held on to the five nearby Pacific Remote Islands, so that they could continue to be used for national defense purposes. Four years later, in 1983, President Reagan claimed the US exclusive economic zone, and the 200-mile ocean area surrounding each island came under control of the US government, as well.

Except for Johnston Atoll, absent this history of colonization all of the islands within the Pacific Remote Islands Marine National Monument would today be a part of sovereign Micronesian nations. From the perspective of the United States, these were unknown, unowned islands, but this narrative of pristine, unpeopled lands is but an extension of Manifest Destiny to the Pacific. Even the Catholic Church has disavowed the legal and political Doctrine of Discovery, as it fails to “recognize the inherent human rights of Indigenous peoples.”³⁵ The Native people who owned and used these islands survive today, living in the surrounding archipelagos.

Speaking at the *Tales with Futuran I Tasi: Finding Our Voices* symposium in December 2023, Saipan resident and Ocean Elder Ignacio V. Cabrera said, “The ocean is our heritage. It’s ours by culture, (even if) it’s not ours by law.”³⁶ Guam resident and activist Dakota Camacho attended a May 2023 sanctuary public hearing said, “I’ve heard stories that in the old days, our navigators would go and meet in all of these islands and have ceremonies. We’re not allowed to do that anymore. Because the federal government is making the rules about what we’ve supposed to be doing in our waters.”³⁷

The islands comprising the Pacific Remote Islands Marine National Monument are Micronesian islands.³⁸ The Micronesia region stretches from Palau in the west

³³ Colin Woodard, “Sold! An Entire Pacific Ecosystem,” *The Christian Science Monitor*, May 4, 2000, <https://www.csmonitor.com/2000/0504/p1s2.html>.

³⁴ “Republic of the Marshall Islands: Archipelagic and other Maritime Claims and Boundaries,” United States Department of State, Bureau of Ocean and International Environmental and Scientific Affairs, accessed on September 18, 2023, <https://www.state.gov/wp-content/uploads/2020/02/LIS-145-Marshall-Islands.pdf>.

³⁵ Hannah Brockhaus, “Vatican: ‘Doctrine of Discovery’ is not Catholic Teaching,” *Catholic News Agency*, March 20, 2023, <https://www.catholicnewsagency.com/news/253977/vatican-doctrine-of-discovery-is-not-catholic-teaching>.

³⁶ Island Tide Records, “*Tales from Futuran I Tasi: Finding Our Voice & Defining Our Future*,” Facebook video, January 22, 2024, <https://www.facebook.com/watch/?v=1121007952378318>.

³⁷ Joe Taitano II, “A marine sanctuary proposal raises concern from residents,” *Guam Daily Post*, May 19, 2023, https://www.postguam.com/news/local/a-marine-sanctuary-proposal-raises-concern-from-residents/article_65f100c0-f526-11ed-8bc6-ff9cab553539.html.

³⁸ Angelo Villagomez, “Connecting Conservation and Culture in Oceania,” *AngeloVillagomez.com*, January 10, 2018, <https://www.angelovillagomez.com/2022/09/connecting-conservation-and-culture-in.html>.

to Kiribati in the east (Fig. 1). Six of the seven islands within the monument's non-contiguous borders abut Micronesian archipelagos, including the Marshall Islands, Phoenix Islands, and Line Islands. The seventh island, Johnston Atoll, is in an area between Micronesia and Hawai'i.

Understanding Pacific Islander identity can be complicated. The great Pacific scholar Epeli Hau'ofa was perhaps a bit idealistic when he wrote, "anyone who has lived in our region and is committed to Oceania is an Oceanian," but he was correct in observing, "our present regionalism is a direct creation of colonialism," and that "we have not been able to define our world and ourselves without direct and often heavy external influences."³⁹

Colonialism has historically pitted Indigenous peoples against one another, and to avoid this today, when we explore our shared *Pasifiku* histories, cultures, and identities, we must do so in a respectful and intentional manner to ensure pluralistic advocacy encompassing multiple perspectives. The value of the proposed sanctuary can and should be interpreted through its connection to Hawai'i, but it must center its connection to Micronesia.

In a letter to President Biden dated October 31, 2022, Hawaii Representative Ed Case echoed the importance of including Native Pacific voices beyond those in Hawai'i:

"Some stakeholders have expressed hesitancy with what has been to this point a primarily Native Hawaiian-driven effort to protect the cultural heritage of the PRIMNM expansion zone. To address the concerns voiced by stakeholders throughout the Pacific, I especially encourage you to continue to engage with all Indigenous communities tied to the PRIs throughout the renaming process so that the importance of this unique ecosystem place can be articulated and deeper connections to this place can be forged.

While many of the most active voices in protecting the cultural seascape of the PRIs are Native Hawaiian, protection of these islands must be inclusive of Micronesian and Polynesian Indigenous communities, including American Samoans, Chamorros and Native Hawaiians. The expanded monument's proposed boundaries contain key areas in which the diverse Indigenous peoples of the Pacific can connect with their shared culture and history. We must consider its cherished cultural history along with its ecological importance and scientific value."

Mr. MOYLAN. Thank you, Mr. Chairman.

These detail strong oppositions at all levels from the local and Indigenous people of the Pacific territories. Our islands carry the burden of fishing restrictions, while the social and economic benefits accumulate elsewhere. This is not an equitable approach to marine conservation and protection.

The continued policy of shutting out the voices of territorial residents in the decision-making process is shameful. In a recent meeting with the Western Pacific Fisheries Management Council, this Administration approved a plan to stop all longliner tuna quota transfer sales. Funds raised from these quota sales are used to fund Guam's Marine Conservation Plan. Preventing these sales endangers our ability to protect our marine environments. This decision is incredibly harmful to my district, and my constituents have repeatedly requested that this policy be immediately reversed.

Chairwoman Mallory, can you please tell me and my constituents why the Administration continues to pursue an agenda that harms the Pacific territories and strips away their own ability to protect local environments?

Ms. MALLORY. I thank you, Congressman, for that question.

I think that the Administration is very much focused on trying to ensure that we are engaging with and meeting the needs of the Pacific remote island and territory communities.

³⁹Epeli Hau'ofa, *We Are the Ocean: Selected Works*, (Honolulu, University of Hawai'i Press, 2008), 46-51.

Mr. MOYLAN. Chairwoman Mallory, I am sorry, we are short of time. But one of the statements that came in in the proposals, in the letter from Manny Duenas, President of the Guam Fisheries Co-op, states that, "But this proposed sanctuary is unprecedented in size. It is more than 50 times larger than any previous designated sanctuary. Furthermore, if anyone would benefit from this sanctuary, it will be foreign fishermen fishing just outside the sanctuary boundaries."

Chairwoman Mallory, can you please tell me why this Administration is so persistent in the designation of new Pacific monuments and sanctuaries which hinders the development of our essential Pacific territory fishery industries?

Ms. MALLORY. Thank you, Congressman. I think the reason that we have been focused on the Pacific remote island area is because of its incredibly unique ecosystem and cultural heritage, and I think that was the reason the President directed the Commerce Department to initiate a sanctuary process.

Mr. MOYLAN. Chairwoman, one of the other testimonies came from three governors, the Governor from CNMI, Governor from Guam, and the Governor from American Samoa. They said that this would be devastating for our local tuna economy. And it has direct conflict with the Biden administration's Indo-Pacific economic framework. So, it is not working. We are not listening here.

And Mr. Chairman, I know I am running out of time, but basically, what our statements are saying here, what the Administration is doing is completely different, to me, based on all these testimonies, the proposal for sanctuary should be dead in the water.

Thank you, Mr. Chairman, I yield back.

The CHAIRMAN. The gentleman's time has expired. The Chair recognizes the gentleman from Georgia, Mr. Collins, for 5 minutes.

Mr. COLLINS. Thank you, Mr. Chairman.

Director Mallory, it is good to see you again.

Ms. MALLORY. Thank you.

Mr. COLLINS. Last year, I asked you a few questions about a proposed rule in the sole selection of both carbon disclosure project and science-based target initiatives to gatekeep companies from participating as Federal contractors. And I have to tell you, I was a little shocked when at one point you just got to the point where you had no further comments.

Under a proposed rule which your office was heavily involved in drafting, all major Federal contractors would have to disclose their greenhouse gas emissions, and set emissions reduction targets that must be validated and approved by an international NGO known as the Science Based Target initiative, or SBTi, in effect, outsourcing government responsibilities to an outside foreign entity.

The SBTi has received criticism from some who argue there is an inherent conflict of interest in both setting the emission standards, while also charging customers a fee to validate their emissions reductions target. So, yes or no, was there a competitive process used in selecting SBTi as the sole provider of emissions target validation?

Ms. MALLORY. As part of the rulemaking, sir?

Mr. COLLINS. As part of a competitive process in selecting SBTi, were they the sole source provider of the mission target validation?

Ms. MALLORY. Congressman, I believe that the letter that we sent to the FAR Council that is actually doing the rule identifies three entities.

Mr. COLLINS. I just ask, was there a competitive process used to select—

Ms. MALLORY. Not for the rulemaking. I don't know where—

Mr. COLLINS. I am talking about in selecting SBTi as the sole provider.

Ms. MALLORY. Right, but what I am saying is—

Mr. COLLINS. When you selected SBTi, was there a competitive process for other people?

Ms. MALLORY. And I don't think that (1) I am thinking that they weren't selected, and that (2) they were one of three entities that I think we recommended—

Mr. COLLINS. They are the ones that are handling the responsibility of monitoring these people.

Ms. MALLORY. There is not a competitive process that I am aware of.

Mr. COLLINS. OK. Are you aware that a report by the NewClimate Institute determined that several of SBTi's emission assessments were contentious or inaccurate?

Ms. MALLORY. I am not aware of that report.

Mr. COLLINS. Are you aware that one of the SBTi's founders has accused them of having several conflicts of interest, and of putting their own interests above the interests of the public?

Ms. MALLORY. I am not aware of this report.

Mr. COLLINS. Prior to selecting SBTi, did CEQ vet any of these allegations?

Ms. MALLORY. Congressman, as I said, CEQ's role was in being part of sending a letter to the FAR Council that directed them—

Mr. COLLINS. We are so short on time. Just yes or no.

Ms. MALLORY. I don't have a yes or no on that. I don't know the answer to that.

Mr. COLLINS. What about yes or no, are CEQ employees required to recuse themselves from working on projects with a prior employee?

Ms. MALLORY. There is no blanket requirement like that. They are required to meet the ethics requirements.

Mr. COLLINS. So, they are not required to recuse themselves.

Ms. MALLORY. It depends on what the ethics requirements call for.

Mr. COLLINS. Are all CEQ employees bound by the Biden ethics pledge?

Ms. MALLORY. No, only certain employees.

Mr. COLLINS. Are you aware that at least one senior official at CEQ had previously spent a decade working at Carbon Disclosure Project?

Ms. MALLORY. I am now aware of that, yes.

Mr. COLLINS. Last June, you highlighted in your testimony that the Biden administration provided more than \$1 billion to make sure that agencies have the environmental review and permitting

experts they need. While I agree with you that personnel can be a serious cause for delays, it isn't the main problem. I have seen permit modifications in my district essentially go through the NEPA process three or four times and get hung up on a single solicitor's review.

Do you agree that duplicity within the NEPA is a significant roadblock in the permitting process?

Ms. MALLORY. Congressman, we have been focused on trying to reduce any duplicative actions.

Mr. COLLINS. So, you do agree that there is——

Ms. MALLORY. I don't know that I agree that it is a significant roadblock.

Mr. COLLINS. Let's move on to energy policies on this Administration. There is a common theme of this Administration's energy policy, and it has been an attack on low-income communities, the very people that they claim to be protecting. Do you agree that low-income communities are disproportionately impacted by policies that raise energy prices?

Ms. MALLORY. Yes.

Mr. COLLINS. If a GAO report were to suggest that the policies coming from your agency disproportionately increased energy prices and energy poverty amongst the most vulnerable communities, would you rescind those policies?

Ms. MALLORY. I would like to see the report, Congressman.

Mr. COLLINS. But that is what I am saying. If they——

Ms. MALLORY. If they said it. It depends on what the basis of the report was. I have read GAO reports that are not reliable.

Mr. COLLINS. So, if they disproportionately increase the energy prices and energy poverty among the most vulnerable communities, you would rescind those policies.

Ms. MALLORY. I would read the report and see if that was appropriate.

Mr. COLLINS. But you would agree that if the policies of the agency were disproportionately increasing the energy prices and the energy poverty amongst our vulnerable communities, it is just a basic question.

Ms. MALLORY. I know, Congressman, but it is not a simple answer.

Mr. COLLINS. You wouldn't rescind those——

Ms. MALLORY. It is not a simple answer. I don't think there is a blanket, across-the-board answer to that question.

Mr. COLLINS. I think if they were, that would be a pretty easy answer.

Ms. MALLORY. I think if they were, it would depend on whether there were other tools that we had to address that.

Mr. COLLINS. That doesn't matter.

Ms. MALLORY. I think if they were, yes, it does matter.

Mr. COLLINS. You can't address everything. You can only address what is right in front of you. And that would be those policies.

Ms. MALLORY. Right. And I guess what I am saying is it depends on the policy, it depends on the circumstances. There is not an easy answer to that question.

Mr. COLLINS. Yes, I would agree. I think that is a common theme, "It depends," and that it is somebody else.

Sorry, Mr. Chairman, for going over, and I yield back.

The CHAIRMAN. The gentleman's time has expired.

Chair Mallory, thank you for your testimony and thank the Members for their questions today. The members of the Committee may have some additional questions for the witness, and we will ask you to respond to these in writing.

Under Committee Rule 3, members of the Committee must submit questions to the Clerk by 5 p.m. on Tuesday, May 21. The hearing record will be held open for 10 business days for these responses.

If there is no further business, without objection, the Committee stands adjourned.

[Whereupon, at 12:18 p.m., the Committee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

Submissions for the Record by Rep. Westerman

AUGUST 21, 2023 | Albany, NY

**Statement From Governor Kathy Hochul on
Negotiations With Biden Administration on
Floyd Bennett Field**

“After months of negotiations, the Biden Administration has provided us with a tentative contract that would allow New York to utilize Floyd Bennett Field as a shelter for asylum seekers. Once the final agreement is signed, we will work with Mayor Adams and his team to set up a Humanitarian Emergency Relief and Response Center at Floyd Bennett Field with the capacity to shelter more than 2,000 asylum seekers. We are grateful to President Biden for his support of this initiative and committed to continuing our advocacy on behalf of the people of New York.

“Ultimately the path out of this crisis is granting work authorization immediately, so these individuals can move out of shelter and into independent living arrangements. This site will be critical in the interim for the City of New York to provide humanitarian aid, as we work collectively to get people on the path to asylum seeker status and legal work.”

**Decision Memorandum and Environmental Review to Support Emergency
Activities for Temporary Housing of Migrants
U. S. Department of the Interior National Park Service
Gateway National Recreation Area**

Introduction

The National Park Service (NPS) is requesting alternative arrangements for National Environmental Policy Act (NEPA) compliance pursuant to 43 CFR 46.150(c) (emergency responses).¹ As described below, there is an urgent need to respond to a humanitarian crisis caused by tens of thousands of migrants entering New York City (City) and exceeding the City's capacity for temporary shelter. The Council on Environmental Quality (CEQ) has concurred that there is an emergency situation that can appropriately be addressed through the DOI NEPA emergency procedures at 43 CFR 46.150.

The NPS is proposing to enter into one or more agreements, leases, and other administrative arrangements in accordance with its authorities to allow the City to use NPS lands for the purposes of temporarily operating a migrant camp on Floyd Bennett Field (FBF) within Gateway National Recreation Area (GATE or park). The impacts of allowing such use are not expected to be significant, and therefore an environmental assessment would be the appropriate NEPA compliance pathway for this action. However, there is not time to complete an EA before action must be taken to address imminent threats to human health and safety. Consistent with guidance from the Council on Environmental Quality (Emergencies and the National Environmental Policy Act Guidance 2020), the information contained herein, and the efforts to be taken regarding the emergency action, the NPS proposes to comply with the regulatory requirements for EA content, interagency coordination, and public involvement to the extent practicable.

Background

New York City has seen an influx of approximately 100,000 migrants in the past year and is currently housing more than 58,000 migrants in City shelters. The City has utilized areas such as soccer fields, recreation centers, and parking lots to house migrants, but lacks additional space and resources to meet current needs. The influx of migrants has led to overcrowding in existing facilities, instances of migrants being forced to sleep on sidewalks and other public areas, and in some cases unsanitary conditions. Taken together, the situation has resulted in threats to health and safety of migrants and others. The State of New York has declared a Disaster Emergency as a result of the large number of migrants, stating, "federal support is critical to support the City of New York and other local governments within the State that lack the infrastructure, facilities, and resources necessary to meet the immediate humanitarian demand to house and meet other basic needs of the large numbers of migrant arrivals related to the large influx of migrants" (see New York State Executive Order 28).

Purpose and Need

The purposes of taking action are: 1) to allow New York City to operate a temporary shelter to provide housing and other services for a limited number of migrants; and 2) to make certain improvements to Floyd Bennett Field that ensure its preservation, repair and rehabilitation and will contribute to its long-term visitor use and enjoyment.

Action is needed to alleviate risks related to health and safety of migrants and others and to assist the City in meeting migrant needs. GATE has historic resources available for lease that can assist the City in meeting those needs, as well as its own need to make certain improvements to the historic property at Floyd Bennett Field.

Proposed Action

The 1,450-acre Floyd Bennett Field Historic District is the largest single publicly owned, managed, and accessible under-developed parcel of land in New York City

¹"If the Responsible Official finds that the nature and scope of the subsequent actions related to the emergency require taking such proposed actions prior to completing an environmental assessment and a finding of no significant impact, the Responsible Official shall consult with the Office of Environmental Policy and Compliance about alternative arrangements for NEPA compliance. The Assistant Secretary, Policy Management and Budget or his/her designee may grant an alternative arrangement. Any alternative arrangement must be documented. Consultation with the Department must be coordinated through the appropriate bureau headquarters."

(National Register Form 2010). Floyd Bennett Field opened in 1931 as the site of New York City's first municipal airport. In 1942, it was transferred to the Navy and became Naval Air Station—Brooklyn. The Navy decommissioned the airfield in 1971, and in 1972, most of the land was transferred to the National Park Service as a unit in Gateway National Recreation Area. The site was originally one of many marsh islands in Jamaica Bay. Extensive fill was placed on the site from the 1920s through 1940s to create the largely anthropogenic landform that exists today. The site was most densely developed during the World War II era. Many of the buildings and structures at the site today are unoccupied and in varying degrees of disrepair or ruin. It is an expansive landscape characterized by open fields, extensive areas of concrete and asphalt pavement, young second-growth thickets and woods, engineered and natural shorelines, and a variety of buildings clustered into what were historically flight-path clear zones.

The NPS will enter into a lease agreement with the City for a period of one year with an initial period of ninety days. The lease agreement will allow the City to take actions necessary to provide occupation and use of the areas specified in Figure 1 for the purpose of housing up to 2,000 migrants.



Figure 1. Floyd Bennett Field, Gateway National Recreation Area, Brooklyn, NY identifying runway 19, a portion of the Hanger B/Sea-Plane Parking Lot, and two (2) Campground areas.

The lease agreement will also include requirements for site improvements of certain areas within FBF as public benefits (see Figure 2). Some of the site improvements will be completed at the end of, or after, the up to 12-month emergency action period. For the purposes of this document, “emergency action” refers to actions related to controlling the immediate impacts of the emergency, which are fully covered by these NEPA emergency alternative arrangements. This generally includes construction, improvements to existing infrastructure, and placing new temporary infrastructure to allow occupancy of the site; operation and administration of the site; and associated actions related to health and safety of individuals within the project area. Planned future improvements (follow-on actions) are actions that will provide public benefits and that will not be immediately implemented. Although follow-on actions are included in this document, related impacts are assessed at a “programmatic” level. The NPS has time to complete site-specific NEPA compliance for follow-on actions and will do so as necessary before implementing any follow-on actions.

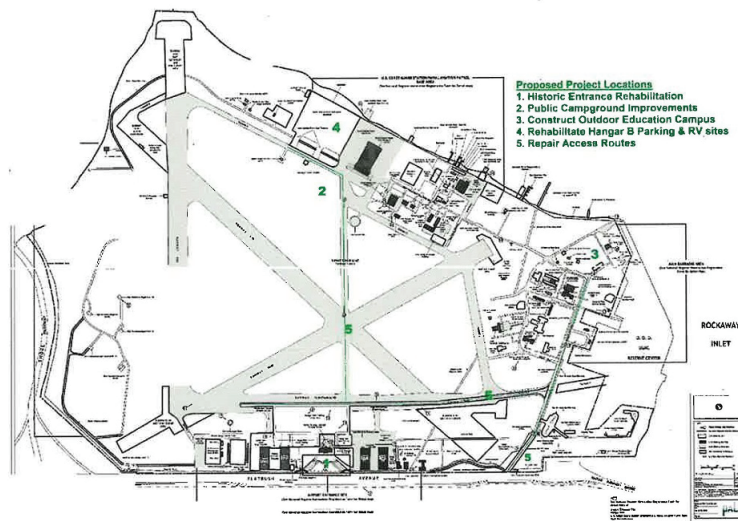


Figure 2. Location of emergency actions required to provide safe access for and administration of the migrant housing (projects 1, 4, 5 and some elements of project 2) and follow-on actions (projects 2 and 3) at Floyd Bennett Field, Gateway National Recreation Area, Brooklyn, NY.

Throughout the duration of the proposed action, the NPS will provide oversight of operations on FBF concerning the temporary housing of migrants. The NPS Director (or designee) will retain command oversight of the park's facilities and operations, balancing the City's requirements against impacts to the park's mission. All modifications to real property will require pre-approval from the NPS and will be submitted to the GATE superintendent for approval. The City and its agents will be held accountable for the protection of park resources to include natural and cultural resources identified in various NPS management plans.

Temporary facilities will be constructed to support a maximum initial occupancy of 2,000 residents plus additional support personnel to provide shelter, food services, restrooms, showers, clothing, medical, security, laundry, and associated needs. Migrants will be housed in tent-based structures. All facilities will be constructed in a temporary and removable fashion. Facilities will be designed in a resilient manner or will be able to be quickly demobilized in anticipation of major weather events. Based upon facilities constructed at other locations, NPS anticipates that 4-8 winterized tents similar in size to the airplane hangars at FBF will be installed to support the 2,000 residents. Facilities will be arranged and anchored in a manner that minimizes impacts to natural and cultural resources. To the greatest extent possible, tents will be secured using sandbags, water ballast or similar materials. Staking will be minimized and will avoid areas with sensitive resources. Throughout the duration of the proposed action, the City will be responsible for providing and managing utilities (including water, wastewater, and power), security, food, clothing, medical, security, custodial services, solid and hazardous waste, and grounds maintenance, as necessary. Medical staff will be under the direction of the designated Lessee's Chief Medical Officer or medical coordinator. The City may station an emergency medical service unit at the site as required. The disposal of all medical waste will be coordinated with appropriate NPS representatives and will meet all applicable regulatory requirements.

The City will provide 24-hour law enforcement (security services) scaled appropriately to accommodate the number of migrants and the size and complexity of the camp. The New York Police Department will be the primary entity responsible for law enforcement issues involving migrants. The City will provide enhanced 24-hour law enforcement and security at locations identified by the NPS Director sufficient to protect park visitors and park resources. During park closure hours this will include staffing the security gate at the entrance to FBF. The NPS will identify sites within the proximity of the project area that pose an elevated safety risk with a high density of people residing in the park 24-7, including unoccupied and deteriorating buildings as well as contaminated sites. The City will be required to mitigate

those risks through fencing, security cameras, and other security measures. To the greatest extent possible, fencing will be secured using sandbags, water ballast or similar materials. Any ground disturbance related to fencing will be temporary in nature and will avoid areas with sensitive resources. Temporary lighting will be installed in locations throughout the area in order to ensure safety and deter crime. To the greatest extent possible, new lighting will be Night Sky compliant. In some locations, such as near the visitor center and other structures, lighting will remain on at all times after sundown.

The City will make arrangements for all required utilities, including gas, electricity, other power, water, cable, telephone, sewage, waste removal, and other communication services. The City will manage all water and wastewater facilities in a containerized manner as the City will not be permitted to connect to NPS utilities, which are not sized to accommodate additional capacity. The City will provide electrical services which may include on-site generators or other temporary installations. The City will manage all fuel in a containerized manner as the City will not be permitted to utilize NPS fuel services, which also are not sized to accommodate additional capacity. All fuel facilities will have secondary containment. In the event the City generates, processes, disposes of, or handles any hazardous substances and hazardous materials, the City will ensure removal, remediation, or other corrective action mandated by either the State or Federal regulatory authority and adhere to all relevant regulatory requirements related to hazardous substances and hazardous materials. The City is not authorized to operate the site for storage of hazardous materials.

The City will improve traffic circulation, parking, and access to the site by reestablishing the historic entrance to the FBF at the Ryan Visitor Center, improving the Hangar B/Sea-Plane Ramp Parking Lot, and performing repairs on approximately 12,000 linear feet of main access routes throughout the project area. As identified in the 2006 Jamaica Bay Transportation Studies and 2014 General Management Plan (GMP), the original entrance to the municipal airport from Flatbush Avenue will be re-opened at the Ryan Visitor Center. Re-opening the diagonal entrance drives requires a circulation plan, striping, security mechanisms for the gates, gate repair, hardscape repair or repaving of the surface, minor curb modifications, and landscaping. The park coordinated with The New York City Department of Transportation (NYCDOT) on their design and reconfiguration of Flatbush Avenue to accommodate this use. NYCDOT has already altered the pavement markings and signage on Flatbush Avenue to allow for reopening of the Ryan Visitor Center entrance drives. Re-opening of the diagonal entrance drives is identified in the Cultural Landscape Report for Floyd Bennett Field (Cody and Auwaerter 2009) as the most historically appropriate location for new entrances from Flatbush Avenue into the Historic District.

At the Hangar B/Sea-Plane Ramp Parking Lot, work will include removing a large debris pile adjacent to the site, removing invasive trees and vegetation, planting native species, replacing fencing, jack mudding sunken slab sections, and concrete patching. Consistent with the 2014 GMP, the 12 adjacent RV camping sites will be upgraded to include electrical hookups and striping. The parking lot area is a non-contributing structure within the Historic District.

Throughout FBF, approximately 12,000 linear feet of main access routes will be improved to facilitate traffic for equipment delivery, administration, and migrant housing. Immediate improvements will be needed to correct drainage issues where water is ponding on Runway Road 15-33, parallel to Flatbush Avenue. Existing asphalt roadway will be milled and top coated. Existing concrete areas will be mud jacked and patched as necessary. The City will be responsible for not only addressing any impacts that result from their use but for general improvements to these access routes for the benefit of the public.

The NPS and the City will develop a full site plan for how the project area relates to other public areas and operations of FBF. The NPS may limit migrant, City personnel, and/or contractor access to some park areas and/or amenities as necessary to provide visitor safety and/or to protect park resources. Movement of City personnel, contractors, and visitors to the mission site will be restricted to direct movement between the main entrance to FBF (from Flatbush Avenue just north of the Marine Parkway Bridge) to the project area and return when exiting GATE. Any movement outside this direct travel route must be coordinated with the NPS. During hours the park is open, migrants will be permitted to use the park following the same rules as other visitors. During closure hours, migrants will not be permitted in areas of the park that are not part of the project area.

When use of the project area ends, the City will remove all temporary facilities, alterations and additions related to the operation and administration of temporary migrant housing and restore the area at a minimum, to as good of a condition that

existed prior to the commencement of the emergency action. Alterations, betterments, additions and improvements that are made to reestablish the historic entrance to the FBF at the Ryan Visitor Center, to improve safety and use of the Hangar B/Sea-Plane Ramp Parking Lot, and to improve approximately 12,000 linear feet of main access routes will remain after the use of the project area ends. Additional compliance may be required for other improvements or requirements specified in the proposed by the City throughout the period of the lease. Any changes to the proposed action will be subject to NEPA compliance, as appropriate. Compliance for planned future improvements is addressed in the "Follow-on Actions" section of this memorandum.

Mitigation Measures

Pursuant to the terms of the lease, the City will be responsible for developing a number of plans to address and incorporate the specific issues and mitigation measures listed below, as applicable. The lease agreement contains additional mitigation measures and plan requirements that, although not specifically listed below, are incorporated by reference into this memorandum.

1. All City personnel and contractor employees must utilize routes specifically designated by NPS. The City, in coordination with NPS Director, will develop a transportation plan to include ingress and egress to the project area, parking, pick-up and drop-off locations, and operational schedules.
2. Visitor access to the project area will be limited. A formal request for visitation to the project area will be made to and approved by NPS based on a City-provided "need to access assessment" after coordination with all appropriate NPS entities. All visitors to the project area will be escorted by a City representative. This includes, but is not limited to, Congressional staff, media, and non-governmental organizations.
3. NPS will limit migrant, City personnel, and/or contractor access to some park areas and/or amenities as necessary to provide visitor safety and/or to protect park resources.
4. The City will comply with all requirements derived from completion of federally required consultations and compliance, including National Historic Preservation Act Section 106, Endangered Species Act Section 7, Coastal Zone Management Act, and Floodplain Statement of Findings.
5. All vertical structures/facilities built or installed on NPS property will comply with applicable building code requirements to include wind loads.
6. The City will develop a trash and recycling plan. This will include actions to minimize single use plastics to protect park resources. Best management practices will be employed to manage and secure trash at all times.
7. The City will develop a food services plan to include food distribution, food storage, food security, cooking facilities, cold storage, etc. The City will be responsible for ensuring food is managed in a centralized facility and will be responsible for ensuring all food handling meets federal standards.
8. The City will develop a pest management plan for review and approval of the NPS Director prior to occupancy. The plan will conform to NPS laws, regulations, and policies for integrated pest management, and any chemicals used must be approved by NPS.
9. The City will develop a detailed storm management plan for review and approval of the NPS Director. This plan will identify how the City will address how temporary facilities and other property will be removed from the project area within 48 hours of an evacuation notice.
10. The City will develop a detailed emergency evacuation plan for review and approval of the NPS Director. The plan will describe how the site will be evacuated in the event an emergency evacuation order is issued.
11. The City will develop a stormwater pollution protection plan to include erosion control associated with all construction and any potential overflow into Jamaica Bay related to the proposed action. Best management practices will be employed to prevent migration of construction materials, debris, and sediment from entering the waterways. Seed-free straw bales must be deployed for sediment/erosion control.
12. The City will develop an air quality management plan for review and approval of the NPS Director. The City will submit to the NPS all air quality monitoring reports that may be required by regulatory agencies in conjunction with

activities associated with the Premises, such as the use of generators. Any generators utilized on the Premises must be Environmental Protection Agency (EPA) Tier IV (Tier 4) compliant and must be permitted by the appropriate regulatory agencies.

13. The City will monitor noise levels associated with generator operations to ensure that the noise levels identified in the GATE Superintendent's Compendium of 60 decibels, at 50 feet from the source, are not exceeded.
14. The City will develop a lighting management plan. The City will ensure sufficient lighting to deter crime both on the Premises and at secondary locations the NPS deems to be appropriate to protect resources. While safety will remain the first priority for the lighting plan, the City will make every effort to comply with NPS Management Policies 2006 (Section 4.10) best practices on lightscape management in national parks.
15. The City will develop a Spill Prevention, Control and Countermeasures Plan. The City will immediately notify the NPS and other applicable regulatory entities of any unauthorized releases or the deployment of any countermeasures.
16. All machinery containing fuels and oils shall have a spill kit available immediately in the event of a spill. In the event of a fuel or oil leak/spill, the work shall cease immediately, spill containment deployed, and NPS Dispatch (phone: 718-354-4700) and other jurisdictional authorities called immediately, as designated.
17. Excess drilling fluids, slurry, and spoils must be contained until disposed of in compliance with local ordinances, regulations, and environmentally sound practices in an approved disposal site.
18. Unless otherwise specified by the NPS, all removed material is to be disposed of outside the park at an approved landfill, recycled, or disposed of at other locations in accordance with federal, state, and local regulations.
19. All areas of soil disturbance resulting from the permitted activity must be stabilized immediately following project completion.
20. Intact native topsoil from the project area shall be retained whenever feasible. Should additional fill be needed, all fill must be of quality suitable for use in a National Park Unit. The City will submit material certificates for imported backfill and fill materials before delivery to document park approval of source and quality in accordance with applicable standards.
21. Any new soils/sediment brought on site must be tested and meet New York State Department of Environmental Conservation standards for general fill (6 CRR-NY 360.13). Any fill materials required for the project must be obtained from a park-approved source. Soils should not be amended.
22. The City will provide documentation that all imported soils and materials (such as straw bales, mulch, seed mixes, plantings) are clean of contaminants and free of exotic seeds and spores.
23. The City will submit certificate(s) of inspection for species and areas subject to quarantine rules (such as but not limited to 1 CRR-NY III C 142) to demonstrate compliance with applicable Federal, state, and local laws, requirements, and NPS policies.
24. Except for the project work described in this document and the lease agreement, the City may not cut any timber or remove any other landscape features such as shrubs or bushes without prior written approval from the NPS.
25. Site use controls (e.g., temporary fencing) and improved signage will be used to direct visitor use to authorized areas and authorized trails to limit impacts on vegetation and wildlife.
26. Any wheel ruts, holes or divots in lawn areas caused by the work will be repaired. Any bare soil areas created by the work will be seeded with annual ryegrass and a native grass seed mix designed for the Northeast US region, where needed to restore the area to pre-construction condition. Seed will be applied at a rate of ½ pound per 1,000 square feet *unless otherwise required for compliance with applicable standards*. The park's Resource Stewardship Division must approve all plant selections before they are purchased.
27. The City will use native plant species that are as closely related genetically and ecologically as possible to park populations. For GATE, the operational definition for closely related native species is plant material from seeds or cuttings

that were collected from native plant species within 10 miles of the ocean anywhere along the coasts of New Jersey, Staten Island, and western Long Island. Substitution of plant material will be made only based on proof of unavailability. The NPS must approve all plant selections before they are purchased.

28. Care will be taken not to disturb any wildlife species (reptiles, migratory birds, raptors, or bats) found nesting, hibernating, estivating, or otherwise living in, or immediately nearby, worksites.
29. If exterior project work will be implemented during period of April 1 to September 1, NPS must be notified in advance and the City may be required to have a qualified biologist conduct an inspection of the work area prior to initiating work to determine if there is any nesting activity that could be impacted by the project. If nest building begins, birds must not be harassed in any manner to deter nesting activity. Park approval is required prior to placement of any structures to deter nesting.
30. Any park infrastructure impacted during construction, including but not limited to paved and unpaved roadways, walkways, turf, will be restored to pre-construction conditions upon completion of the project.
31. Best management practices for communication tower design, sighting, construction, operation, maintenance, and decommissioning will comply with United States Fish and Wildlife Service 2016 guidelines (see <https://us-fcc.app.box.com/s/sc1742pny7w14vzzhcz3hrkoft1gn31>).

Existing Condition of Resources and Potential Environmental Impacts

In addition to the resources discussed below, the NPS used CEQ's Climate and Economic Justice Screening Tool to determine whether there are any disadvantaged communities that would be disproportionately affected by the proposed action. While some disadvantaged communities exist outside of the project area and outside of GATE, no disadvantaged communities would be disproportionately affected by the proposed action due to their distance from the project area.

The following discussion of impacts presumes application of the mitigation measures included above, as applicable.

Air Quality

Floyd Bennett Field is in Kings County, New York, which is part of the New Jersey-New York-Connecticut Interstate Air Quality Control Region (40 CFR §81.13). The air basin is a shared resource and impacts on it come from regional sources. Current air quality conditions at FBF are poor for several indicators, including all three indicators evaluated by the NPS: ozone, wet deposition, and visibility. Kings County is designated by USEPA as serious nonattainment for the 2008 8-hour ozone (O₃) National Ambient Air Quality Standard (NAAQS) and as moderate nonattainment for the 2015 8-hour O₃ NAAQS. Kings County is also designated as maintenance for carbon monoxide (CO) and particulate matter less than or equal to 2.5 microns in diameter (PM_{2.5}) and unclassified/attainment for all other criteria pollutants (USEPA 2020).

Temporary operation of heavy equipment; workers commuting to and from the project area in personal vehicles; heavy duty diesel vehicles hauling materials, water, wastewater, and debris to and from the project area; operation of generators to power the temporary facilities; and the potential for bus services for migrants to travel to and from the project area would contribute to air quality impacts. Particulate matter air emission would be produced by the combustion of fuels. Particulate matter emissions from fugitive dust would be minimized through minimal ground disturbance and use of hardscapes. Portable facilities and other sustainable design techniques would minimize the need for permanent construction and its related air quality impacts.

In its GMP, the park evaluated the impacts of creating a wetlands center at FBF. This included the use of heavy equipment for excavating, grading, and construction. The GMP concluded that the very intense construction related to the wetlands center, requiring 30 to 50 trips by heavy-duty trucks each day for a 6-month period would contribute between 0.25 and 0.5 ton of hydrocarbons, 1.3 and 2.3 tons of carbon monoxide, and 6 and 10 tons of nitrogen oxides. The GMP concluded that those levels of emissions would be small in the context of overall air quality at FBF. The air quality impacts expected from construction related to the wetlands center are far greater than the impacts that would occur from the temporary construction and operation activities under the proposed action.

Generators used under the proposed action would be permitted by appropriate regulatory agencies and would meet EPA Tier 4 emissions standards in order to minimize impacts to air quality. The City will be required to develop an Air Quality Management Plan and submit air quality monitoring reports, as appropriate, to the NPS.

The park would potentially diminish its contribution to greenhouse gases by restoring native vegetation as part of emergency and follow-on actions, including removal of non-native vegetation and planting of appropriate native vegetation (Figure 2 projects 2, 3 and 4), thereby offsetting the cumulative degradation of air quality from regional sources. Overall, air quality impacts would be minimal, temporary, and localized.

Cultural Resources

Floyd Bennett Field Historic District was listed on the National Register of Historic Places in 1980 with 15 contributing resources and a period of significance from 1928 to 1931. In 2010, the district was expanded to include 94 contributing resources and a period of significance from 1928 to 1945. It is significant under Criterion A at the national level in the area of Transportation for its role in early aviation history. It is also significant at the national level under Criterion C in the areas of Architecture and Engineering for its collection of buildings and structures embodying the characteristics of both early-twentieth-century civil aviation facility design and World War II-era military construction. Today the site consists of Art Deco hangars, paved runways and taxiways, and the Ryan Center, a 42,000-square foot Georgian Revival administration building with an attached control tower. FBF also contains numerous structures from the WWII era such as barracks, utility buildings, warehouses, and maintenance facilities. The civil and military aviation history resources at FBF as well as pre-contact and historic archeological sites are identified as important park resources and values in the 2014 GMP.

The Historic District is a largely anthropogenic landform that was transformed during the 1920s and 1930s through extensive grading and landfilling to develop New York's first municipal airport. In 1941, FBF was transferred to the Navy and became the Naval Air Station-Brooklyn. In the early 1940s, the Navy expanded the airfield from 387 acres to more than 1,200 acres. Over 100 new buildings and structures were constructed including runways, taxiways, new hangars, offices, workshops, storage and maintenance facilities, barracks, mess halls, and other support structures. It was the busiest Naval Air Station in America during World War II and was in use until 1967. The Navy decommissioned the airfield in 1971, and in 1972, most of the land was transferred to the NPS as a unit in GATE.

Runway 6-24 (New) (built 1942, LCS #041264, NYSHPO #04701.014793, contributing structure) is located along the northern edge of the airfield. It was built by the Navy in asphalt in 1942 and initially measured 5,000 feet long and 300 feet wide. In 1960 it was lengthened to 5,800 feet with a concrete extension at its east end that required a small area of fill into Jamaica Bay. Runway 6 is the only runway that presently retains most of its historic circulation pattern. Runway 6 is identified as the location for the migrant housing (Figure 2).

Access routes required for equipment delivery and administration of the migrant housing include the Main Entrance Road, Barracks Road Complex, Runway 15-33 (Taxiway 10), Taxiways 1 and 2 (the original Runway 6-24), and Taxiway 6 (Figure 2). The Main Entrance Road (built ca. 1951, non-contributing structure) consists of the main public entrance to FBF from Flatbush Avenue to the Main Entrance Gate House and Entrance Guard Booth. The Barracks Road Complex (built ca. 1942, contributing structure) is a system of paved roads through the barracks area. The central road of the Barracks Road Complex, Floyd Bennett Boulevard, runs east-west through the center of the barracks area from the main entrance and continues north to connect with the Naval Aviation Patrol Base Access Road. Runway 15-33 (Taxiway 10) (built 1930-1945, LCS #041264, NYSHPO #04701.014793, contributing structure) defines the western boundary of the airfield, extending north to south parallel to Flatbush Avenue and the Hangar Row Apron. One of the two runways original to the municipal airport, it presently serves as the main public entrance road to Hangar Row. The present asphalt road was built on top of the original runway, running roughly along the centerline, and taking up approximately one-quarter of the runway surface. The historic runway surface remains intact beneath and to either side of the road. Taxiways 1 and 2 (original Runway 6-24, built 1930-1935, contributing structure) extend perpendicularly from Runway 15-33 (Taxiway 10) just south of the Administration Building/Passenger Terminal (Ryan Visitor Center) to Taxiway 6. Taxiway 1 forms the eastern half and Taxiway 2 the western half of the original Runway 6-24. Taxiway 6 (built 1942, contributing structure) is part of

the taxiway system developed during War II for circulation around the periphery of the airfield. Taxiway 6 is surfaced in asphalt and is now used as a road.

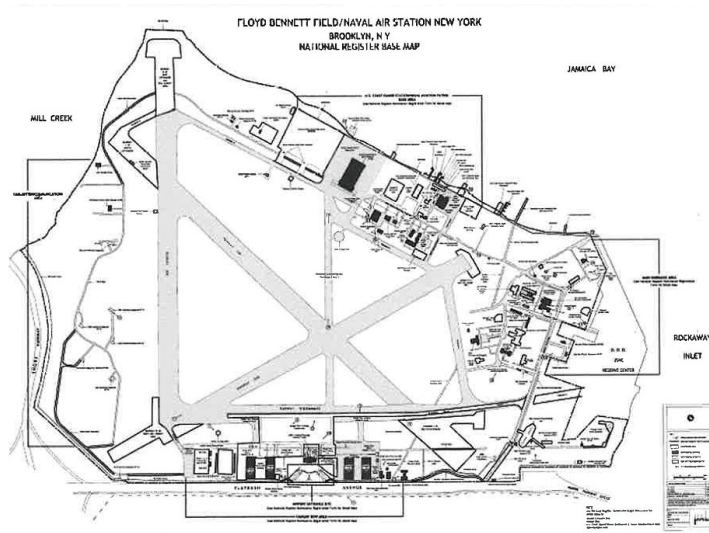


Figure 3. Floyd Bennett Field National Historic District National Register Base Map (from National Registration Form 2010).

Runway 1-19 (built 1935-1942, LCS #041265, NYSHPO #04701.014792, contributing structure) crosses the airfield diagonally from the southwest to the northeast comers (Figure 1 area Band Figure 3). Runway 19 was originally 3,500 feet long and 150 feet wide with a concrete surface. In 1942 it was widened to 300 feet with concrete extensions and lengthened to 5,000 feet, using asphalt at the north end where it intersects Runway 6.

The Airport Entrance Site (built 1932-2006) is a contributing site. The Airport Entrance Drives (built ca. 1932, LCS #041260, associated feature) consist of two diagonal drives from Flatbush Avenue that frame a central lawn area and converge in front of the Administration Building/Passenger Terminal (currently the Ryan Visitor Center) at the Airport Entrance Central Parking Lot (Figure 4). The drives are surfaced in asphalt and edged by concrete curb. The upper ends of the drives are currently closed off with black metal picket fencing.

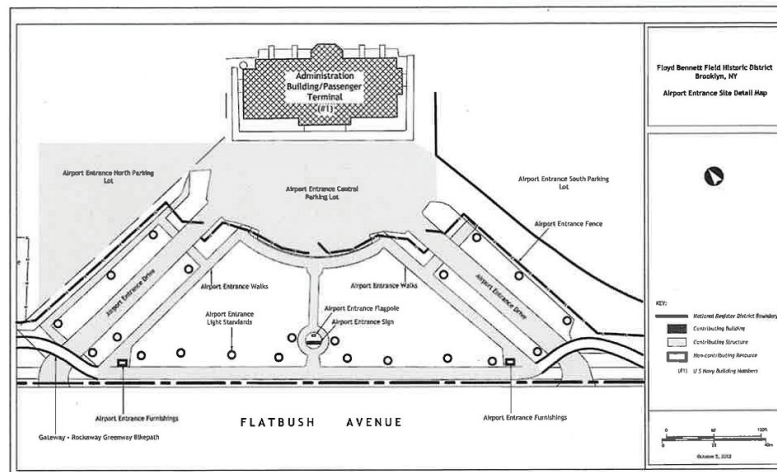


Figure 4. Floyd Bennett Field Airport Entrance Detail Map (from National Registration Form 2010).

The Naval Aviation Patrol Base Apron Extension (built ca. 1952, non-contributing structure) and Naval Aviation Patrol Base Apron Taxiways (built ca. 1952, non-contributing structure) (Figure 1 area C) are adjacent to the Naval Aviation Patrol Base Apron (built 1940-1942, contributing structure), Naval Aviation Patrol Base Seaplane Ramp (built ca. 1942, LCS #174, contributing structure), and Naval Aviation Patrol Base Hangar B (built ca. 1942, LCS #100, contributing building) (Figure 3). The Naval Aviation Patrol Base Apron Extension is currently used as a parking lot with the Naval Aviation Patrol Base Apron Taxiways used as access routes to the parking lot.

While there are no documented precontact or historic archeological sites in the area of potential effect, there is the potential for these resources to be encountered in marshy areas buried below the average 9 feet of fill that comprises the airfield. The southern portion of the current airfield boundaries, however, incorporates what were formerly the upland boundaries of Barren Island, a highly desirable settlement location during both the pre- and post-contact periods. Comprising well drained soils, an abundance of subsistence resources, proximity to fresh water, and high ground overlooking the Atlantic to the south and prime marshland hunting locations to the north, the island would have been a locus of settlement beginning with the stabilization of sea level during the latter half of the Early Archaic Period through the 19th and 20th century residential and industrial development.

The proposed action would not authorize any penetration or alteration of Runway 6 or 19 for construction and administration of the migrant housing. All structures would be free-standing or secured with water filled ballast or like materials. No penetration of the historic runway or any hardscape is authorized. Repair to approximately 12,000 linear feet of main access routes would correct drainage issues on historic runways and taxiways through mud jacking and patching of existing concrete areas and milling and top coating of existing asphalt. Rehabilitation of the historic entrance to the municipal airport, removal of invasive vegetation, and planting of appropriate native species will enhance the cultural landscape. Ground disturbance will be limited to staking to a depth of less than thirty inches and will be authorized only in NPS-approved areas. The lease does not authorize any digging or trenching. The lease requires that all existing cultural resources and landscape features must be protected from damage or injury and that no actions can be taken that are detrimental to the historical resources. The NPS-collected August 2023 photo points are included as an Appendix to the lease to document pre-project conditions. An August 2023 evaluation of List of Classified Structures (LCS) within or adjacent to the proposed project area was also completed to document baseline conditions of park cultural resources. While the NPS does not anticipate that the proposed emergency action would have any adverse effects on cultural resources, in accordance with 36 CFR Part 800.12(b)(2), the NPS will notify the New York State Historic Preservation and Tribal Historic Preservation Offices of the Delaware Nation, Delaware Tribe, Stockbridge-Munsee Community, Shinnecock Nation and

Shawnee Tribe, and the Advisory Council on Historic Preservation of the emergency situation and will initiate consultations as appropriate.

The NPS finds that the proposed action would not have adverse impacts on cultural resources. Temporary impacts on the viewshed would be expected. Reopening the Airport Entrance Site, repairs to the runways, removal of invasive species, and planting of appropriate native species would benefit the cultural landscape and improve the conditions of the historic district and could help to offset any of the project's temporary impacts. The effects of the project on cultural resources will be fully evaluated under emergency procedures of Section 106 and any as yet unidentified adverse effects would be mitigated.

Wetlands, Floodplains, and Flooding

FBF is a mostly man-made conglomerate of dredged fills, fly ash, garbage, and other urban fill. Some of the North Forty (the western portion) is also underlain with rubble or other urban materials. The western portion of the North Forty includes one 0.70-acre of a freshwater pond and two freshwater forested/shrub wetlands (9.02 acres total), with the nearest located 185 feet from northern edge of Runway 6. Tidal wetlands are located along the shoreline of Jamaica Bay, including low salt marsh type located north of Hangar B parking lot that is critically imperiled statewide. No impacts to any site wetlands are anticipated from the proposed action, including proposed rehabilitation work for public benefit.

Site elevation is highest in the western portion of Floyd Bennett Field, near Flatbush Avenue at +14 feet NAVD88, and generally decreases to +9.5 feet NAVD in the eastern portion of the site near Taxiway 6. Portions of the project area are located within the 500-year floodplain, as determined by the Federal Emergency Management Agency (FEMA). The eastern portion of Hangar B parking lot and portions of the North Forty are located within the 500-year floodplain, where the elevation is below +9.5 feet NAVD88 and there is a 0.2% annual chance of flooding.

Overall, the potential flood risks associated with the proposed action include risks to human health and life, as well as minor flooding damage risk to temporary housing and associated facilities. Within the project area, flood potential is highest at Hangar B/Sea-Plane Ramp Parking Lot because it is located within approximately 500 feet of Jamaica Bay and along the segment of Flatbush Avenue located within 100 feet of Dead Horse Bay. It should be noted that the proposed temporary migrant housing will primarily be constructed on-top of already built out (hardened) lands formerly constructed as airfield runways. These park lands are situated outside of the 1% annual exceedance probability (AEP) flood within Zone X that constitutes a "moderate" floodplain hazard in FEMA terms (floods that fall between the 0.2 to 1% Annual Exceedance Probability). As such, the flooding risk to government investment is considered acceptable. The risk of inundation, erosion, wave attack, and overtopping potential at the project area is low.

FBF has previously been used by the US Government for emergency relief services stemming from Superstorm Sandy relief, which included housing for 2,000 troops (US Army 2012). The existing infrastructure and facilities needed to support emergency services can be found nowhere else within NPS lands at this location.

NPS has prepared a Floodplain Statement of Findings (FSOF) to document compliance with Executive Order 11998 (Floodplain Management), as amended by Executive Order 13690. Through the FSOF process, the NPS has determined that there are no practicable, non-floodplain locations for the proposed action. Potential impacts to human life and health would be mitigated through a combination of non-structural risk mitigation measures. Emergency preparedness planning, storm and flood warning, and coordinated evacuation plans and protocols would be protective of human life. The risk to federal capital investment is acceptable, and there is no risk to natural and beneficial floodplain values because the cumulative amount of new permanent infrastructure would be small, above ground, and in previously disturbed and developed areas. All improvements, including storm or flood damage, would be undertaken at the City's sole expense and only with the NPS's prior written approval. Therefore, the NPS finds that the proposed action would not have any additional adverse impacts on floodplains and their associated values.

Native Vegetation

Natural areas at FBF are named as fundamental resources in the park's 2014 GMP. Most of the areas between the runways and taxiways are managed as natural areas and wildlife habitat.

FBF is a mostly man-made conglomerate of dredged fills, fly ash, garbage, and other urban fill. Some of the North Forty (the western portion) is also underlain with rubble or other urban materials. Nonetheless, a wide diversity of vegetation

grows here, including successional maritime forest, northern beach heather dune shrubland, northern bayberry dune shrubland, and a host of human-modified associations such as early successional woodland, northeastern modified successional forest, and northeastern old field. Both successional maritime forest and northern bayberry dune shrubland are vulnerable or imperiled statewide. Within GATE, maritime forest is considered important at FBF because of its rarity at other park sites where it occurs. Hardened areas of the FBF coastline associated with development alternate with eroding mudflats or sandy beaches. Although the grassland growing in the center of FBF is human-modified little bluestem old field, it is important because it is one of the largest remaining grasslands in the New York City area and provides nesting for migratory birds as well as pollinator habitat.

The City selected FBF as suitable for temporary migrant housing in part because of existing hardscaped acreage to accommodate the proposed use. The proposed action would minimize new built facilities and would concentrate them on existing hardscaped areas to avoid any rare vegetation associations. The proposed action could increase park visitation. During hours that the park is open, site contractors, staff and migrants will have use of the park following the same rules as other visitors. Bringing more visitors to FBF would increase the potential for loss of vegetation from trampling, a localized adverse impact. Mitigation measures include site use controls (e.g., temporary fencing, as necessary) and improved signage that would encourage visitor use in authorized areas and authorized trails to limit new adverse impacts on native vegetation in natural areas such as the North Forty and grasslands. The NPS would also limit migrant, City personnel, and/or contractor access to some park areas as necessary to protect native vegetation. Overall impacts to native vegetation would be minimal, and impacted vegetation is expected to return to existing conditions once use of the site for the emergency action ends.



Figure 5. 2008 Floyd Bennett Field National Historic District existing conditions showing the location of woods, managed grasslands and marsh (from Cultural Landscape Report for Floyd Bennett Field (Cody and Auwaerter 2009))

Nonnative Plants

Large areas of FBF are dominated by nonnative, invasive species such as porcelain berry (*Ampelopsis glandulosa*), Japanese honeysuckle (*Lonicera japonica*), tree of heaven (*Ailanthus altissima*), oriental bittersweet (*Celastrus orbiculatus*), mugwort (*Artemisia vulgaris*) and *Phragmites australis* (the nonnative genotype). Park management of invasive species is conducted as time and resources allow. This localized beneficial impact on native vegetation would continue during the time frame of the proposed action. In addition, the proposed action would provide for some removal of invasive species and planting of appropriate native species (Figure 2 projects 2, 3 and 4). Efforts associated with the proposed action to control invasive species and revegetate with native species would have localized beneficial impacts.

Wildlife

Maintenance of the grassland at FBF through mechanical means (primarily mowing) would continue during the time frame of the proposed action, with localized benefits for grassland nesting birds, including homed lark, eastern meadowlark, upland sandpiper, savannah sparrow, northern harrier, American kestrel, and common barn owl. Many of these species also depend on FBF grasslands for overwintering, as do short-eared owls and rough-legged hawks. Historically, the Jamaica Bay and Long Island region was thought to contain some of the largest contiguous grassland habitats east of the Mississippi River (Drennan 1981, as cited in NYCDEP 2007). Although the 140-acre grassland at FBF is artificially maintained by mowing, it is extremely rare as a remaining large grassland habitat in the New York City area. Its unique character and ability to support wildlife that would otherwise not be present in the park in more than an incidental way provides substantial benefits for grassland species.

The proposed action would construct temporary migrant housing on existing hardscaped areas to avoid wildlife impacts. Increased occupancy and 24-hour use of Leased areas adjacent to grassland and forested habitat, in addition to increased visitor use of trails within these habitats, has the potential for adverse localized impacts on wildlife in the form of disturbance, which may cause wildlife to temporarily avoid certain areas. Mitigation measures including site use controls (e.g., temporary fencing) and improved signage would encourage visitor use in authorized areas and authorized trails to limit new adverse impacts on wildlife. NPS would also limit migrant, City personnel, and/or contractor access to some areas off FBF as necessary to protect wildlife. Impacts to wildlife would be temporary and limited to the duration of the proposed action. A qualified biologist would be onsite to conduct an inspection of the work area for any exterior construction occurring between April 1 and September 1. The biologist would determine if there were nesting activity that could be impacted by the project. If there is, construction activities would be modified or relocated to the greatest extent possible to avoid or minimize impacts. Overall, the proposed action would result in minimal, temporary impacts to wildlife. Impacts would cease and conditions would return to a state similar to existing conditions once use of the site for the emergency action ends.

Special Status Species

The proposed action does not include in-water work or potential to impact aquatic federal or state listed species that may occur within Jamaica Bay. NPS is conducting informal consultation with US Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act (ESA) on four terrestrial ESA listed species that may occur within the proposed emergency action area.

Piping plover (*Charadrius melodus*—threatened) are not expected to occur within the project area except as occasional transients. Plovers may forage along the FBF shoreline of Jamaica Bay. There is no designated critical habitat for piping plover. The only report in eBird of a piping plover sighting at FBF was one bird in March 2016. The nearest location for annual piping plover nesting is on the oceanside beach on the Rockaway Peninsula at Fort Tilden near Beach 169th Street [located over 1.4 mile (2.3 km) south of the project site]. For these reasons, NPS concludes that the proposed action would have no effect on piping plover.

Roseate tern (*Sterna dougallii dougallii*—endangered) are not expected to occur within the project area except as occasional transients. The species may nest and forage on the Atlantic shoreline of the Rockaway Peninsula and may forage on along the shorelines off FBF and bay beaches within Jamaica Bay. No roseate tern sightings at FBF were identified in eBird. Nesting or loafing roseate terns have been observed occasionally during the past decade on the beach at Breezy Point, which is over 3 miles (4.8 km) from the project area. There is no critical habitat designated for this species. For these reasons, NPS concludes that the proposed action would have no effect on roseate tern.

Red knots are not expected to occur within the project area except as occasional transients, in part because suitable breeding habitat does not occur within New York. This species breeds in the Canadian arctic region. From mid-March through late November, foraging red knots (*Calidris canutus rufa*—threatened) may occur along the FBF shoreline of Jamaica Bay. The first eBird reported sighting of two red knots at FBF occurred in August 2007. Since then, the greatest number of individuals reported at one time was 71 individuals at an unnamed FBF location in May 2017. The most recent eBird report was of a single individual in late October 2022. The proposed emergency action is located approximately 1 mile (1.6 km) from proposed critical habitat unit NY-4 in Jamaica Bay (88 FR 22530). The proposed action has no potential to temporarily or permanently alter the quality of critical

habitat in the project vicinity or the proposed critical habitat unit NY-4. Most of the proposed project area is more than 984 feet (300 m) from the Jamaica Bay shoreline. For these reasons, NPS concludes that the proposed action would have no effect on red knot and that there would be no effect on designated critical habitat for this species.

Northern long-eared bat (*Myotis septentrionalis*—endangered) historically occurred in Kings County. No site-specific survey for bats has been conducted at FBF. The proposed action does not include forest conversion via trimming or removal of vegetation during the active season (April 1 through October 30). The project area is not located within 0.5-mile radius of any known northern long-eared bat hibernacula. For these reasons, NPS concludes that the proposed action would have no effect on the northern long-eared bat.

Monarch butterfly (*Danaus plexippus*—candidate) are known to feed on the nectar of flowering plants such as those in the approximately 140-acre grasslands at FBF in the immediate vicinity of the proposed action. There is no designated critical habitat for this species at FBF. Management of the grasslands will continue as usual and no use or alteration of the grassland area will be authorized as part of the proposed action. Increased activity on and use of runways adjacent to the FBF grasslands as well as increased park visitation related to the proposed action would result in minimal, temporary impacts to monarch butterfly. Impacts would cease and conditions would return to a state similar to existing conditions once use of the site for the emergency action ends. As a candidate species, ESA consultation is not applicable.

State listed and other special status species that may occur in the project action area include barn owl, red-banded hairstreak (butterfly; historic), white-m hairstreak (butterfly; historic), forest blue grass, red pigweed, reflexed flat sedge, and Schweinitz's flat sedge. Increased activity on and use of runways adjacent to forested and grassland habitats as well as increased park visitation related to the proposed action would result in minimal, temporary impacts to these species. Impacts would cease and conditions would return to a state similar to existing conditions once use of the site for the emergency action ends.

Soundscapes

A 2015 resource brief for GATE provides the best available summary of the park's acoustic environment, using predictions from a geospatial sound model (see Wood 2015). The mean existing sound level at GATE is estimated to be 47.3 dBA (decibels), and the average existing sound level (with the influence of human-caused sounds) is predicted to be 9.9 dBA above natural conditions. The soundscape at FBF has a sound level typical of quiet rural residential areas with little to light automobile traffic (45-50 dBA) and some helicopter overflights associated with New York Police Department (87 dB at 500 ft and 79 dB at 1000 ft) (see *How Loud is a Helicopter?* (Comparing Helicopter Noise Levels/Executive Flyers)).

Noise from temporary construction activities would originate from mechanical equipment. To the extent practicable, construction work would occur during park operating hours. However, some construction related activities could occur outside of those hours. Generators used would be Tier 4 in order to minimize impacts to soundscapes. Generators would be located as far as possible from visitors, migrants, and wildlife. The City will monitor noise levels associated with generator operations to ensure that the noise levels identified in the GATE Superintendent's Compendium of 60 decibels, at 50 feet from the source, are not exceeded. Overall, construction noise impacts would be minimal and temporary.

Visitor Use and Experience

The human need for recreation and renewal has resulted in an evolving history of traditional and innovative uses of the park's lands and waters to improve the quality of urban life. Intrinsicly connected to the diverse population of the New York metropolitan area, GATE's resources provide unique opportunities for outdoor recreation and rejuvenation in a densely populated and largely impacted metropolitan area. The park's open spaces and wide horizons offer opportunities for resource-based recreation as well as contemplation and reflection. The feelings associated with open space in the high-density metropolitan area and opportunities to recreate through nature observation, water-based activities, walking, hiking, biking, and visiting historic sites are fundamental resources and values.

The GATE 2014 GMP identifies FBF as a year-round destination for daily use and multiple day experiences that include outdoor recreation, community activities, environmental education, preservation and interpretation of the aviation and military history of this historic site, and the protection of grassland, forested and coastal ecosystems. FBF is managed to provide camping opportunities, a community garden,

environmental education, access to shorelines and waters of Jamaica Bay for fishing, canoeing, and kayaking, an extensive system of trails for hiking, access to runways and roadways for biking, and the concession operated Aviator Sports Complex. Park management relies heavily upon partnerships to provide and develop recreational opportunities and for the management and reactivation of the structures and spaces at this site.

With annual visitation around 9 million, GATE typically ranks within the top five most visited National Park units. FBF, like many of the sites in GATE, is in the “backyard” of New York City. Going to FBF is routine for many park visitors. A 2015 visitor use survey identified that 22% of visitors surveyed had visited FBF 21 or more times in the prior 12 months, 50% had visited 2-20 times and 28% had visited only once. Visitor use levels peak in the summer months, decrease in the fall, and are lowest in the winter and spring. In the Jamaica Bay Unit of GATE, 73% of visitors were white, 12% black or African American, and 10% were Asian.

The closure of any areas within FBF would be minimized to only those areas necessary for the proposed action and for the safety and security of park visitors. Certain portions of FBF will be closed to the public by the City for operation and administrative purposes in connection with the proposed action. Access to those areas of the park will be limited to the City, its contractors, migrant residents and others that have been approved by the NPS. Visitors will continue to have access to locations within FBF that provide opportunities for fishing, launching and landing kayaks, biking, walking, running, or parking a car to enjoy views of Jamaica Bay. At FBF, there are five primary hubs of visitor activity. The Hangar B parking lot is one of those hubs. The Hangar B parking lot is the only area off FBF that provides vehicle access to the shoreline and views of Jamaica Bay. Temporary impacts on visitor use of the Hangar B parking lot would occur due to a partial closure of the lot as a result of the proposed action. The NPS does not anticipate that any impacts related to the proposed action will disproportionately affect any particular user groups.

FBF has over 3 miles (5 km) of shoreline. Much of the shoreline is hardened or currently unavailable for visitor use due to access limitations related to adjacent upland forested habitat, land assignments to park partners (New York City Sanitation, New York City Police Department) or the shoreline is part of the US Marine Corps Reserve Center, an inholding within FBF. Public access is focused at approximately 2962 feet (903 m) of shoreline across 5 locations within FBF. The proposed action would restrict access to less than 900 feet (250 m) of shoreline (Figure 1 area C). The primary effect of this limited access would be on visitors that rely upon vehicle access to the shoreline. The impacted area is the only area in FBF in which park visitors can drive up to the shoreline. This is a popular area for fishing, landing and launching of kayaks, and for enjoyment of the Jamaica Bay viewshed.

FBF provides approximately 5.8 miles (9.3 km) of runways, taxiways and roads for biking or running. Vehicle traffic is authorized on 4.3 miles (6.8 km) of that 5.8 miles (9.3 km). There are no protected bike or pedestrian use lanes on any roadways. The proposed action would restrict pedestrian and bicycle access of up to 1.5 mile (2.5 km) on Runways 6 and 19 (Figure 1 areas A and B). There would be no impact to vehicle access since both areas are closed to vehicles.

There is system of trails within the North Forty area off FBF, northwest of Runway 6. Depending upon the season, the Belt Parkway is visible from some parts of the trail system. It is not anticipated that trails will be closed. Increased noise and activity associated with construction and operation of the temporary migrant camp as well as increased use of trails would impact visitor experience on some parts of the trail system.

Three varieties of camping experiences are offered at Floyd Bennett Field and include programmatic camping at Ecology Village, walk-in tent camping at Goldenrod and Tamarack Campground (30 sites), and recreational vehicle (RV) camping at an RV park (12 sites). The Goldenrod and Tamarack Campground and RV camp sites have not been open since 2019. These sites were closed in 2020 and 2021 due to COVID. The sites were not opened in 2022 and 2023 due to staff capacity. No bids were received in response to a 2022 Request for Proposal for use and occupancy to facilitate opening the campground to the public. The Ecology Village camping program is managed by the Appalachian Mountain Club for school and youth groups. The proposed emergency action is not expected to impact programmatic camping at Ecology Village.

The proposed action would increase park visitation. During hours that the park is open, the City’s contractors, staff and residents will have use of the park following the same rules as other visitors. NPS would limit migrant, City personnel, and/or contractor access to some park areas and/or amenities as necessary to provide visitor safety. Overall, the proposed action would have minimal and temporary

impacts on visitor use and experience, primarily in the form of increased use of specific sites within FBF during operating hours.

Traffic and Site Circulation

Floyd Bennett Field is located south of Exit 11 on the Belt Parkway (Shore Parkway), a six-lane highway that runs west to northeast across the southern portion of Brooklyn, NY. Commercial traffic is not authorized on NY Parkways. As a major route of transportation in the metropolitan area, traffic is heavy on the Belt Parkway. The 2016 two-way annual average daily traffic (AADT) for Shore Parkway, starting at Rockaway Parkway (Exit 13) traveling southwest toward Flatbush Avenue (Exit 11), was 165,379 vehicles. Flatbush Avenue travels in a northwest to southeast along the western boundary of FBF. The AADT count for Flatbush Avenue, from Shore Parkway to the Marine Parkway Bridge, was 24,420 vehicles. Although less common, access is also available from the south via Beach Channel Drive, Rockaway Point Boulevard, and the Marine Parkway Bridge, which had 2016 AADT counts of 22,616, 6,753, and 21,100, respectively. The average travel time for people commuting in New York City is 36.2 minutes while the average commuter in Kings County drives approximately 42.6 minutes (NYSDOT 2016, USCB 2019). Impacts to area traffic will be mitigated through the City's transportation management plan and mobilization and demobilization plans. Impact to area traffic will be minor and temporary.

Flatbush Avenue is part of the Jamaica Bay Greenway, a 19-mile pedestrian and bicycle loop around Jamaica Bay in Brooklyn and Queens. A protected bicycle lane with access points is located along the eastern side of Flatbush Avenue. NPS allows pedestrians and cyclists to hike and bike the historic runways at FBF (NYC DOT 2019).

According to traffic data, approximately 1,600 vehicles on weekdays and 1,000 vehicles on weekend days access FBF via Aviation Road during non-summer months and up to 3,000 vehicles per day during the summer months, which is a rate of approximately 300 vehicles per hour during typical daytime recreation hours. Peak hour traffic using Aviation Drive is 150 vehicles (morning) to 200 vehicles per hour (evening). Saturday midday peak hour traffic is slightly more than 200 vehicles per day (NPS 2014).

Impacts on traffic and site circulation are expected to be minimal and temporary. Runways 6 and 19 are currently closed to vehicles; therefore, use of those areas under the proposed action would not impact vehicle circulation. While there is no prohibition on pedestrian or cyclist use of runways, taxiways, and roadways within FBF, there are very limited sidewalks and no bike lanes or designated multi-use paths within FBF. As a result, movement throughout FBF is primarily by vehicle. Site circulation would be improved through the rehabilitation and reopening of the historic airport entrance to FBF and repairs to approximately 12,000 linear feet of main access routes within FBF (Figure 2 projects 1 and 5).

Coordination with Affected Agencies and Public Outreach

The NPS has coordinated with the State of New York and New York City officials regarding this emergency action. Throughout the duration of the proposed action, in coordination and collaboration with the NPS, the City will be primarily responsible for all external communications to include questions from media, local residents, businesses, other land users, and local, state, and federal elected officials. The NPS will make this memorandum available to the public.

In accordance with 36 CFR 800.12(b)(2), the NPS has notified the New York State Historic Preservation and Tribal Historic Preservation Offices of the Delaware Nation, Delaware Tribe, Stockbridge-Munsee Community, Shinnecock Nation and Shawnee Tribe, and the Advisory Council on Historic Preservation of the emergency situation and will initiate consultations as appropriate.

The NPS has prepared a FSOF to document compliance with NPS floodplain management procedures for the proposed action. Through the FSOF process the NPS has determined that there are no practicable, non-floodplain locations for the proposed action. Potential impacts to human life, health, and safety would be mitigated through a combination of non-structural risk mitigation measures. Emergency preparedness planning, storm and flood warning, and coordinated evacuation plans and protocols would protect human life, health, and safety. There is no risk to federal capital investment or natural and beneficial floodplain values. All improvements shall be undertaken at the City's sole expense and only with the NPS's prior written approval. Therefore, the NPS finds that the proposed action would not have any additional adverse impacts on floodplains and their associated values.

The NPS has determined the proposed action would have no effect on listed species and is conducting informal consultation with the USFWS under Section 7

of the ESA on four terrestrial ESA listed species that may occur within the proposed emergency action area.

The NPS has determined that the proposed emergency action constitutes an exigent circumstance under the Coastal Zone Management Act as provided in 15 CFR 930.32(b). Once the exigent circumstances have passed, the NPS shall comply with all applicable provisions of 15 CFR part 930, subpart C, to ensure that the activity is consistent to the maximum extent practicable with the enforceable policies of the New York State Department of State Coastal Management Program. The NPS will submit a Consistency Determination to provide a description of actions and supporting policy analysis.

Follow-on Actions

The NPS will conduct some follow-on actions related to site improvements that may not occur until the end of, or after the up to 12-month emergency action period. The follow-on actions will include:

Public Campground Improvements—The FBF public campground sites (Goldenrod and Tamarack Campgrounds; Figure 2 project 2), which are across the street from Historic Hangar B, would be used for administrative purposes such as providing a location for office trailers and equipment staging. Minor improvements, such as vegetation maintenance (mowing and trimming) necessary for use to support the emergency action are included in the above analysis. Additional improvements would be required as follow-on actions under the Lease. Consistent with the park's 2014 GMP, camping opportunities would be improved at FBF. The City would be responsible for campground improvements so that the facilities follow current NPS Campground Design Guidelines. The existing 30 public camping sites would be upgraded and an additional 30 sites will be added. Improvements include adding signage, removing hazardous and invasive trees and vegetation, installing fire rings and picnic tables at each site, re-grading the access trail, and building a new permanent restroom facility. Temporary trailers would be required to house additional restroom and shower facilities as well as a camp store.

Outdoor Education Campus—The City would be required to develop portions of an outdoor education campus according to existing conceptual designs. This includes garden plots, an outdoor skills course, a gathering pavilion, and parking lot. Actions to accomplish this would include site clearance of invasive plant material, construction of permeable walking trails, rehabilitation of the existing greenhouse, installation of new parking, and visitor amenities. This would need to proceed in coordination with the two park partners involved in this project, Launch and the Jamaica Bay-Rockaway Parks Conservancy.

In general, these actions will be consistent with the park's holistic management approach for coastal resources to improve resiliency and will incorporate principles of energy conservation and sustainability, resulting in long-term beneficial impacts to park resources and values, and to visitor use and experience. Adverse impacts related to the follow-on projects may include short-term, localized, and low intensity impacts to air quality, soundscapes, vegetation, wildlife, and visitor use and experience related to construction activities and temporary closures. The NPS will complete site-specific NEPA compliance, as appropriate, before taking the following actions. Therefore, these actions are not fully covered by these NEPA alternative arrangements.

Other Alternatives Considered but Dismissed

Hangars 3 and 4—Hangars 3 and 4 (49,020 square feet) at Floyd Bennett Field are existing vacant historic structures that were constructed in 1931. Hangars 3 and 4 are contributing resources in the Floyd Bennett Field Historic District which was listed on the National Register of Historic Places. They have not been restored or rehabilitated and are currently vacant and deteriorated. The building shell is showing signs of failure that left uncorrected will result in damage that is beyond reasonable repair. The interior is aged, and the utilities and systems are either inoperable, inadequate, or non-compliant with current codes and standards. The building is only suitable as semi-protected storage space in its current condition, and even that use is put at risk by continued neglect. Although the NPS is currently preparing plans to rehabilitate the structures, no work has yet begun.

Within the Jamaica Bay Unit, there are no other sites where emergency activities of a similar nature have previously been sited; have a lower potential for impact on park resources, operations, or public uses; or have available hardscaped areas of sufficient acreage with a low risk of flood potential to accommodate the emergency activities.

Based on my review I have decided to proceed with the proposed action and mitigation commitments.



Date: September 11, 2023

Charles F. Sams III
Director
National Park Service

Approval of Decision Memorandum and Environmental Review:

I have determined that an emergency situation exists such that agency actions must be taken prior to preparing NEPA analysis and documentation. I concur with the National Park Service's review and findings that the impacts of these actions are not anticipated to be significant. I hereby grant the National Park Service's request for alternative arrangements.

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Joan M. Mooney
Principal Deputy Assistant Secretary
Exercising the Delegated Authority of
Assistant Secretary—Policy, Management and Budget
Department of the Interior

Submissions for the Record by Rep. Stauber

Why the World Has Gone Cuckoo for Copper

The U.S. and China are competing to acquire the metal essential for EVs and data centers. It is also at the center of a \$43 billion takeover battle.

Wall Street Journal, May 14, 2024 by Julie Steinberg

<https://www.wsj.com/business/why-the-world-has-gone-cuckoo-for-copper-ef8c385a>

After one of the world's top copper producers recently hit a financial crunch, the Biden administration started huddling with potential investors about taking a stake in the company's Zambian mines worth as much as \$3 billion.

The search isn't restricted to American companies, with entities from the United Arab Emirates, Japan and Saudi Arabia—all viewed as friendly to U.S. interests—expressing interest in the stake in First Quantum Minerals' FM 7.53% assets, according to people familiar with the matter.

The goal is simple: to keep it out of Chinese control and prevent the Asian superpower from tightening its grip over the global supply of crucial metals and minerals.

The bidding, expected to be concluded later this year, is part of a global rush to acquire more copper, a key component in everything from electric cars to transmission lines and the data centers powering the AI revolution.

BHP Group's record nearly \$43 billion takeover bid for Anglo American, which was rejected Monday, puts a fresh spotlight on the intense demand for copper. While London-listed Anglo produces a range of commodities, from diamonds to nickel, Australia's BHP has made clear that it most prizes the company's copper assets. Anglo rebuffed BHP's first offer last month, and other companies are believed to be weighing rival bids.

On Tuesday, Anglo announced its own turnaround plan, saying it would get out of its platinum, diamond and steelmaking coal businesses—effectively pitching investors on a strategy that makes copper even more central to the company's future.

Chief Executive Duncan Wanblad said on a media call that the company would look at growing its copper business both organically and from potential mergers and acquisitions, such as taking greater stakes in assets it already owns.

"Copper of course is the story of the day," he said.

While the U.S. government doesn't have any oversight over a proposed deal, officials have communicated to Anglo executives that they are concerned consolidation could limit the overall supply of copper, said people familiar with the matter. The U.S. is also concerned that China could put pressure on BHP to sell some assets or agree to sell more of its copper to the country to address potential anticompetitive concerns.

For the U.S., the current frenzy highlights the importance of its yearslong effort to build up supplies of the metals and minerals critical to the green-energy transition.

Demand for copper is expected to rise as certain mines close or scale back production. Copper futures are up 20% this year.

The U.S. doesn't have a ministry for mining, a sovereign wealth-fund or much of a domestic mining industry. That has put it at a disadvantage with China, which can direct its state-owned enterprises to invest heavily no matter how commodity prices are performing.

The U.S. government is limited in how much money it can directly pump into projects of national security. That means it must work with private companies at home and abroad, as well as friendly countries with sovereign-wealth funds, to entice them to invest in assets helpful to national interests.

The Wall Street Journal reported last year, for example, that the U.S. and Saudi Arabia have held talks for potential agreements in the Democratic Republic of Congo, under which Saudi Arabia would take stakes in mines and U.S. companies would be guaranteed some of the rights to production.

One of President Biden's senior advisers, Amos Hochstein, is a linchpin of this effort. Hochstein and a small team at the State Department have been flying around the world, meeting with government officials in sub-Saharan Africa one day and with U.S. investors the next.

Regarding copper, "We don't have a lot of new supply coming online around the world," Hochstein said in an interview. "What concerns me is even when a discovery is made, it could take between seven and 15 years before the first copper comes out."

The U.S. has committed more than \$1 billion to the Lobito Corridor to develop local infrastructure, including clean power and a railroad connecting Angola, Congo and Zambia to export critical minerals. Also in Zambia, the U.S. last year urged the U.A.E. to consider investing in Mopani Copper Mines, according to people familiar with the matter.

The effort was successful: Zambia in December chose the U.A.E.'s International Resources Holding as a new equity partner.

Hochstein declined to comment on specific deals.

Hochstein said he and his team have made clear to African governments that the U.S. is trying to put forward an alternative model that won't result in debt, corruption and environmental degradation.

"We are putting our money where our mouth is," he said.

A central part of the U.S. effort is the International Development Finance Corp., a federal agency that helps finance projects overseas. The agency agreed to invest \$740 million last year in the mining sector, up from \$245 million it had committed to legacy mining projects.

It is currently in talks to finance a multibillion-dollar copper mine in Pakistan that, when it comes online in 2028, will be among the world's largest copper projects, according to people familiar with the matter.

An Irish company called TechMet is one of its signature investments. Under the Trump and Biden administrations, the agency has given TechMet some \$105 million in funding and become its second-largest shareholder. An investment firm backed by a scion of the Walton family also invested in the most recent fundraising round, which valued the company at more than \$1 billion.

"We are in a second Cold War," said TechMet CEO Brian Menell, a South African. "One has to increasingly pick sides. For me it's never been a moment's doubt. It is a competition between Western values and dictatorship."

TechMet owns stakes in lithium, cobalt, nickel, vanadium and rare-earth miners.

Meanwhile, Chinese miners, with government backing, are rapidly snapping up assets. In Belt and Road countries, which don't include Brazil or Australia, China spent more than \$19 billion last year on metals and mining investments, up 158% from 2022, according to the Green Finance & Development Center at Fudan University in Shanghai. That is the highest level since 2013.

In the latest example, a Chinese firm is in advanced talks to buy Chemaf, a metals producer that is developing a cobalt and copper mine in Congo, according to people familiar with the matter.

At least two Western suitors were interested in buying the company, according to people familiar with the matter, including Chilean Cobalt Corp., or C3, a U.S. company with copper-cobalt operations in northern Chile.

Duncan Blount, chief executive of C3, said he spoke with the International Development Finance Corp and State Department about making a bid, but concluded it would have been too expensive. Still, he said, "They were incredibly helpful on this venture and other projects. They're keen to see American businesses and entrepreneurs go back into Congo."

