

**DISCUSSION DRAFT OF H.R. ____, TO
AMEND THE NATIONAL ENVIRON-
MENTAL POLICY ACT OF 1969, AND FOR
OTHER PURPOSES;
H.J. RES. 168, AND H.R. 6129**

LEGISLATIVE HEARING

BEFORE THE

**COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES**

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

Wednesday, September 11, 2024

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HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: House Committee on Natural Resources Republican Members

From: Energy and Mineral Resources Subcommittee Staff, Rob MacGregor—Robert.MacGregor@mail.house.gov, Will King—Will.King@mail.house.gov, and Jeanne Kuehl—Jeanne.Kuehl@mail.house.gov

Date: Wednesday, September 11, 2024

Subject: Legislative hearing on H.R. 6129, H.J. Res. 168, and a Discussion Draft of H.R. ____ (Rep. Westerman)

The Committee on Natural Resources will hold a full committee legislative hearing on a Discussion Draft of H.R. ____ (Rep. Westerman), To amend the National Environmental Policy Act of 1969, and for other purposes; H.R. 6129 (Rep. Yakym), “Studying NEPA’s Impact on Projects Act”; and H.J. Res. 168 (Rep. Graves), Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Council on Environmental Quality relating to “National Environmental Policy Act Implementing Regulations Revisions Phase 2” on **Wednesday, September 11, 2024, at 10 o’clock a.m. in room 1324 Longworth House Office Building.**

Member offices are requested to notify Jacob Greenberg (Jacob.Greenberg@mail.house.gov) by 4:30 PM on Tuesday, September 10, 2024, if their Member intends to participate in the hearing.

I. KEY MESSAGES

- While well-intentioned, NEPA (the National Environmental Policy Act of 1969) has evolved into an extremely cumbersome and lengthy process that has increased costs and delays for a wide range of projects, from transportation and infrastructure to forestry and energy development.
- NEPA is the most frequently litigated environmental statute, and NEPA-related litigation on environmental impact statements takes an average of 4.2 years to resolve.
- NEPA must be reformed to provide developers and federal agencies with certainty. This will allow various projects to move forward responsibly, improving America’s energy security, national security, and economic competitiveness.
- The Council on Environmental Quality (CEQ) has intentionally ignored provisions in the bipartisan Fiscal Responsibility Act (FRA) to further the Biden-Harris administration’s radical environmental agenda through its NEPA Phase II rule. H.J. Res. 168 would provide for congressional disapproval of the Biden-Harris administration’s “National Environmental Policy Act Implementing Regulations Revisions Phase 2.”
- H.R. 6129 would mandate CEQ to publish annual reports on NEPA’s impact on projects. Regular reporting will establish greater transparency in environmental reviews and help ensure that the NEPA reforms enacted by Congress are properly implemented by the administration and have their intended impact.

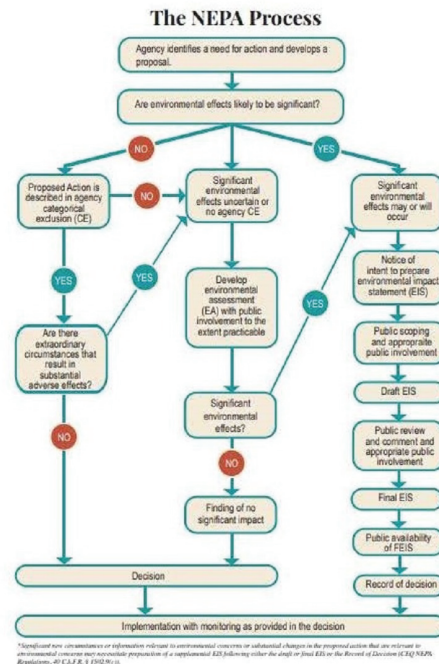
II. WITNESSES

- **Mr. Chip Jakins**, CEO, Jackson Energy Membership Corporation (EMC), Jefferson, GA
- **Mr. Keith Pugh**, President 2022-2023 American Public Works Association, Asheville, NC
- **Mr. John Beard Jr.**, Founder, President and Executive Director Port Arthur Community Action Network, Port Arthur, TX [Minority Witness]
- **Ms. Heather Reams**, President, Citizens for Responsible Energy Solutions (CRES), Washington, D.C.

III. BACKGROUND

National Environmental Policy Act Overview

The National Environmental Policy Act of 1969 (NEPA) is a procedural statute that established parameters for assessing and publicly disclosing the environmental impact of all major federal actions. NEPA also created the White House Council on Environmental Quality (CEQ).¹ The requirements in NEPA apply to all “major federal actions,” which include a broad range of actions affecting the American economy. This can include, but is not limited to, the construction of critical infrastructure such as roads, bridges, highways, ports, irrigation systems, transmission lines, conventional and renewable energy projects, broadband, and water infrastructure. It also encompasses grazing, forest management, and wildfire protection on Federal lands. Originally intended to ensure an appropriate balance between protecting the environment and economic development, the NEPA process has become increasingly complex, resulting in unwieldy NEPA documents and timelines and increased frivolous litigation.²



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

²Source: Healthy Forests, Healthy Communities, 2020.

Section 102(c) of NEPA directs federal agencies to produce “detailed statements” on major federal actions that “significantly [affect] the quality of the human environment.”³ The “detailed statements” must contain the following information: (1) the environmental impact of the proposed action, (2) adverse environmental effects that cannot be avoided if the proposal is implemented, (3) alternatives to the proposed action, (4) “the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity,” and (5) any “irreversible and irretrievable” commitments of resources associated with the proposed action.⁴ The “detailed statements” discussed in Section 102(c) of NEPA are called Environmental Impact Statements, or EISs. EISs are the most detailed and rigorous category of analysis for major federal actions. Agencies will usually publish a Notice of Intent (NOI), conduct a public scoping process, publish a draft EIS for public comment for a minimum of 45 days, publish a final EIS with a 30-day waiting period, and ultimately issue a final Record of Decision (ROD). In some circumstances, after preparing a draft or final EIS, an agency may also need to prepare a supplemental EIS if it is directed by a court, makes “substantial changes” to its initial proposal, or learns of “significant new circumstances or information” related to environmental concerns.⁵ While only a small percentage of agency actions require EISs, a higher percentage of EISs are challenged in court compared to other environmental review documents.⁶

If the environmental impacts of a proposed agency action are unknown, agencies will prepare Environmental Assessments, also known as EAs. If an agency determines through an EA that a proposed action will have a significant impact on the environment, a subsequent EIS is prepared. If no significant impact is identified, a finding of no significant impact (FONSI) is issued, and a final decision is made.⁷

Sometimes, agencies will identify routine actions that have no significant impact on the environment, either cumulatively or individually. In these cases, agencies will develop categorical exclusions, also referred to as a CE or CATEX. Although its name may cause confusion, a CE “is a form of NEPA compliance; it is not an exemption from NEPA, but an exemption from requirements to prepare an EIS” or an EA.⁸ According to CEQ, “the use of categorical exclusions can reduce paperwork and save time and resources.”⁹ CEs have also been created legislatively through Congressional action.

While well-intentioned, ambiguity in the statute has allowed NEPA to evolve into an extremely cumbersome and lengthy process that has increased costs for numerous projects ranging from transportation and infrastructure to forestry and energy development. CEQ finalized regulations in 1978 regarding the implementation of NEPA but subsequently issued more than 30 guidance documents to federal agencies pertaining to NEPA compliance.¹⁰ NEPA’s labyrinth of regulations has imposed significant time and cost burdens, with environmental analysis adding an estimated average of \$4.2 million to project costs.¹¹ CEQ recently found that Federal Highway Administration projects take more than seven years to get from a NOI to the issuance of a ROD.¹² It should be noted that in 1981, CEQ predicted that agencies should be able to complete EISs in 12 months or less.¹³ Adding to this complexity

³ *Id.*

⁴ *Id.*

⁵ Nina M. Hart & Linda Tsang, “The Legal Framework of the National Environmental Policy Act,” Congressional Research Service, September 22, 2021, <https://crsreports.congress.gov/product/pdf/IF/IF11549>.

⁶ <https://crsreports.congress.gov/product/pdf/IF/IF12560>

⁷ *Id.*

⁸ Bureau of Ocean Energy Management, “Categorical Exclusion Reviews,” <https://www.boem.gov/environment/environmental-assessment/categorical-exclusion-reviews>.

⁹ CEQ, “NEPA Practice,” <https://ceq.doe.gov/nepa-practice/categorical-exclusions.html>.

¹⁰ CEQ, “Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act,” Federal Register, July 16, 2020, <https://www.federalregister.gov/documents/2020/07/16/2020-15179/update-to-the-regulations-implementing-the-procedural-provisions-of-the-national-environmental>.

¹¹ NEPA Modernization 101: An Outdated Environmental Law the is Impeding Clean Energy Developments, C3 SOLUTIONS, <https://www.c3solutions.org/policy-paper/nepa-modernization-101/>.

¹² Council on Environmental Quality, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 7.16.2020, <https://www.federalregister.gov/documents/2020/07/16/2020-15179/update-to-the-regulations-implementing-the-procedural-provisions-of-the-national-environmental#footnote-2-p43305>.

¹³ Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations, 46 FR 18026 (Mar. 23, 1981) (“Forty Questions”), <https://www.energy.gov/nepa/downloads/forty-most-asked-questions-concerning-ceqs-national-environmental-policy-act>.

is the fact that NEPA is the “most frequently litigated environmental statute,” according to the Department of Justice.¹⁴ According to a recent study by the Breakthrough Institute, NEPA-related litigation on EISs takes 4.2 years on average to resolve.¹⁵

In 2020, the Trump administration updated CEQ’s NEPA regulations for the first time since 1978 to help reduce analyses’ cost, time, and complexity. This involved establishing time and page limits for EISs and EAs, applying the One Federal Decision framework, and allowing applicants/contractors to assume a greater role in preparing EISs.¹⁶ However, in April of 2022, the Biden-Harris administration instituted rules to roll back aspects of these reforms and bolster cumbersome aspects of NEPA that increase the regulatory burdens for building pipelines and other energy infrastructure. CEQ referred to this rulemaking as Phase 1 of revisions to existing NEPA regulations.¹⁷

NEPA Reforms in the Fiscal Responsibility Act of 2023

On June 2, 2023, the bipartisan Fiscal Responsibility Act¹⁸ (FRA) was signed into law by President Biden, marking the first significant reforms to NEPA in over forty years. The FRA included many key provisions from the Building U.S. Infrastructure through Limited Delays and Efficient Reviews (BUILDER) Act, introduced by Rep. Garret Graves (R-LA). The BUILDER Act also passed the House of Representatives as a part of H.R. 1, the Lower Energy Costs Act, introduced by Majority Leader Steve Scalise (R-LA). Regarding NEPA, the FRA:¹⁹

- *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 designating a lead agency to set a permitting schedule, procedures to elevate and streamline delays or disputes, and preparing 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 Actions:* 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.

¹⁴ Congressional Research Service, “National Environmental Policy Act: Judicial Review and Remedies,” Nina M. Hart and Linda Tsang, September 22, 2021, IF11932.

¹⁵ The Breakthrough Institute, “Understanding NEPA Litigation: A Systematic Review of Recent NEPA-Related Appellate Court Cases,” 7.11.24, <https://thebreakthrough.org/issues/energy/understanding-nepa-litigation>.

¹⁶ CEQ, “Final Rule: Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act,” August 2020, <https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/01/20200819-FINAL-Summary-of-NEPA-Rule.pdf>.

¹⁷ 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>.

¹⁸ 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/>.

¹⁹ 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.

- *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.

On May 1, 2024, CEQ published its final rule, instituting Phase 2 of its overhaul of NEPA implementing regulations, with broader changes to the 2020 NEPA regulations.²⁰ CEQ named its Phase 2 regulation the “Bipartisan Permitting Reform Implementation Rule” in reference to the FRA. Unfortunately, CEQ’s Phase 2 final rule largely ignores the FRA’s prescriptions in favor of further progressing the Biden-Harris administration’s radical environmental justice agenda. Rather than abide by the FRA’s significant NEPA and permitting reforms intended to streamline construction 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. Further, prolonged analysis and constant litigation challenging the sufficiency of environmental documents continue to pose significant barriers to transportation infrastructure, transmission buildout, forest management, drought mitigation efforts, and more.²¹

Judicial Review Under NEPA

NEPA, as initially enacted, did not explicitly provide for judicial review of agency compliance within its text. Instead, challenges to NEPA are brought under the Administrative Procedure Act (APA).²² Passed in 1946, the APA establishes federal agencies’ procedures for rulemakings, adjudications, and litigation of such actions.²³ Under the APA, a disputed agency action must be “final,” and the legal challenge to that action must be brought before a court within six years to be considered valid.²⁴ The FRA later added an explicit right of review provision under NEPA, allowing for court enforcement of deadlines to complete an EA or EIS. Nevertheless, litigation remains available under the APA for other NEPA concerns.²⁵

In NEPA cases, plaintiffs often allege that an agency acted “arbitrarily or capriciously” when taking steps to comply with NEPA and thus violated the APA.²⁶ Reviewing courts generally do not dictate the substance of an agency’s decision. Instead, they enforce NEPA processes, considering whether an agency took a “hard look” at the environmental consequences of its proposed actions, consulted with other relevant federal or state agencies, considered alternatives, and publicly disclosed such information before reaching a final decision.²⁷

NEPA claims can vary widely. For example, plaintiffs sometimes challenge an agency’s assessment of whether an action will have significant impacts, arguing that it inappropriately relied on a CE or should have prepared an EIS in instances when an agency had prepared an EA, concluded that the project would not result in significant environmental effects, and then issued a FONSI.²⁸ Additionally, some claims allege that an agency failed to prepare an appropriate supplemental

²⁰ 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>.

²¹ House Committee on Natural Resources “Legislative Hearing on H.R. ____ (Rep. Graves of Louisiana), the “Building United States Infrastructure through Limited Delays and Efficient Reviews (BUILDER) Act of 2023.” February 28, 2023, https://naturalresources.house.gov/uploadedfiles/hearing_memo_-_fe_leg_hrg_on_builder_02.28.23_final.pdf

²² Kristen Hite, “National Environmental Policy Act: Judicial Review and Remedies,” Congressional Research Service, September 22, 2021, <https://crsreports.congress.gov/product/pdf/IF/IF11932>

²³ Jonathan M. Gaffney, “Judicial Review Under the Administrative Procedure Act (APA),” Congressional Research Service, December 8, 2020, https://www.everycrsreport.com/files/2020-12-08_LSB10558_babd79c50d2e4d559e06c1e0a31490db815f7558.pdf

²⁴ Kristen Hite, “National Environmental Policy Act: Judicial Review and Remedies,” Congressional Research Service, September 22, 2021, <https://crsreports.congress.gov/product/pdf/IF/IF11932>

²⁵ Kristen Hite, “Environmental Reviews and the 118th Congress,” Congressional Research Service, September 19, 2023, <https://crsreports.congress.gov/product/pdf/IF/IF12417>

²⁶ Kristen Hite, “Judicial Review and the National Environmental Policy Act of 1969,” Congressional Research Service, August 4, 2022, <https://crsreports.congress.gov/product/pdf/R/R47205>

²⁷ *Id.*

²⁸ *Id.*

environmental review. These disputes tend to center on whether new information or changes to a proposed action trigger additional NEPA requirements.²⁹

In other cases, plaintiffs argue that an agency failed to account for specific impacts or fully consider the weight of the impacts reviewed when analyzing for an EIS. This includes lacking enough data to make a reasoned decision, inadequately considering cumulative impacts, or failing to examine indirect effects arising from a proposed action.³⁰

Remedies in NEPA Litigation

When a plaintiff prevails in a NEPA case, courts generally grant declaratory relief and remand the disputed action to the agency for further proceedings.³¹ The agency then must either abandon its proposed action or take steps to remedy the APA violations and demonstrate that it has complied with the NEPA process.³²

Courts often vacate an agency's final action in addition to remanding it, meaning that the agency's original decision is declared void and ineffective.³³ Vacatur is considered the "ordinary" remedy in NEPA cases because the APA directs courts to "set aside" agency actions in the case of a violation.³⁴ However, some courts allow for an equitable exception in NEPA suits, ordering remand without vacatur.³⁵ This keeps an agency's original action or decision in place while it corrects a deficiency in its NEPA compliance.

In some instances, parties request permanent injunctive relief in addition to remand or vacatur.³⁶ This involves a court staying part or all of a project while an agency completes the requisite NEPA analysis.³⁷ Vacatur often has the same practical effect as a permanent injunction in that once an agency's final decision is set aside, it cannot proceed with the proposed action. However, while vacatur generally leaves an agency free to make a new decision without further court supervision, an injunction may provide a more specific direction, prohibiting it from proceeding until it comes into compliance with NEPA.³⁸ Injunctions may also be preliminary, barring all or part of a proposed action while litigation is ongoing.³⁹

Energy and Mineral Production and Development

Prolonged analysis under NEPA and constant litigation challenging the sufficiency of environmental documents have become significant barriers to all forms of energy development, causing uncertainty and deterring investment. The current permitting process is filled with repetitive assessments and lengthy processing times, making it difficult for developers to plan, finance, and build projects efficiently.⁴⁰

For example, onshore oil and gas development must go through three rounds of review under the NEPA process before drilling can occur: 1) the Resource Management Plan phase, 2) the lease sale phase, and 3) the permitting phase.⁴¹ The Mineral Leasing Act requires BLM to issue permits within 30 days. Still, the agency has a backlog of over 5,000 permits pending for, in some cases, over a year due to prolonged analysis under NEPA.⁴² Further, thousands of onshore oil and gas leases

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Kristen Hite, "National Environmental Policy Act: Judicial Review and Remedies," Congressional Research Service, September 22, 2021, <https://crsreports.congress.gov/product/pdf/IF/IF11932>

³⁸ Kristen Hite, "Judicial Review and the National Environmental Policy Act of 1969," Congressional Research Service, August 4, 2022, <https://crsreports.congress.gov/product/pdf/R/R47205>

³⁹ *Id.*

⁴⁰ Geothermal Rising, Letter to Secretary Debra Haaland, March 18, 2021, <https://geothermal.org/resources/geothermal-rising-letter-addressing-geothermal-permitting-public-lands>.

⁴¹ Bureau of Land Management. Land Use Planning and NEPA Compliance. <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/land-use-planning>; Bureau of Land Management. Leasing. <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing>.

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

are currently involved in litigation from environmental groups, meaning operators cannot develop them until the lawsuits are resolved.⁴³

Offshore oil and gas development must go through 4 rounds of NEPA review: 1) the National OCS Program phase (5-year-planning phase); 2) the lease sale phase; 3) the approval of the exploration plan and drilling permits; and 4) the approval of the development and production plan.⁴⁴ Litigation at the lease sale phase has created significant uncertainty about the future of the offshore leasing program and delayed the development of new leases in the Gulf of Mexico. For example, the Bureau of Ocean Energy Management (BOEM) held offshore lease sale 257 in November 2021. Still, a district court vacated the lease sale in January 2022 in an unprecedented decision, claiming the EIS prepared by BOEM was insufficient.⁴⁵ The Biden-Harris administration chose not to appeal this case, declining to defend the agency's own work.⁴⁶

NEPA reform has also become a significant challenge for renewable energy development, and reform of the statute would benefit these projects. For example, according to the Department of Energy's website, 32 percent of active projects requiring either an EIS or EA were related to clean energy or transmission, while only 14 percent were related to fossil fuels.⁴⁷ Similarly, 45 percent of Bureau of Land Management actions requiring an EIS were for renewable energy or transmission projects, and only 21 percent were for fossil fuel-related projects.⁴⁸ The Permitting Dashboard tells a similar story. Of the 21 active FAST-41 projects, 15 are renewable energy or transmission, and only one is related to fossil fuel production.⁴⁹

Hardrock mineral development requires hundreds of millions of dollars in upfront capital due to the distinct technical challenges associated with hardrock mineral exploration and development. In the United States, exploration is followed by almost a decade of permitting under NEPA and other statutes before production begins.⁵⁰ It routinely takes over 10 years and \$1 billion in start-up capital before a company produces any product in the U.S.⁵¹ Prolonged delays under NEPA create significant uncertainty, deterring investment in developing minerals needed for renewable energy and countless other high-tech applications.

Forest Health and Wildfires

For decades, burdensome NEPA regulations and frivolous lawsuits filed by extreme environmentalist organizations have dramatically limited the pace and scale of active forest management projects, resulting in overgrown, fire-prone federal forests. According to a report from the Property and Environment Research Center (PERC), the U.S. Forest Service (USFS) takes an average of 3.6 years to begin mechanical treatments and 4.7 years to begin a prescribed burn under NEPA.⁵²

⁴³ Testimony of Kathleen Sgamma before the Committee on Natural Resources. February 8, 2023.

⁴⁴ Department of the Interior, Bureau of Ocean Energy Management, OCS Leasing, Exploration and Development Process. <https://www.boem.gov/sites/default/files/documents/oil-gas-energy/national-program/OCS%20Leasing%20Process%20Diagram.pdf>

⁴⁵ Department of the Interior, Bureau of Ocean Energy Management, Final Notice of Sale, Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sale 257, <https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/Final-NOS-257.pdf>; Friends of the Earth, et al. vs. Debra Haaland, et al., U.S. District Court for the District of Columbia, Memorandum Opinion, filed January 27, 2022, <https://subscriber.politicopro.com/eenews/f/eenews/?id=0000017e-a065-db8b-ab7f-f2ff5ec00000>.

⁴⁶ Rachel Frazin, "Biden administration won't appeal invalidation of offshore oil leases," The Hill, March 1, 2022, <https://thehill.com/policy/energy-environment/596334-biden-administration-declines-to-appeal-invalidation-of-offshore>.

⁴⁷ Department of Energy, Office of NEPA Policy and Compliance, Active NEPA Reviews, <https://www.energy.gov/nepa/active-nepa-reviews>

⁴⁸ U.S. Department of the Interior Bureau of Land Management, BLM National NEPA Register, https://eplanning.blm.gov/eplanning-ui/search?filterSearch=%7B%22states%22:null,%22projectTypes%22:%5B%5D,%22programs%22:%5B%22FLUID_MINERALS%22,%22MINING%22,%22RENEWABLE_ENERGY%22%5D,%22years%22:null,%22open%22:false,%22active%22:true%7D.

⁴⁹ Permitting Dashboard, FAST-41 Covered Projects, https://www.permits.performance.gov/projects/fast-41-covered?title&term_node_tid_depth=All&term_node_tid_depth_1=All&field_permitting_project_adpoint_administrative_area=All&field_project_status_target_id=3036&page=0.

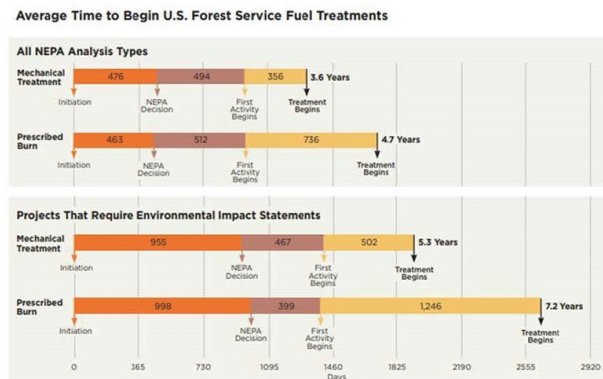
⁵⁰ Briefing from the National Mining Association. March 2019.

⁵¹ *Id.*

⁵² PERC, "Does Environmental Review Worsen the Wildfire Crisis", Eric Edwards, Sara Sutherland, June 14, 2022, <https://perc.org/2022/06/14/does-environmental-review-worsen-the-wildfire-crisis/>.

This timeline dramatically increases depending on the level of analysis conducted, with EISs taking 5.3 years to permit mechanical treatments and 7.2 years to permit prescribed burns.⁵³

Vital forest management projects are often delayed or canceled. Land managers divert finite agency time and resources from essential management activities to instead support endless analysis to “bulletproof” NEPA documents, circular consultations with other agencies, and fighting against obstructionist litigation. For example, USFS has spent seven years and an estimated 15,000 pages of documentation analyzing a roughly 7,000-acre treatment project in the Nez-Perce Clearwater National Forest in Idaho, or approximately 0.008 percent of the National Forest acreage estimated to be at moderate to high risk of catastrophic wildfire.⁵⁴ The Forest Service is carrying out only two percent of needed fuel reduction treatments per year.⁵⁵ At this paltry scale, the agency will not be able to reverse the deteriorating health trends of our national forests for several decades.⁵⁶



Source: PERC, 2022.

Instead of utilizing forests as tools to address climate change, the cumbersome and lengthy NEPA process has made federal forests contributors to climate change by releasing millions of metric tons of carbon due to wildfire every year.⁵⁷ In the last 20 years, the United States has lost an average of 7 million acres per year to catastrophic wildfires, more than double the average seen during the 1990s.⁵⁸ Since 2000, over 164 million acres have been damaged by wildfire, a collective area roughly three times the size of the entire State of Utah.⁵⁹ Prior to 2015, the United States had never burned more than 10 million acres in a single wildfire season. In the past decade, the country has hit that ominous mark three times during some of the worst wildfire seasons on record (2015, 2017, and 2020).⁶⁰

While opponents of NEPA streamlining make unsubstantiated claims that changes to the law will completely bypass public input, NEPA-related delays and cancellations of forest management projects have disproportionately affected local communities that have called for proactive management before catastrophic wildfires. A prime example of this is Grizzly Flats, a community in California that was completely decimated by the Caldor Fire in 2021. Despite USFS warning the community in the early 2000s that a catastrophic wildfire could potentially destroy Grizzly Flats, the Forest Service delayed work on the Trestle Forest Health Project

⁵³ *Id.*

⁵⁴ Data provided by FFRC.

⁵⁵ Fretwell, Holly, and Jonathan Wood. “Fix America’s Forests: Reforms to Restore National Forests and Tackle the Wildfire Crisis.” PERC, 12 Apr. 2021, www.perc.org/2021/04/12/fix-americas-forests-reforms-to-restore-national-forests-and-tackle-the-wildfire-crisis/.

⁵⁶ *Ibid.*

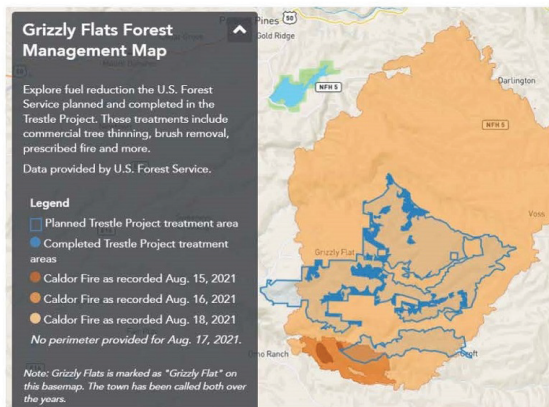
⁵⁷ Murphy, Zoeann, and Chris Mooney. “Montana’s Forests Have Swung from Pulling Carbon Dioxide out of the Air to Putting It Back Again.” *The Washington Post*. January 29, 2019. Accessed January 31, 2019. https://www.washingtonpost.com/graphics/2019/national/gone-in-a-generation/forest-climate-change.html?utm_term=.8d7a6e691000.

⁵⁸ Congressional Research Service, “Wildfire Statistics”, Katie Hoover, June 1, 2023, <https://www.crs.gov/Reports/IF10244?source=search&guid=b82a4d954677449b918a65ece823396f&index=0>.

⁵⁹ NIFC, “Wildfires and Acres,” <https://www.nifc.gov/fire-information/statistics/wildfires>.

⁶⁰ *Id.*

around the town for decades. Originally scheduled to be completed the year before the Caldor Fire ignited, USFS ultimately only completed 14 percent of the planned 15,000-acre project.⁶¹ According to “wildfire experts, career firefighters, former Forest Service officials and residents . . . Grizzly Flats would have stood a better chance of surviving the Caldor Fire if the Trestle Project had been completed.”⁶² A significant contributor to this delay was NEPA, as the only 15,000-acre project required a full EIS and was objected to by environmentalists “spreading ‘agenda-driven science’ that promotes specific unsupported narratives and avoids data to back up their litigious claims.”⁶³ These delays came at the expense of the local community, which repeatedly asked the Forest Service to move more expeditiously to complete the project.⁶⁴



Western Water

NEPA implementation directly impacts the development of critical water supply projects. Obtaining permits typically involves many agencies with specific requirements, timelines, and procedures that can result in an expensive and inefficient process. Throughout the West, several examples of water projects have taken decades to get through the convoluted and complex federal regulatory process.

One such project is Sites Reservoir, a proposed off-stream storage facility northwest of Sacramento, California, which could improve California's water storage capabilities. The project's origins date back to the 1960s, but it is anticipated to be operational around 2030.⁶⁵ While this project has had several starts and stops, it has been continuously studied since the early 2000s.⁶⁶ The Final Environmental Impact Report/Environmental Impact Statement was released in November 2023.⁶⁷ The NEPA requirement to analyze project alternatives has been a leading factor delaying this project and under NEPA, the Bureau of Reclamation and the State

⁶¹ Rodd, Scott, "Stalled U.S. Forest Service project could have protected California town from Caldor Fire destruction," CapRadio, August 16, 2022, <https://www.caprado.org/articles/2022/08/16/stalled-us-forest-service-project-could-have-protected-california-town-from-caldor-fire-destruction/>.

⁶² *Id.*

⁶³ Sacramento Bee Editorial Board, "Rogue environmentalists put Californians in harm's way by blocking forest thinning projects," Sacramento Bee, October 21, 2021.

⁶⁴ *Id.*

⁶⁵ In the 1960s, Reclamation evaluated construction of a 1.2 million-acre-foot Sites Reservoir. California Department of Water Resources (DWR). Bulletin 76-81: State Water Project—Status of Water Conservation and Water Supply Augmentation Plans. 1981. https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/comments102612/desjardins/bulletin76-81.pdf

⁶⁶ DWR received authorization to study Sites Reservoir in 1996 under State of California Proposition 204, The Safe, Clean, Reliable Water Supply Act. The Bureau of Reclamation was authorized by Congress through the California Bay-Delta Program (CALFED, Public Law 108-361, Water Supply, Reliability, and Environmental Improvement Act).

⁶⁷ Sites Reservoir Environmental Review, 2023-2024 Sites Reservoir Test Pits, Fault Studies, and Quarry Studies. <https://sitesproject.org/environmental-review/>

of California investigated 52 different project alternatives for Sites Reservoir.⁶⁸ According to the Sites Project Authority, had the project been constructed before the 2023 atmospheric rivers, “Sites Reservoir could have diverted and captured 250,000 acre-feet of water as a result of the January storms if the reservoir was operational, and an additional potential 244,000 acre-feet of water as a result of the February-March storms.”⁶⁹

Coastal and Habitat Restoration Projects

In a field hearing that the Committee held in Thibodaux, Louisiana, last month, one of the main themes Members heard was the challenge of the environmental review and permitting processes. One specific challenge identified is that the federal government’s permitting process, which involves “numerous federal agencies with divergent missions,”⁷⁰ often fails to account for the broader benefits of restoration projects. Specifically, how the NEPA process accounts for the environmental baseline in analyzing a project’s EIS operates under “the premise that current conditions are the appropriate baseline against which to evaluate a project’s environmental impacts.”⁷¹ However, baseline conditions can often change for restoration projects, making it challenging to determine the environmental baseline for projects designed for the coast’s long-term restoration.

Discussion Draft of H.R. ____ (Rep. Westerman), To amend the National Environmental Policy Act of 1969, and for other purposes.

The Discussion Draft would amend NEPA to address flaws in the statute that have given rise to lengthy timelines and increased litigation. The bill accomplishes this in three main ways:

Scope of Review

The bill would minimize the amount of analysis required in agency documents. Specifically, the bill would limit alternatives considered in NEPA documents to those alternatives that are within the jurisdiction of the lead agency. This would prevent agencies from suggesting unrelated and irrelevant alternatives that do not meet the applicant’s goals. Similarly, the bill would stipulate that agencies only consider effects within their jurisdiction or control. This would prevent agencies from considering environmental effects that are disconnected from the action or effects that the agency does not have the expertise to quantify. The legislation also clarifies that agencies are not required to consider new scientific information after the start of an EIS or EA unless the scientific information is peer-reviewed and is essential in considering the effects. This provision will help to ensure that scientific information isn’t manufactured to block agency actions. Lastly, the bill would add a new definition for “Reasonably Foreseeable” to clarify that for EISs, agencies must only consider environmental effects that are likely to occur in an area directly affected by the action, are under the control or jurisdiction of the agency, and have a close relationship between a change in the environment and the proposed action. Limiting and clarifying the scope of review would have the added benefit of reducing litigation, as special interest groups often challenge NEPA reviews for failing to study certain effects adequately.

Threshold for When NEPA is Triggered

These provisions would clarify when NEPA would apply for a federal action. The bill does so by reworking the definition of “Major Federal Action” in the statute. Specifically, the bill would remove language in statute for actions involving federal funding when an agency controls the “subsequent use of the financial assistance.” Agencies always have control over the subsequent use of the funding they provide, which is a loophole in existing statutes that results in NEPA always being triggered when federal funding is involved. The bill also mandates that NEPA shall not be triggered solely based on federal funding or an interstate effect of the action. By eliminating projects from NEPA that have little to no Federal nexus, these provisions will reduce the overall number of projects that are subject to NEPA, which

⁶⁸Testimony of Thad Bettner, General Manager, Glenn-Colusa Irrigation District before the Natural Resources Committee, February 7, 2012. <https://www.govinfo.gov/content/pkg/CHRG-112hhrg72805/pdf/CHRG-112hhrg72805.pdf>

⁶⁹Sites, Press Release: *New Analysis Finds 2023 Storms Would Have Yielded Water for Up to 2.4 Million People, Farms, and Businesses if Sites Reservoir Were Operational Today*, March 16, 2023. https://sitesproject.org/wp-content/uploads/2023/03/Sites-News-Release_March-Storm-Diversion-Data_FINAL-3.16.2023.pdf

⁷⁰*Id.*

⁷¹*Id.*

will allow agencies to focus their resources on NEPA reviews for projects that are truly Major Federal Actions.

Judicial Review

There are currently no judicial review limitations in NEPA. The bill would create limitations for standing, limit vacatur and injunction—instead forcing agencies to fix errors and deficiencies in EAs and EISs, establish new review standards, and place timelines on the judicial process. Plaintiffs would be required to file NEPA claims within 120 days after the final agency action and would have to have participated in the public comment period for the action. The claim would also have to be concerning the organization's comments. This provision would ensure that agencies are adequately notified during the process before being sued on a given issue. Claims would also be limited to alternatives or effects considered in the EA or EIS. For supplemental EAs and EISs, claims would be limited to the new information in such supplemental environmental documents, preventing plaintiffs from reaching back to attack aspects of initial documents. For a major federal action to be vacated, enjoined, or delayed, a court would have to conclude that the action itself would pose a risk of proximate and substantial environmental harm, and there is no other remedy available to the agency. When a court identifies deficiencies in the EA or EIS, but this standard isn't met, the court would remand the document to the agency to address the errors.

The bill would allow applicants to move projects forward while the EA or EIS is being remedied, so long as their activities do not impact what is being remanded. The agencies would also have to correct deficiencies within 180 days. Courts would be instructed to uphold challenged actions so long as the action is supported by substantial evidence in the record taken as a whole or if a plaintiff fails to demonstrate clear and convincing evidence. Courts would have 180 days to issue a final judgment on NEPA claims. Appeals must be filed within 60 days of a decision, and courts have 180 days to issue a final judgment on appeals.

H.R. 6129 (Rep. Yakym), “Studying NEPA’s Impact on Projects Act”

In previous administrations, CEQ published several reports analyzing the length and paperwork burden of NEPA litigation and environmental review. From 2001 through 2013, CEQ conducted an annual survey on litigation involving a NEPA-based cause of action.⁷² Each year, the survey tallied the lead defendant Federal Agency in NEPA cases, the type of plaintiff, and the case outcome.⁷³ Notably, over this period, the surveys show that most litigation is filed by activist groups, not individual members of the public.⁷⁴

As part of a thorough review of previous NEPA practices, the Trump administration analyzed 656 EISs published between 2013 and 2018. The review found that the average length of an EIS was 575 pages.⁷⁵ This is nearly double the length the Obama-Biden administration suggested for EISs in 2012 when they released guidance that EISs “should normally be less than 150 pages and a final EIS for proposals of unusual scope or complexity should normally be less than 300 pages.”⁷⁶

In 2020, the Trump administration also published a report examining Federal agencies’ time to complete EISs and RODs between 2010 and 2018. CEQ found that, on average, EISs took 4.5 years to complete, and one-fourth of all EISs took over 6 years to complete.⁷⁷ CEQ also noted that for some EISs, the study’s timeline did not represent continuous activity due to delays from the agency, the applicant, Congress, cooperating agencies, States, Tribes, local interests, or public controversy. In these cases, agencies did not consistently announce that work on an EIS had been suspended.⁷⁸

⁷² CEQ, “National Environmental Policy Act, NEPA Litigation, CEQ Reports,” 2001-2013, <https://ceq.doe.gov/ceq-reports/litigation.html>

⁷³ CEQ, “NEPA Litigation Surveys: 2001-2013,” 2013, <https://ceq.doe.gov/docs/ceq-reports/nepa-litigation-surveys-2001-2013.pdf>

⁷⁴ Rossetti, Philip, “ADDRESSING NEPA-RELATED INFRASTRUCTURE DELAYS,” R Street Institute, July 2021, https://www.rstreet.org/wp-content/uploads/2021/07/FINAL_RSTREET_234.pdf.

⁷⁵ *Id.*

⁷⁶ CEQ, “Memorandum for Heads of Federal Departments and Agencies, Nancy H. Sutley, March 6, 2012.

⁷⁷ CEQ, “ENVIRONMENTAL IMPACT STATEMENT TIMELINES (2010-2018),” June 12, 2020, https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Report_2020-6-12.pdf.

⁷⁸ *Id.*

While these studies provide useful data on cumbersome review timelines and resource strains resulting from NEPA analysis, they have either been ad hoc or fallen by the wayside over time.⁷⁹

The Studying NEPA's Impact on Projects Act would coalesce prior efforts into a single report published annually by CEQ. Like CEQ's annual litigation surveys conducted between 2001 and 2013, the report would study the cause of action, lead federal agency, lead plaintiff, and project outcome between June 2023 and June 2024.⁸⁰ The bill would also build off of the Trump administration's NEPA studies, mandating CEQ to review the length of EISs over the last five years and timelines to complete environmental reviews over the last 10 years, with updates published annually.⁸¹ This transparency will help ensure that the reforms made in the FRA are having their intended impact.

H.J. Res. 168 (Rep. Graves), Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Council on Environmental Quality relating to "National Environmental Policy Act Implementing Regulations Revisions Phase 2."

Under the Biden-Harris 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 President Biden's legion of frontline warriors determined to implement radical social change and eco-justice initiatives across the federal government.

Despite the significant bipartisan NEPA and permitting reforms enacted in the FRA,⁸² CEQ is again ignoring the will of Congress and must be held accountable. CEQ's Phase 2 Rule, despite their assertions to the contrary, will not make it faster and easier to build critical infrastructure projects and reduce the burden on taxpayers by creating a more efficient permitting process. CEQ implemented some of the reforms in the FRA in their Phase 2 rule but reverted to the 1978 regulations seemingly whenever possible, ignoring the bipartisan call for streamlining as well as the language of the FRA. CEQ has also imposed requirements related to several priorities of the Biden-Harris administration, including addressing climate change, environmental justice and community engagement, which are not in the underlying statute and will only create more red tape, litigation, and permitting delays.

Congressman Garret Graves (R-LA), along with Senators Manchin (I-WV) and Sullivan (R-AK), have introduced a CRA Joint Resolution of Disapproval on CEQ's NEPA Phase 2 Final Rule. Enactment of this will cause the rule to stop taking effect immediately.

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.⁸³ As the White House itself made clear, the NEPA Phase 2 regulations aim to "address climate change" and "advance environmental justice" instead of implementing positive bipartisan permitting reform that would benefit Americans, as Congress directed in the Fiscal Responsibility Act.⁸⁴

⁷⁹ Reps. Yakym and Panetta, "Support the Studying NEPA's Impacts on Projects Act," November 2, 2023, <https://d12t4t5x3vyizu.cloudfront.net/yakym.house.gov/uploads/2023/10/Studying-NEPAs-Impact-on-Projects-Act-One-Pager.pdf>

⁸⁰ H.R. 6129 "Studying NEPA's Impact on Projects Act," November 1, 2023, <https://www.congress.gov/bills/118th-congress/house-bill/6129/text>

⁸¹ *Id.*

⁸² Public Law No. 118-5.

⁸³ 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>.

⁸⁴ THE 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/>.

III. MAJOR PROVISIONS & ANALYSIS

Discussion Draft of H.R. _____ (Rep. Westerman), To amend the National Environmental Policy Act of 1969, and for other purposes.

SEC. 1.

Purpose of NEPA Clarification (Section 1(a)):

- Amends 42 U.S.C. § 4321 to explicitly state that NEPA is a procedural statute meant to ensure that federal agencies consider the environmental impacts of their actions without mandating specific outcomes. This change underscores that NEPA is about the decision-making process, not dictating results.

Scope of Environmental Review Limited to Agency Jurisdiction (Section 1(c)):

- Modifies 42 U.S.C. § 4336 to specify that environmental reviews must focus only on effects within the jurisdiction and control of the federal agency. This amendment aims to streamline the scope of reviews to relevant impacts, minimizing extraneous considerations that can delay project approvals and increase risks of litigation.

Timely and Unified Federal Reviews (Section 1(d)):

- Amends 42 U.S.C. § 4336a to improve coordination among agencies. It limits comments from cooperating agencies to their specific areas of jurisdiction (Section 107(a)(3)) and sets clear timelines for considering scientific research (Section 107(b)). This ensures that only pertinent information is considered, reducing unnecessary delays and making the process more predictable.

Restriction on New Scientific Research Requirements (Section 1(c)(3)):

- Changes to 42 U.S.C. § 4336 clarify that agencies are not required to conduct new scientific or technical research unless it is essential to making a reasoned choice among alternatives (Section 106(b)(3)). This is designed to prevent agencies from using research requirements to stall decision-making.

Limiting Scope and Timing of Research Consideration (Section 1(d)(2)):

- Adds provisions to 42 U.S.C. § 336a that establish deadlines after which new scientific information is generally not considered in decision-making unless it meets specific criteria (e.g., peer-reviewed and essential for determining reasonably foreseeable effects). This provision is intended to reduce continuous delays due to late-arising information.

SEC. 2. JUDICIAL REVIEW

Judicial Review Limitations (Section 2-New Section 112 of NEPA):

- Adds 42 U.S.C. § 4336f to limit who can file lawsuits challenging NEPA decisions to those who have participated in the public comment process and submitted specific comments (Section 112(a)). It also bars lawsuits challenging the establishment of categorical exclusions. This provision is meant to reduce frivolous litigation that can delay projects.

Restrictions on Court Actions Against Projects (Section 2-New Section 112(c)):

- Further amends 42 U.S.C. § 4336f to limit a court's ability to vacate or enjoin NEPA-related agency actions unless there is a clear finding of substantial environmental harm (Section 112(c)). This is aimed at ensuring that frivolous legal challenges do not unnecessarily halt projects unless significant harm is demonstrated.

Expedited Resolution for Legal Challenges (Section 2-New Section 112(f)-(g)):

- Establishes timelines for courts to resolve NEPA-related cases (within 180 days) and appeals (also within 180 days) as per 42 U.S.C. § 4336f (Sections 112(f) and 112(g)). This provision reduces lengthy litigation that can cause delays and cost overruns.

SEC. 3. RULEMAKING

The Council on Environmental Quality shall issue a rule to implement Section 1 of this Act and its amendments not later than 6 months after its enactment.

- Prevents prolonged uncertainty or delays in applying this revised NEPA processes. This requirement aims to expedite the regulatory changes necessary for more efficient and predictable environmental reviews, aligning with the broader goals of reducing bureaucratic obstacles and enhancing the speed of project approvals.

H.R. 6129 (Rep. Yakym), “Studying NEPA’s Impact on Projects Act”

- Directs CEQ to study NEPA litigation starting between June 2023 and June 2024, analyzing the cause of each action, lead federal agency, lead plaintiff, and project outcome.
- Requires CEQ to review the length of EISs over the last 5 years and timelines to complete environmental reviews over the last 10 years.
- Mandates CEQ to publish annual updates to these studies in a single report submitted to Congress and made publicly available.

H.J. Res. 168 (Rep. Graves of LA), Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Council on Environmental Quality relating to “National Environmental Policy Act Implementing Regulations Revisions Phase 2”.

- This Joint Resolution would rescind the NEPA Phase II rule entirely and would prevent CEQ from publishing a substantially similar rule in the future.

IV. COST

The Congressional Budget Office (CBO) has not scored any of these bills.

V. ADMINISTRATION POSITION

The Administration’s position on these bills is unknown.

VI. EFFECT ON CURRENT LAW (RAMSEYER)

H.R. 6129

https://naturalresources.house.gov/uploadedfiles/bill_to_law_118hr6129ih.pdf.pdf

Westerman Discussion Draft

https://naturalresources.house.gov/uploadedfiles/permitting_reform_discussion_draft_ramseyer.pdf.pdf

**LEGISLATIVE HEARING ON DISCUSSION
DRAFT OF H.R. ___, TO AMEND THE
NATIONAL ENVIRONMENTAL POLICY ACT
OF 1969, AND FOR OTHER PURPOSES; H.J.
RES. 168, PROVIDING FOR CONGRESSIONAL
DISAPPROVAL UNDER CHAPTER 8 OF TITLE
5, UNITED STATES CODE, OF THE RULE
SUBMITTED BY THE COUNCIL ON ENVIRON-
MENTAL QUALITY RELATING TO “NATIONAL
ENVIRONMENTAL POLICY ACT IMPE-
MENTING REGULATIONS REVISIONS PHASE
2”; AND H.R. 6129, TO REQUIRE THE COUN-
CIL ON ENVIRONMENTAL QUALITY TO
PUBLISH AN ANNUAL REPORT ON ENVI-
RONMENTAL REVIEWS AND CAUSES OF AC-
TION BASED ON COMPLIANCE WITH THE
NATIONAL ENVIRONMENTAL POLICY ACT
OF 1969, AND FOR OTHER PURPOSES,
“STUDYING NEPA’S IMPACT ON PROJECTS
ACT”**

**Wednesday, September 11, 2024
U.S. House of Representatives
Committee on Natural Resources
Washington, DC**

The Committee met, pursuant to notice, at 10:02 a.m., Room 1324, Longworth House Office Building, Hon. Bruce Westerman [Chairman of the Committee] presiding.

Present: Representatives Westerman, McClintock, Graves, LaMalfa, Fulcher, Stauber, Tiffany, Carl, Rosendale, Boebert, Bentz, Hunt, Collins; Huffman, Levin, Porter, Leger Fernández, Stansbury, Ocasio-Cortez, Hoyle, Dingell, and Lee.

Also present: Representative Yakym.

The CHAIRMAN. The Committee on Natural Resources will come to order.

Before we move to opening statements, please join me in a moment of silence to remember those who lost their lives 23 years ago on September 11, 2001, as well as all those lives lost defending freedom and holding terrorists accountable in the years that followed.

[A moment of silence was observed.]

The CHAIRMAN. Thank you.

Without objection, the Chair is authorized to declare a recess of the Committee at any time. Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member.

I ask unanimous consent that the gentleman from Indiana, Mr. Yakym, be allowed to participate in today's hearing.

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. I appreciate all of you being here today to discuss a critical issue facing America: our outdated and cumbersome permitting process. And I know this issue is something that is probably viewed as controversial, but I will remind everyone that the Senate has worked on a bipartisan permitting bill that has passed out of Committee. That bill really focuses on energy. And permitting reform is something that affects all of us.

I consider myself an all-of-the-above energy proponent, and one thing for sure is we need more energy of all kinds. And the jurisdiction that we have in this Committee with NEPA affects a lot more than just energy. It affects infrastructure, it affects forestry, it affects mining, which is critical to energy and, really, anything with a Federal nexus in spending.

So, I expect this to be a heated discussion, and that is good. We need to get the issues out on the table, and we need to come up with permitting reform that works for all projects. And my friends across the aisle have approved a lot of money for mainly renewable energy projects, and I would remind them that there are more of those projects being held up by permitting than traditional energy projects. So, I expect a vigorous debate.

But at the end of the day, what is best for our country is that we get a permitting system that actually works and allows us to build things, allows us to produce our own energy, and makes us less dependent on foreign countries who have really no environmental policies in the production of energy and mining and goods that they sell to us.

The National Environmental Policy Act, or NEPA, was initially intended to promote informed decisions and assess the environmental impacts of major Federal actions. Today, however, NEPA has mutated to a significant impediment to carrying out the infrastructure and energy projects essential to America's energy and national security. NEPA reviews have become limitless academic exercises requiring agencies to amass behemoth environmental treaties, increasing project costs, and creating delays for projects ranging from transportation and infrastructure to forestry, conservation, and energy development.

If for nothing else, permitting changes are necessary to meet growing conventional and renewable energy demand. Time is not on our side unless we want to allow China to dominate the 21st century supply chain. U.S. electricity demand rose by less than 1 percent annually for decades. However, utilities and grid operators have doubled their annual forecast for the next 5 years to demand

increases of about 1.5 percent per year, the highest level since the 1990s. Experts forecast that demand by 2028 will be almost 5 percent more than 2023 consumption levels: nearly double the increase companies originally expected.

The discussion draft before us today would help address these issues and promote the development of American infrastructure and competitiveness in three main ways.

First, it would make common-sense reforms to NEPA to limit the number of projects subjected to NEPA review by ensuring projects are not automatically subject to NEPA based on the disbursement of Federal funding.

The legislation also clarifies the scope of review necessary for NEPA documents, limiting the never-ending list of topics currently considered. In 2020, the average length of final environmental impact statements was 661 pages, and the average time to complete an EIS was a whopping 4.5 years.

This brings us to the third point of emphasis in the discussion draft, which is judicial review. The bill would create timelines to expedite the litigation process, limit standing for serial litigants, and reduce vacature and injunction which serial litigants exploit to kill projects in court.

According to a recent study by the Breakthrough Institute, NEPA-related litigation takes an average of over 4 years to resolve, adding time and increasing cost to complete many projects with a Federal nexus. For many projects, years of delay and increasing cost are a best case scenario. In many cases, projects are stopped permanently by the courts or mired down in endless reviews and appeals until project proponents simply give up.

The discussion draft does not contain any carve-outs and is technologically and sector neutral. We do not pick winners and losers by listing specific energy sources or categories of projects. Just as NEPA is not exclusive to the energy sector, the bill would streamline the permitting process for all sectors of the economy, creating benefits for all Americans.

I look forward to conversation on the discussion draft, and will continue working with stakeholders to refine the legislation based on the input received.

We also have two other bills on the agenda today. H.J. Resolution 168, introduced by Congressman Graves from Louisiana, which would utilize the Congressional Review Act to nullify CEQ's recently published Phase 2 NEPA rulemaking. H.J. Res. 168 would simplify and expedite the process, and eliminate the rule and send CEQ back to the drawing board to finally comply with the FRA.

Then we have H.R. 6129, Studying NEPA's Impact on Projects Act, which is a transparency bill introduced by Representative Yakym from Indiana, which would require an annual report on NEPA-related litigation as well as NEPA document length and timelines for completing environmental reviews.

I look forward to the testimony and the discussion.

I yield back and recognize the Ranking Member for 5 minutes.

STATEMENT OF THE HON. JARED HUFFMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. HUFFMAN. Thank you, Mr. Chairman, and welcome to our witnesses.

Mr. Beard, it is especially good to see you again today, as we find ourselves mercifully inching toward the end of the 118th Congress. I see we also find ourselves unmercifully right back where team extreme started this Congress: scapegoating environmental laws and trying to advance an extreme de-regulation agenda for polluting industries.

The very first piece of legislation brought before the Full Committee in this Congress was the curiously-named BUILDER Act, courtesy of our friend from Louisiana, Mr. Graves. I say "curiously" because it wasn't about building anything, certainly not the infrastructure or clean energy resources that we need for the future. The bill was more interested in tearing down NEPA to the studs.

If my Republican colleagues were interested in building the clean energy projects that we need, one of these bills before us would do something, anything, to address the transmission issues holding these projects back. Team extreme has been conspicuously uninterested in electrical grid reform for this entire Congress; they want oil and gas. They would also have voted for the more than \$1 billion in funding that my Democratic colleagues and I secured in the Inflation Reduction Act to expedite permitting, to boost capacities in Federal agencies' environmental review offices, one of the top reasons for energy project delays.

Now, just last month, the White House explained how effective this billion-dollar investment has already been. In a short period of time, the funding has reduced the average time that it takes to complete an environmental impact statement by 6 months. Under the Trump administration, environmental reviews were sloppy and slow. Under the Biden administration, they are being done right, and they are being done much faster. We can look at the Department of Energy specifically. The results are really remarkable there. Times have been cut in half for environmental reviews by the Department of Energy. The Department of Transportation, they have been cut by a third. At the Department of Commerce, Secretary Raimondo recently explained that environmental reviews are no longer the bottleneck for chip manufacturing projects in this country.

So, for my Republican colleagues who complain endlessly about the speed of environmental reviews but voted against this very effective permitting reform that Democrats enacted, you are welcome. And if you want to work with us on speeding things up even more, let's go. But that is not what the BUILDER Act is all about. That is not what H.R. 1, the polluters over people act, is all about. And it is not what these bills before us today are about. These bills attempt to dismantle NEPA.

Big oil and other corporate polluters don't want faster reviews. They want impunity. They want to do what they want, when they want, how they want, no matter how it affects the environment, public health, or disadvantaged communities. They want to kill NEPA through the death of 1,000 cuts, and they have had some

success. Let's remember that ousted Speaker McCarthy already secured NEPA cuts when he held the whole country hostage with a wholly-manufactured debt ceiling crisis last May. He got some cuts to NEPA. But never satisfied, team extreme is back taking aim again, proposing some of the most dangerous cuts that we have seen so far, straight out of the pages of Trump's Project 2025.

Now, on the other side of the Hill, Senators Manchin and Barrasso have recently introduced a so-called permitting reform bill that includes an awful lot of giveaways to the fossil fuel industry; drastically shortens the statute of limitations for challenging unlawful permitting decisions, including those under NEPA, from 6 years to 150 days. That means communities who are impacted have less than 5 months to determine whether they need to challenge a project. That is virtually impossible in many cases. But it wasn't draconian enough for team extreme here in the House. The Chairman's discussion draft shortens that statute of limitations even further to 120 days.

But, of course, the Chairman's discussion draft is not the only thing on the docket. The other exaltation of the Project 2025 agenda is Congressman Graves' resolution to use the Congressional Review Act to overturn the Biden-Harris administration NEPA regulations. These new regulations incorporate suggestions from nearly 100 Members of Congress, helping ensure climate change and environmental justice are part of the Federal decision-making process. That is a reasonable and reality-based policy that does not sit well with team extreme.

So, let's turn our hymnals to page 533 of Project 2025, where we find, quite clearly, that it calls for these new regulations to be eliminated because they don't align with the right-wing agenda to whittle down NEPA to a stump. Not just extreme and dangerous, this stuff that we are dealing with today that we have dealt with this entire Congress is sad.

More than 50 years ago, President Nixon signed NEPA into law. It passed with overwhelming bipartisan support. Somewhere between then and now, polluters seized the agenda and NEPA became Republican enemy No. 1. There used to be Republican environmentalists in Congress, lots of them, and good ones. And now we have this agenda from team extreme.

Real, meaningful permitting reform is already happening with the funding from the IRA and executive actions from the Biden-Harris administration. We are shortening timelines. We are building clean energy infrastructure while creating hundreds of thousands of good-paying jobs. We don't need to gut NEPA, we don't need this even uglier stepchild of the Manchin-Barrasso bill, and we certainly don't need any more previews of Project 2025.

I yield back.

The CHAIRMAN. I thank the Ranking Member for his statement, and I will now begin with our Member panel to speak on our legislation. I recognize myself for 5 minutes to speak on the NEPA permitting reform bill.

I think Mr. Huffman made the point that permitting reform is needed. He mentioned that, talking about transmission lines, and actually the discussion draft we put forth would help not only with transmission lines but with all forms of NEPA permitting. And it

doesn't carve out anything for any one technology or project over another. It is not picking winners and losers. It is creating a fair process for anyone who wants to get a NEPA permit.

And we know that the bloated NEPA process significantly impacts our national interest, our economic competitiveness, and ability to build critical infrastructure. Reforming NEPA is not a partisan issue. It is a matter of national importance, and we must modernize the process to allow America to build, innovate, and grow sustainably.

Those who argue that the discussion draft before us today would only help conventional energy projects couldn't be more wrong. NEPA reviews are a significant challenge for renewable energy development. Compared to conventional energy projects, many more renewable energy projects are under NEPA review. According to the Department of Energy, 32 percent of active projects requiring either an EIS or EA were related to either renewable energy or transmission. In comparison, only 14 percent were related to conventional energy production.

Similarly, for Bureau of Land Management actions requiring an EIS, 45 percent were for renewable energy or transmission projects and only 21 percent were related to conventional energy projects.

The permitting dashboard tells a similar story. Of the 21 active FAST-41 projects, 15 are renewable energy or transmission projects, and only 1 is developing conventional energy.

Failing to act on permitting reform risks the delay or abandonment of 100 gigawatts of renewable energy, which is more electricity than the entire state of California uses annually. A rising tide of permitting reform will truly lift all boats.

Clarifying when NEPA is triggered will help all kinds of projects, especially those that receive Federal funding. The bill mandates that NEPA shall not be triggered solely based on Federal funding or an interstate effect of the action. Reining in the scope of review will shorten NEPA documents, make them more resistant to litigation, and decrease processing time.

The bill would also limit the alternatives and effects considered in NEPA documents to those within the jurisdiction of the lead agency. This would prevent agencies from considering alternatives unrelated to the action or effects that the agency does not have the expertise to quantify.

The language also adds a new definition of "reasonably foreseeable" to clarify that for EISs, agencies only need to consider environmental effects that are likely to occur in an area directly affected by the action or under the agency's control or jurisdiction, and have a close relationship between a change in the environment and the proposed action. This definition follows precedent set by the Supreme Court.

The bill would also clarify that agencies are not required to consider new scientific information after the NEPA process begins. There has been some misunderstanding of this provision, as some have tried to make the case that the bill would not allow for the consideration of new science. Again, this is not true. The bill does not say new science is not allowed, but simply says that it must be peer-reviewed. This will prevent those on both sides of a project from attempting to manufacture science for or against a project.

Lastly, the judicial review components of this bill would expedite the judicial process for NEPA claims by setting timelines for plaintiffs to file claims, for courts to issue judgments, and for agencies to correct deficiencies. The language creates a higher bar for vacature and injunction, encouraging an increased reliance on the remand so that agencies can correct identified deficiencies.

Additionally, courts must uphold projects subject to NEPA claims if the action is supported by substantial evidence in the record taken as a whole, or if a plaintiff fails to demonstrate clear and convincing evidence.

I want to close by restating that this discussion draft reflects ongoing discussions with stakeholders and Members on the other side of the aisle. I look forward to continuing talks and further refining this text to strike a careful balance that supports both the need for critical infrastructure development and responsible environmental stewardship.

With that, I yield back and recognize Mr. Graves from Louisiana's 6th Congressional District for testimony on his bill.

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

Mr. GRAVES. Thank you, Mr. Chairman. I appreciate the recognition and the opportunity to discuss the legislation.

Mr. Chairman, I find myself in a unique situation. I am here to join my friend, Congressman Huffman, in expressing concern about some of the NEPA reforms as they were implemented, and I want to quote my friend from California, and this is in regard to the NEPA changes that were included in last year's Fiscal Responsibility Act: "These are permanent, substantive reductions in environmental protection that Republicans and the fossil fuel industry have been seeking for many years. This deal is a major step backward from the climate and environmental justice wins delivered in the last Congress. And since Democrats got nothing on permitting reform we actually need." It basically goes on to suggest opposition. And it says, "Among other things, the bill limits the type of project subject to NEPA review, allows polluters to conduct their own environmental reviews, and codifies various provisions of the Trump administration's 2020 NEPA regulations."

Ranking Member Grijalva released a statement saying, "Rather than strengthening that tool," which is NEPA, "this bill gives polluters a shield, inevitably worsening an already unacceptable status quo. And as we have heard time and time again from experts, NEPA is not the problem when it comes to energy project delays. The reforms we actually need are fully-staffed, permitting offices, transmitting reforms," all these other things. And then he says, "This bill's slicing and dicing of NEPA won't do any of that." My favorite quote: "But of course, it is no surprise that when you have big oil's favorite GOP lapdogs at the negotiating table," I think he may be talking about me, Jared, "NEPA is the first target of attack. Moving forward, I urge my colleagues to see Republicans never-ending attack on NEPA for what it is, a decades-old industry-funded partisan attack that hurts all of us, but especially poor people and people of color. Once again, polluter profit is the point."

Now, Mr. Chairman, you know, the enemy of my enemy is my friend, or whatever other analogy or term we want to use now, the bottom line is it is apparent to me that my friends, Mr. Huffman and Mr. Grijalva, are opposed to what has been done on NEPA. So, I want to join my friend, Mr. Huffman, and give him an opportunity to stop this regulation from moving forward. Based upon his comments, based upon the comments of Ranking Member Grijalva, it seems that we are aligned. Perhaps for different reasons, but it seems we are aligned.

Now, of course, from my perspective, Mr. Huffman, I know that you are aware that my concerns are that the White House, throughout some of the revisions and reforms in the Fiscal Responsibility Act, whether it be in the SNAP provisions, whether it be in the TANF provisions, whether it be in the student loan provisions, and in this one, the White House has blatantly gone back on their word that they committed.

And we had the Chair of CEQ sitting right there at that table months ago, where she explicitly admitted that, in drafting the regulations, that she intentionally avoided using a term that was actually in the law. She admitted that she explicitly, explicitly avoided using a term that the law had in it because she was worried about the implications, and used a different word instead.

It is great that people feel like they just have this discretion to exercise. But thankfully, the Supreme Court recently came in with the Chevron deference decision, and made it crystal clear that these are the decisions of the Congress. And we have people, millions of people, that have lost their lives, that have given the ultimate sacrifice to allow us to have this structure of government, where we actually have representatives here that were elected by people from home to share their voice up here. We left a monarchy. We don't have a scenario where Chair Mallory can just write whatever the hell she wants.

And we have a Congressional Review Act resolution that will repeal the Biden administration's NEPA regulations because they are not consistent with the agreement. They broke trust.

And finally, for all these people that are here talking about these bedrock environmental laws, these important laws, I want to remind you the majority of infrastructure projects built across this country do not have to comply with NEPA because it is not Federal funds, because you are not triggering Federal regulatory. State and local governments have their own environmental laws, including the radical CEPA in California.

So, why is there not environmental destruction everywhere if NEPA is this amazing safety net that is there? It is because there are many, many other things in place, structures in place, frameworks in place to protect the environment because we too care about the environment.

I urge adoption of this resolution that Mr. Huffman is going to be excited about, and I yield back.

The CHAIRMAN. I thank the gentleman for his testimony, and I now recognize Representative Rudy Yakym from Indiana's 2nd Congressional District for testimony on his bill.

**STATEMENT OF THE HON. RUDY YAKYM, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF INDIANA**

Mr. YAKYM. Thank you, Mr. Chairman, for providing me with an opportunity to testify in support of my bill, H.R. 6129, the Studying NEPA's Impact on Projects Act, which I introduced with my friend, Representative Jimmy Panetta of California.

H.R. 6129 would require the White House Council on Environmental Quality, or CEQ, to publish and submit to Congress an annual report that captures key metrics on how the statutory obligations of the National Environmental Policy Act, or NEPA, impacts projects.

Though well intentioned, NEPA has, over time, become something of a four-letter word, more often associated with frivolous lawsuits, mountains of paperwork, project delays, and cost overruns than environmental protection. My bill would require CEQ to report on NEPA-related litigation, the length of required NEPA reports, and the amount of time it takes to clear the NEPA process, as well as the costs associated to taxpayers and project sponsors of NEPA-related delays. This information has been compiled in reports in the past, either on an annual or ad hoc basis. H.R. 6129 simply revives and combines these into a single report. The data collected will help Congress fulfill its essential oversight duties, allowing us to identify choke points, hold executive branch officials accountable, and highlight areas of future reform.

The NEPA process impacts all areas of our economy, from manufacturing and construction in my district to the lack of forest management in Mr. Bentz's district and the dwindling number of mining operations in Mr. Stauber's district. The massive regulatory costs associated with NEPA help maintain China's stranglehold on the critical mineral supply chains, despite the fact that we have some of the most mineral-rich territory on Earth.

NEPA has continually been hijacked by bad actors to delay, halt, and deter economic development and energy production at the expense of our constituents. For example, the 2020 report on NEPA permitting timelines found that it took an average of just under 5 years to clear the NEPA process from the notice of intent to into the record of decision. For comparison, we built the entirety of the Hoover Dam in 5 years.

But the Biden-Harris administration is trying to make it even worse, taking the bipartisan agreement on NEPA reforms in the Fiscal Responsibility Act and handing the pen to radical environmentalists to write a rule that will mean even more lawsuits, more paperwork, and more delays. If anything, this makes the report required by the Studying NEPA's Impact on Projects Act even more important to have in place.

We should be ensuring that our nation can build roads, bridges, manufacturing plants, and energy generation and transmission in a timely and efficient manner. We simply cannot afford to allow NEPA to gum up the process. Doing so will continue to jeopardize the American economy and put us at a severe disadvantage with China. The Studying NEPA's Impact on Projects Act is an important step in our work to continue reforming the permitting process. It is time to get the government and frivolous litigation out of the

way of hard-working Americans who want to make America build again.

Thank you for the opportunity to testify. And Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The gentleman yields back. I thank the gentleman for his testimony.

Mr. Huffman, did you have a request?

Mr. HUFFMAN. Thank you, Mr. Chairman. I would like to ask unanimous consent to enter a couple of things into the record, please.

To the suggestion that this is about helping renewable projects which outnumber fossil fuel projects in environmental reviews right now, there is a November 2022 article here which clarifies that fossil fuel projects going through environmental review far outnumber clean energy projects, actually to the tune of about four to one.

And then, similarly to the suggestion that these proposed bills are about helping clean energy projects that are moving forward now, there is a September 10 article from Politico where the Chairman is interviewed about the Inflation Reduction Act, stating that if it were up to him, it would be repealed in its entirety, the permitting review part, the tax credit part, all of it that is advancing clean energy.

So, thank you, Mr. Chairman.

The CHAIRMAN. Without objection, this article from November 2022 so ordered, and this article from September 10.

[The information follows:]

Fossil fuels outnumber clean energy projects in NEPA environmental review

Renewable energy is on the rise across America. But there are still lots of pipelines and other fossil fuel projects awaiting federal environmental review.

Frontier Group, November 16, 2022 by Tony Dutzik and Lisa Frank

<https://frontiergroup.org/resources/fossil-fuels-outnumber-clean-energy-projects-in-nepa-environmental-review/>

With the midterm elections now in the rearview mirror, some version of Sen. Joe Manchin's "permitting reform" legislation could soon be coming back to life.

Proposed as part of the deal that led to passage of the Inflation Reduction Act in August, the legislation would have expanded the federal government's power to build electric transmission lines, approved the controversial Mountain Valley Pipeline, and closed off various avenues for objections under the National Environmental Policy Act (NEPA). Sen. Manchin withdrew the proposal from spending legislation in September, but it could be attached to a must-pass defense spending bill during the lame duck session of Congress.

Advocates for "streamlining" environmental review argue that, with renewable energy on the rise and the nation needing to dramatically ramp up its production of clean energy to meet its climate goals, traditional forms of environmental review could slow America's transition away from fossil fuels. These arguments often cite some version of the following factoid, with this example from a Washington Post editorial:

"An analysis last year found that of the projects undergoing NEPA review at the Department of Energy, 42% concerned clean energy, transmission or environmental protection, while just 15% were related to fossil fuels."

This factoid, produced by the R Street Institute (and a similar one, also sourced to R Street, that two-thirds of the energy projects listed on the federal permitting dashboard are renewable energy projects) has been used to create the impression that the majority of energy-related projects currently subject to federal environmental review are clean energy projects.

This is not true.

The data sources used by R Street capture only a small slice of the energy-related projects subject to federal environmental review. A more complete assessment finds that the number of fossil fuel-related projects in NEPA review likely significantly exceeds the number of clean energy projects.

Missing the pipelines for the trees

The two sources cited by R Street—the federal permitting dashboard and the U.S. Department of Energy’s NEPA Policy and Compliance website—both exclude many fossil fuel projects.

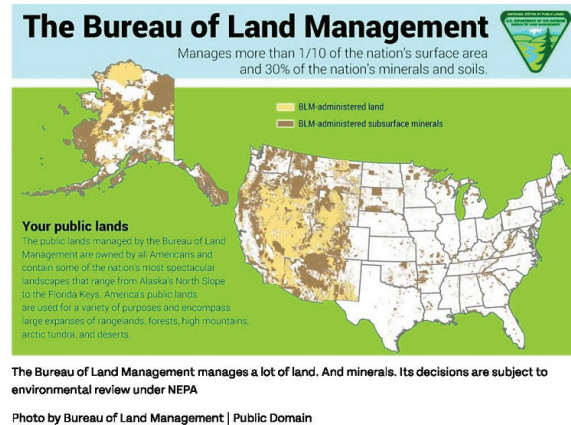
The federal permitting dashboard was created to track projects—mostly transportation projects—eligible for streamlined permitting under the 2015 Fixing America’s Surface Transportation (FAST) Act. It includes information on a small number of so-called “other projects,” but is far from a comprehensive list of energy projects facing environmental review. As of late October, the dashboard showed only two fossil fuel projects—both related to liquefied natural gas (LNG)—for which the project status was listed as “in progress” or “planned.” That’s compared to 20 renewable energy projects (16 for offshore wind) and six transmission projects.

Similarly, the Department of Energy’s (DOE) website for tracking Environmental Impact Statements and Environmental Assessments includes only a small share of the energy-related projects facing environmental review. As of late October 2022, the DOE site included three active LNG projects requiring environmental impact statements (EIS) and one requiring an environmental assessment (EA, a less-comprehensive form of environmental review that can lead either to a finding of no significant impact or requirement for further study), as well as two EISs related to the now-terminated Keystone XL pipeline, for a total of six fossil fuel-related projects. The DOE site also included seven active electric transmission projects with EISs or EAs, as well as one hydropower project and two wind projects, for a total of 10 projects that could arguably be considered “clean energy” or transmission projects.

Looking at those two sources would give the impression that the majority of energy projects in environmental review are renewable energy or transmission projects. But that is not the case. The key agencies responsible for gas pipelines and for oil and gas production on public lands (among other fossil fuel-related projects) do not consistently report to either the federal dashboard or the DOE tracker. A review of those agencies’ NEPA websites reveals a large number of fossil fuel projects currently requiring environmental review.

Oil and gas drilling on public lands and pipeline projects fill review dockets

The federal Bureau of Land Management (BLM) manages 245 million acres of surface land in the United States—one-tenth of the nation’s surface area—and 700 million acres of subsurface rights. As a federal agency, decisions related to that land and those minerals are subject to NEPA.



We reviewed the BLM's National NEPA Register for active projects classified as "fluid minerals" and "renewable energy" projects for 2022 and 2023 requiring an EIS or EA. There were 95 "fluid minerals"—that is, oil and gas—projects in the register, compared with only 11 renewable energy projects, a ratio of dirty to clean projects of more than 8-to-1.

The renewable energy projects were more likely than not to require the more comprehensive EIS, whereas the fossil fuel projects required EAs. Given their impacts on the climate and public health, fossil fuel projects likely require more stringent environmental review than they currently receive, but nevertheless, the overall "pipeline" of fossil fuel projects on BLM land requiring environmental review is far greater than that of clean energy projects.

Another federal agency, the Federal Energy Regulatory Commission (FERC), is responsible for regulating gas pipelines and infrastructure and hydroelectric projects. We reviewed FERC environmental filings for 2022, finding that 28 gas-related projects and 20 hydro-related projects (many of them license renewals for existing hydroelectric dams, rather than new-build hydro projects) were subject to environmental review in the form of an EIS or EA. [1] Unlike the projects under the jurisdiction of the BLM, numerous large gas pipeline projects have required EISs, whereas the vast bulk of hydro projects required less-rigorous EAs.

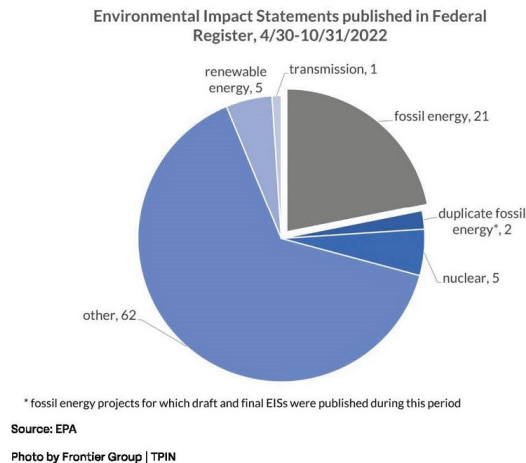
Together, the fossil fuel-related projects under the jurisdiction of those two agencies clearly outnumber the clean energy projects. But the lack of consistent data on environmental review makes a comprehensive, apples-to-apples comparison of the types of projects subject to NEPA review impossible. A 2014 Government Accountability Office report, for example, noted that "Governmentwide data on the number and type of most NEPA analyses are not readily available, as data collection efforts vary by agency."

There is, however, one source of data that provides a picture of environmental review across federal agencies.

Fossil fuel projects have dominated recent published EISs

The EPA maintains a tracking system for EISs published to the Federal Register. This source has its limitations—excluding projects that have not reached at least the stage of a draft EIS, as well as projects receiving lower levels of environmental review, such as EAs.

We reviewed this database for EISs published between April 30 and October 31, 2022—a six-month period—during which 96 draft, final or supplemental EISs were published to the Federal Register. Of those, at least 21 EISs were related to unique oil and gas projects, most of them pipelines. [2] By comparison, only five renewable energy projects had EISs published in the Federal Register during this time, along with five projects related to nuclear energy production and one transmission project. Depending on whether one's definition of "clean energy" includes nuclear power, the ratio of fossil fuel to clean energy projects in the EPA tracker is either roughly two-to-one or roughly four-to-one.



What does all this tell us?

Factoids based on incomplete data on the number and kinds of projects subject to NEPA review have been used to minimize the perceived danger that “permitting reform” will lower the level of public scrutiny and engagement related to fossil fuel projects. Our analysis shows that there are numerous fossil fuel projects currently in NEPA review and that the sheer number of those dirty energy projects likely significantly exceeds the number of clean energy projects.

Comparing the number of projects in environmental review queues, however, doesn’t tell us much that’s worth knowing, either about the trajectory of America’s energy system or the role of environmental review in speeding up or inhibiting the transition to a clean energy economy.

Comparing the number of projects doesn’t tell us anything about the kinds of projects involved—their size or their potential impacts on the environment or the climate. A single pipeline project in Louisiana for which a Final Environmental Impact Statement was published in 2022, for example, was found to be capable of carrying enough methane gas to produce 102 million tons per year of greenhouse gases (CO₂ equivalent) if all the gas were burned—increasing ^{total} U.S. greenhouse gas emissions by about 2 percent. [3] Comparing the approval of major, long-lived fossil infrastructure projects with, say, license extensions for hydroelectric plants risks comparing grapes with watermelons.

Comparing the number of projects also doesn’t tell us much about the type or duration of review to which the projects are subject. And it doesn’t tell us about projects that are not subject to thorough environmental review (such as the hundreds of BLM fossil energy projects issued “categorical exclusions” under NEPA) but should be.

Lastly, it doesn’t tell us much about agencies’ success or lack of it in moving projects through the environmental review process and/or using that process to drive better, less environmentally disruptive projects. While media coverage often focuses on delays to high-profile projects, key agencies continue to make progress in permitting clean energy projects. In fiscal year 2021, for example, the BLM approved projects supporting the addition of nearly 2.9 gigawatts of renewable energy capacity on public lands, and the agency estimates that it will permit nearly 32 gigawatts of renewable energy projects by the end of fiscal year 2025, enough to power more than 9 million homes.

The current debate over environmental review is important and timely. In some cases, environmental review may slow the pace of beneficial projects, while in other cases, current systems of environmental review may fail to subject damaging projects to necessary public scrutiny. With the nation’s climate goals hanging in the balance, and with communities around the country already burdened by pollution and disruption from fossil fuel development, targeted improvements to the system

could deliver benefits, as opposed to the broad scale weakening proposed in the Manchin bill.

Getting to that kind of a result requires good information. The fossil fuel industry is not dead, its products continue to pollute our air and harm the climate, and fossil fuel production wells, pipelines and processing facilities still damage our environment and our health. Environmental review is essential to alert the public to potential harms from those projects and hold the fossil fuel industry accountable to protecting the public.

With any luck, there will soon be a day when the only major energy projects being proposed in the United States are clean energy projects. The data, however, are clear: That day has not yet arrived.

Notes:

[1] Excluding projects that consist solely of abandonment of existing pipeline infrastructure.

[2] Excludes two EISs for projects that had draft and final EISs filed during this period to avoid double-counting. Excludes EIS for oil and gas decommissioning activities off the Pacific coast.

[3] Final Environmental Impact Statement at page 4-125.

Westerman talks permitting, plans to file ESA bill

E&E News, September 10, 2024 by Garrett Downs

<https://www.eenews.net/articles/westerman-talks-permitting-plans-to-file-esa-bill/>

House Natural Resources Committee Republicans will introduce long-awaited legislation Tuesday to overhaul the Endangered Species Act.

The bill is coming at an active time for Natural Resources Chair Bruce Westerman (R-Ark.), who released National Environmental Policy Act legislation last week. During a chat with reporters Monday, he also discussed his views on Republican plans for the Inflation Reduction Act.

The “ESA Amendments Act of 2024,” obtained by POLITICO, would require agencies to analyze the economic and national security impacts of listings. The legislation would also limit lawsuits and take greater account of state, tribal and local government input.

“It’s obvious over the course of the last 50 years the well-intentioned ESA has been anything but successful. It’s being used . . . almost a weapon as something that can help stop development under the guise of protecting endangered species,” co-sponsor Rep. Dan Newhouse (R-Wash.), the Western Caucus chair, told POLITICO.

Westerman and Newhouse released a draft of the legislation this summer. Westerman also included ESA changes to his “America’s Wildlife Habitat Conservation Act,” H.R. 7408. Democrats have criticized both.

Rep. Jared Huffman (D-Calif.) in July said, “We’ve seen this tired anti-ESA agenda trotted out by Team Extreme and their Western Caucus allies so many times that it’s like one of those cult movies, maybe ‘The Rocky Horror Picture Show,’ where everyone knows the words.”

Climate law’s future

Broad changes to the ESA to benefit energy and other development projects have little to no chance of passing the current Congress, even with bipartisan permitting talks underway. But Republicans are showcasing ideas they would roll out if they won the White House and both chambers of Congress this November.

On a recent trip to Scandinavia, Westerman kept getting asked the same question: Will the Inflation Reduction Act survive a second Donald Trump term?

His answer: The IRA is likely here to stay, but Republicans might make some tweaks. “I don’t think the IRA would get repealed under a Trump administration,” Westerman said in an interview with reporters Monday.

“The fact that Democrats passed that, put it into law, it would be very difficult to repeal the IRA,” he said. “But I think the Trump administration would have a different focus on how the money got spent.”

Westerman’s comments come amid a fierce intraparty battle over the IRA’s fate. Trump and many of his fellow Republicans are calling for a full repeal of the law.

But some in the GOP are urging their leadership to maintain the law’s clean energy and manufacturing investments and tax credits, which are heavily concentrated in Republican districts and have strong support from industry.

Just last week, Trump said in remarks to the Economic Club of New York that he plans to “rescind all unspent funds under the misnamed Inflation Reduction Act, which Democrats agreed after it was approved, that it wasn’t for that purpose, it was for other purposes, like giveaways.”

Earlier that day, Trump’s economic adviser and former U.S. Trade Representative Robert Lighthizer suggested Trump may at least consider sparing portions of the IRA.

“Our general view is that—and my personal view is that the Inflation Reduction Act was an absolute monstrosity, with its reckless tax credits, but also its mandates,” Lighthizer said. “But that’s not to say that there aren’t some parts that he may want to at least consider.”

Westerman did not praise any piece of the IRA. He simply said it was unlikely that Republicans would have a large enough majority or enough consensus to repeal the IRA.

“I think it would be equivalent to saying we’re going to repeal Obamacare,” Westerman said, referring to the Affordable Care Act, which Republicans have tried and failed to repeal for years.

“If it were up to me, we would repeal the IRA,” he said. “But the reality is that it’s passed into law and it would take 60 votes in the Senate to repeal the IRA.”

Westerman said Republicans may try to make changes to the law via the budget reconciliation process—the same way it passed—if they can pull off an electoral sweep. That could mean repurposing some of the bill’s funding to priorities that Republicans prefer.

“There might be something we could do with some of the funding through reconciliation to repurpose some of the funding,” Westerman said. “But I don’t want to make bold claims that we can repeal the IRA unless . . . we get 60-plus Republicans in the Senate, control the House and win the White House.”

Permitting, NEPA bills

Westerman also spoke about his new draft legislation—up for a hearing Wednesday—to overhaul the National Environmental Policy Act process to speed up permitting for energy projects.

The plan aims to speed up or avoid NEPA scrutiny for projects by raising the threshold for triggering environmental reviews, limiting the scope of reviews and handicapping legal challenges.

One provision, according to a fact sheet, “is aimed at ensuring that projects are not unnecessarily halted by frivolous legal challenges unless significant harm is demonstrated.”

The bill comes on a parallel track to permitting legislation being pushed in the Senate by Energy and Natural Resources Chair Joe Manchin (I-W.Va.) and ranking member John Barrasso (R-Wyo.), S. 4753, which received bipartisan support in a committee markup.

Westerman said he wanted his bill to be more sweeping across industries and not solely energy-focused, like the Manchin-Barrasso bill. The Republican said the bill would “mesh nicely” with the Senate proposal.

“Energy is the theme of the Senate bill,” Westerman said. “What we’re focusing on is how to streamline NEPA, and across the board NEPA. . . . We want to streamline it for infrastructure, pipelines, siting renewable energy projects, all of the above.”

Westerman suggested his bill and the Manchin-Barrasso bill would have to be merged to get both across the finish line. That probably won’t happen until after the election, Westerman said.

"I think it's going to take some form of the bill that we've got, to mesh with the Manchin-Barasso bill to get it through the House," he said. "I don't think anything's going to happen in September on a permitting bill."

Manchin meeting

Manchin, when asked about the Westerman bill, said he and Westerman are "having a meeting."

The Natural Resources Committee's ranking member, Arizona Democrat Raúl Grijalva, has already panned the bill as a "corporate polluter overhaul."

But Westerman said he's still hoping to get some bipartisan support for his measure. He's been negotiating NEPA reform with Rep. Scott Peters (D-Calif.) for several months.

Peters last week said Westerman's measure is separate but that the pair are still talking—a sentiment Westerman echoed.

"Still trying to get to a point where we can call it bipartisan," Westerman said. "I think he and I generally agree on most of the stuff in there. . . . It's just working through the details."

The CHAIRMAN. I now want to introduce our second panel of witnesses.

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

To begin to talk and present your testimony, please press the "talk" button on the microphone.

We use timing lights. When you begin, the light will turn green. When you have 1 minute remaining, the light will turn yellow. And at the end of the 5 minutes, the light will turn red, and I will ask you to complete your statement.

I will also allow witnesses to testify before we have Member questioning.

Our first witness is Mr. Chip Jakins. He is the CEO of the Jackson Energy Membership Cooperative, and is stationed in Jefferson, Georgia.

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

STATEMENT OF CHIP JAKINS, CEO, JACKSON ENERGY MEMBERSHIP COOPERATIVE (EMC), JEFFERSON, GEORGIA

Mr. JAKINS. Thank you. Good morning, Mr. Chairman, Ranking Member, and the members of this Committee. Thank you for the opportunity to testify today. My name is Chip Jakins, and I am the CEO of Jackson Electric Membership Cooperative, and Jackson EMC is one of the largest electric cooperatives in the country, providing power to more than 260,000 homes, businesses, and farms across Northeast Georgia. I appreciate the opportunity to testify today on behalf of both Jackson EMC and the National Rural Energy Electric Cooperative Association that represents co-ops across the nation.

As with all electric cooperatives, Jackson EMC is a not-for-profit, and is owned by the members we serve. Electric co-ops operate at cost, meaning every dollar required to build, maintain, and operate our electric system is passed directly to our members.

As with many co-ops across the country, we are seeing communities grow and demand for electricity rise. Over the past year, Jackson EMC has added more than 8,000 meters to our

distribution system. And to keep pace with this growth, we invested over \$87 million last year, and plan to invest another \$213 million over the next 4 years to upgrade lines, improve reliability, and to accommodate our expanding membership.

We are also helping connect homes and businesses with reliable broadband service. In 2022, Jackson EMC partnered with two companies to provide access to our existing fiber network, with plans to bring broadband service to over 8,000 underserved homes and businesses. Jackson EMC's energy portfolio is supplied and supported by what we refer to as a family of companies in Georgia that includes Oglethorpe Power Corporation, Green Power EMC, Georgia Transmission Corporation, and Georgia System Operations Corporation, all working together to serve our members.

This year, Georgia's electric co-ops marked a historic achievement with the safe and successful expansion of Plant Vogtle, the nation's latest and only new nuclear units in decades, completing the largest generator of clean energy in the United States.

Oglethorpe Power has increased our investment in natural gas, while reducing our coal generation, which is projected to lower our carbon emissions by 41 percent in 2025, down from 2005 levels, even while annual energy generation has increased by 68 percent during that same time.

Let me emphasize that because it is important: We increase production by 68 percent and lowered emissions by 41 percent in a 20-year period, clearly showing that Jackson EMC and the co-ops of Georgia are committed to the environment.

Another example of this is our formation of Green Power EMC, an EMC designed to be on the forefront of alternative energy. Green Power EMC produces enough renewable energy to power more than 265,000 electric co-op households across Georgia each year.

Despite our recent achievements with new nuclear, natural gas, and solar generation, our state needs more energy capacity. To meet that rising demand, Oglethorpe power has announced plans to invest approximately \$2.3 billion in the construction of new, lower emission natural gas projects in Georgia. As energy demand rapidly grows and as we work to meet those needs, it is vital that we have a timely and predictable permitting process to advance all types of energy projects, ensure reliable and affordable power, and strengthen both our economy and the environment.

Electric co-ops and other utilities are subject to NEPA environmental reviews for projects that require Federal permits, rights-of-way, and other approvals. This includes building and modernizing our electric grid, adding new and cleaner energy sources, and developing broadband infrastructure. It also impacts our ability to conduct basic operations on existing facilities in a timely fashion for things like routine operations and maintenance work, raising the risk of service interruptions.

We appreciate the Committee's work last year to enact sensible and reasonable improvements to NEPA. Congress should ensure that these provisions are implemented in a way that maximizes their effectiveness and appropriately balances the need to protect the environment and provide our members with predictable, cost-effective energy. As Congress considers the additional NEPA

modernization provisions, there are a couple of recommendations I would like to highlight.

First, Congress should identify solutions to address delays and costs that result from unnecessary litigation. This should include reasonable time limits for filing lawsuits.

Second, Congress should also ensure that NEPA does not favor any particular project, regardless of fuel source or type, to give more certainty as we build for the future.

Thank you in particular to Chairman Westerman, Representative Peters, and Representative Graves, as well as others on this Committee for their collaborative work to find bipartisan solutions to these problems. Electric cooperatives like Jackson EMC are deeply committed to serving our communities and our members with reliable and affordable electricity and broadband. We look forward to assisting you in identifying improvements that can be made to NEPA and other permitting processes as we meet the needs of our communities.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Jakins follows:]

PREPARED STATEMENT OF ERNEST “CHIP” JAKINS, CEO, JACKSON ELECTRIC
MEMBERSHIP COOPERATIVE

Chairman Westerman, Ranking Member Grijalva, and members of the Committee, thank you for the opportunity to testify today. My name is Chip Jakins, and I am CEO of Jackson Electric Membership Cooperative (EMC). Jackson EMC is one of about 900 electric cooperatives (co-ops) providing electricity to approximately 42 million people in 48 states covering 56% of America’s landmass. I appreciate the opportunity to testify today and offer a perspective on behalf of both Jackson EMC and the National Rural Electric Cooperative Association (NRECA).

Electric co-ops support appropriate consideration of potential environmental impacts for energy and broadband projects, but the National Environmental Policy Act (NEPA) has become unworkable, outdated, and is in need of reform. Existing NEPA permitting processes present significant challenges to our ability to meet the future needs of our consumer-members and communities. The process for conducting federal environmental reviews should be modernized for all projects, regardless of fuel source or type, to give more certainty as we build for the future and ensure electric co-ops can continue to provide safe, reliable, and affordable electricity to American families and businesses. As this Committee works to develop the next steps forward in permitting reform, electric cooperatives believe there are great opportunities to make improvements to NEPA and to address litigation that unnecessarily delays these projects.

About Jackson Electric Membership Cooperative

Jackson EMC is one of the nation’s largest electric cooperatives and the largest of Georgia’s 41 electric cooperatives. As a not-for-profit cooperative, we are owned by the members we serve. When we completed our first year of supplying power in 1940, Jackson EMC served fewer than 2,000 electric meters on only 680 miles of power lines with two substations. In 2024, we provide power to more than 264,000 homes and businesses on 15,226 miles of power lines with 84 substations. Back in 1940, we finished the year with just nine employees. In 2024, we now have 436 employees. We’re also honored that our members named us number one in Customer Satisfaction among electric cooperatives by the J.D. Power 2023 Electric Utility Residential Customer Satisfaction Study.

Together, Jackson EMC and other Georgia electric cooperatives jointly provide power to roughly 4.5 million people. We do this through a “Family of Companies” that are jointly owned and operated to the benefit of our members. The “Family of Companies” includes Oglethorpe Power Corporation (OPC), Green Power EMC, Georgia Transmission Corporation (GTC), and Georgia System Operations Corporation (GSOC).

I am currently a board member of three of those four companies: OPC, Green Power EMC and GSOC. Oglethorpe Power Corporation is among the nation’s largest generation cooperatives and one of the primary energy producers in Georgia. Green

Power EMC is dedicated to helping Georgia's electric cooperatives find renewable energy sources and is the largest operational green power program in the Southeast. GSOC manages and operates the statewide telecommunication and fiber network that delivers secure network communications and real-time monitoring services. This cooperative family provides electric generation, transmission, and system monitoring resources needed to serve our members.

Given that electric cooperatives are not-for-profit entities, any new costs borne by an electric cooperative must ultimately be passed to the end-of-the-line consumer-members. Because our system is made up of 90% residential accounts, any increase in the cost of energy due to burdensome regulations and federal red tape is disproportionately borne by the rural and suburban families we serve. Jackson EMC actively identifies ways to lower energy costs and pass those savings to our consumer-members as part of our commitment to providing affordable and reliable electric service.

Our ability to deliver affordable, cost-effective power allows us to support the community in various impactful ways. Our tagline is "Your Power. Your Community." This shows that we go beyond providing power; we also invest in our community. Jackson EMC is known for and proud of our commitment to community service, with employees and leadership alike emphasizing that we are more than just a power provider—we are dedicated to genuinely improving lives.

Our employees have made significant contributions, including volunteering over 1,200 hours with 15 local nonprofits. The Jackson EMC Foundation has expanded its role from granting funds to also training nonprofits, with contributions from our Operation Round Up program totaling over \$1.3 million in the past year alone. This program is funded by our members who agree to round up their bills each month. One hundred percent of these funds go to support various causes, such as local food banks, health clinics, youth programs and emergency shelters. Since its inception, the Jackson EMC Foundation has donated more than \$20.6 million to support local charitable organizations. The more efficient we are in our delivery of power to our members, the more we can support the community with the resources it needs.

Meeting Growing Community Needs

To meet the electrical needs of our members, Jackson EMC needs a streamlined and predictable path to future generation. Over the past year, Jackson EMC has added more than 8,200 meters to our distribution system, raising the total to over 264,000 meters. Our service area, which includes some of the fastest-growing communities in the U.S., has seen a 14 percent increase in meter count over the past five years. In fact, the U.S. Census Bureau recently named the area centering on Jefferson—where our cooperative headquarters is located—as the fastest growing "micro" area in the U.S. Our members used over 5.7 billion kilowatt hours of electricity last year. To keep up with this growth, we invested over \$87 million in our distribution network and plan to invest \$213 million over the next four years to upgrade lines, improve reliability, and accommodate our expanding membership. We anticipate adding more than 15,500 new meters by the end of 2026.

In addition to natural growth, we are seeing an increase in non-traditional demands on our system due to data centers. Meeting these demands will require a greater emphasis on streamlined and predictable permitting and planned growth. These large-scale loads can benefit the system because of their high-capacity factor. The nature and shape of their load profiles can help cooperatives like Jackson EMC use their power supply resources more efficiently and effectively, thus benefiting all members. Cooperatives like Jackson EMC are exploring ways to serve these data center loads by working in a pro-competitive multiple-cooperative approach. As cooperatives evolve to meet the demands of our members, our permitting procedures must also evolve and adapt.

Streamlining regulatory permitting can ensure our members have full access to the range of power supply resources that are available. Jackson EMC's energy portfolio includes a range of resources such as natural gas, hydroelectric, solar, nuclear and coal-fired power. This year the electric cooperatives in Georgia marked a historic achievement with the safe and successful commercial operation of Plant Vogtle Unit Four, completing our nuclear expansion project that is now the largest generator of clean energy in the United States. This is the first new, advanced nuclear project to come online in the US in more than 30 years. Jackson EMC is proud of our large ownership stake, a \$2.2 billion investment by Jackson EMC alone. This investment will now provide emission-free baseload energy to Georgians for the next 60–80 years.

Jackson EMC also has a substantial renewable energy portfolio. In 2023, our members enjoyed 120 million kilowatt hours of renewable energy through our partnership with Green Power EMC, with solar power making up more than half of

that-enough to power over 5,500 homes. Electric cooperatives around the country are also committed to closing the digital divide and connecting rural homes and businesses with reliable broadband service. In 2022, Jackson EMC partnered with TruVista and North Georgia Network (NGN) to provide access to our existing fiber network. This allowed these companies to quickly and efficiently build “last mile” fiber broadband service to 8,000 homes and businesses within our service territory. Jackson EMC worked closely with the Georgia General Assembly to ensure we could continue to use of our existing fiber network to help our members get access to highspeed internet. Additionally, in an effort to expand rural broadband to all unserved areas in Georgia, Jackson EMC and our cooperative colleagues, partnered with the Georgia Public Service Commission to create a financial incentive for broadband providers to serve rural territories.

Planning for Tomorrow’s Energy Demands Today

As noted above, Jackson EMC and other Georgia electric cooperatives are owners of and are provided power by Oglethorpe Power and Green Power EMC. Generation cooperatives such as these are committed to exploring any energy source that keeps electricity reliable and affordable. By having a diverse portfolio of generation facilities, we are able to keep costs down and the power on for our consumer-members.

Over the years, our generation cooperative, Oglethorpe Power has proactively made strategic shifts in its generation portfolio to lower its carbon footprint, even while generating more electricity. Over the last 15 years, Oglethorpe Power has strategically decreased our coal generation and increased our investment in natural gas, with eight acquisitions representing more than 3,600 MW. Oglethorpe Power projects that its carbon emissions intensity rate will decline by 41% in 2025 over 2005 levels, even while the annual energy generation has increased by 68%.

Despite our recent achievements with new nuclear, solar and natural gas generation in Georgia, our state needs more energy capacity. As Jackson EMC adds approximately 8,000 new meters a year, we need new capacity to meet our future needs. To help meet that rising demand, Oglethorpe Power has announced plans to invest approximately \$2.3 billion in the construction of two new natural gas generation projects in Georgia.

First, a new 1,200-megawatt combined-cycle plant will be constructed in Forsyth, Georgia. This \$2 billion facility will be one of the most efficient and lowest-emitting natural gas plants in the state. Additionally, Oglethorpe Power will begin construction on a new 240-megawatt peaking plant at the Talbot Energy Facility in Box Springs, Georgia. This \$360 million project will feature dual-fuel capability and enhance year-round resiliency. Both natural gas facilities are expected to enter commercial operation by mid-2029.

These projects are part of Oglethorpe Power’s broader strategy to shift its generation portfolio toward cleaner and more efficient energy sources. To meet the growing demand for renewable energy, Jackson EMC and other cooperatives rely on Green Power EMC. Green Power EMC is a not-for-profit organization dedicated to helping Georgia’s electric cooperatives find renewable energy sources. It’s the largest operational green power program in the Southeast. Green Power EMC works with Georgia-based providers to secure renewable energy from sources like solar, landfill gas, hydro, wood waste and wind. Currently, the program supports a portfolio that produces over 1,540 megawatts of energy, enough to power more than 265,000 electric cooperative households each year, with 1,500 megawatts coming from solar. By 2025, the capacity is expected to grow to over 2,100 megawatts.

Growing demands for electricity require an effective and resilient transmission system to deliver energy where it is needed. As mentioned earlier, this is supported in Georgia by a “family of companies,” approach which includes three key not-for-profit organizations: Oglethorpe Power Corporation (OPC), Georgia Transmission Corporation (GTC), and Georgia System Operations (GSOC). Our transmission cooperative, GTC, is jointly owned by Georgia’s 38 electric cooperatives, and plays the crucial role of planning, building, and maintaining the high-voltage transmission lines and substations needed to transport power from generation facilities to local electric cooperatives, such as Jackson EMC. Cooperatives rely on GTC to develop and build the necessary transmission infrastructure, making it a vital partner in our network. In addition, we have the Georgia Integrated Transmission System (ITS), which is a uniquely shared transmission ownership model between cooperatives, municipalities, and an investor-owned utility. The ITS has provided increased transmission access and lower cost to Georgians for more than 50 years. Permitting Reform is Needed

As energy demand rapidly grows, it is also vital that we have a timely and predictable permitting process. In general, NEPA establishes a process by which federal agencies assess the environmental impacts of proposed major infrastructure

projects. Specific, substantive reviews required by other federal laws—like the Endangered Species Act (ESA), Clean Water Act (CWA), and others—are layered within the federal permitting process. Over the last 40 years, this already complicated and often redundant federal permitting process has continually expanded, requiring more time and resources than originally intended to complete needed infrastructure projects.

Electric cooperatives are often subject to the NEPA process for projects that require federal permits, rights-of-way, and other approvals such as building and modernizing electric and broadband infrastructure, bringing cleaner energy to the grid, and adding capacity as electricity demand increases. They also often are subject to NEPA for approvals to conduct routine operations and maintenance work, vegetation management, and wildfire mitigation activities when they operate across public lands and national forests. Many electric co-ops also receive federal loans and grants that trigger NEPA reviews.

A reasonable and reliable regulatory process requires transparent and predictable environmental review and permitting processes that result in durable decisions to enable informed investments. The current NEPA landscape of years-long, unconstrained reviews, followed by extended litigation risk deprives the American public of needed projects and infrastructure and undermines electric co-ops' provision of affordable, reliable, and safe electricity. It also impedes cooperatives' ability to conduct basic operations in their existing facilities, raising the risk of service interruptions and blackouts. For example, co-ops often can't conduct necessary, basic maintenance and vegetation management operations in a timely fashion, which increases the risk of adverse events like wildfire.

NEPA also plays a role in rural broadband deployment. Fiber broadband installation along electric utility infrastructure not only expands access to reliable, high-speed internet service, but also improves grid resiliency and reliability, enables the integration of new generation sources, and allows for real-time monitoring of the electric network. However, if excess fiber is leased to a third party for retail broadband, or if an electric co-op decides to use that fiber to also provide retail broadband, this could result in the permitting agency requiring a duplicative environmental review. This unnecessary action can take years and present a significant cost, even when the utility is seeking to leverage the same right-of-way and same utility poles that provide electric service to the same communities. Streamlined approaches to actions that are known to have minimal environmental impacts, such as aerial broadband deployment on existing electric infrastructure, would allow federal agencies to focus their time and resources on projects that truly have a significant environmental impact.

Permitting Reform Recommendations

The federal permitting process is not keeping pace with rising demand for electricity and broadband service in our everyday lives, making these discussions around NEPA reform all the more necessary.

We appreciate the Committee's desire to build upon last year's efforts and to continue improving the federal environmental review and permitting process. Based on electric cooperatives' experiences with environmental reviews and NEPA, I'd like to recommend four permitting priorities for consideration:

1. **Fortify 2023 Fiscal Responsibility Act (FRA) Reforms.** We appreciate this Committee's work to enact historic NEPA reforms, including recommendations from electric cooperatives, as part of last year's FRA. This legislation established firm time limitations for NEPA reviews, introduced new opportunities for project sponsors to engage directly throughout the NEPA process, and broadened use of "categorical exclusions" (CEs) for projects that do not have significant environmental impacts. Unfortunately, the Council on Environmental Quality's (CEQ) recent NEPA "Phase 2" regulations, which provides direction to all federal agencies on how to conduct environmental reviews, undermines the effectiveness of the FRA modernization provisions. The NEPA Phase 2 Rule expands analysis of climate change-related and environmental justice effects, adopts mitigation requirements for which NEPA provides no authority, and imposes new requirements making CEs less efficient and more burdensome. This NEPA Phase 2 Rule will complicate environmental reviews, increase litigation risk for essential electric infrastructure projects, increase risks of adverse events like wildfire, and further complicate our ability to maintain affordable, reliable, and safe electricity.

2. **Limit unnecessary litigation of NEPA reviews.** Attempts to litigation-proof NEPA reviews lead to unnecessarily expansive NEPA documents and lengthy permitting timelines. If a NEPA document is challenged, legal action can lead to further delays. This results in inflated costs, excessive paperwork, and unnecessary delays in the permitting process that are particularly impactful for not-for-profit electric cooperatives. To mitigate these issues, Congress should establish reasonable time limits for filing lawsuits after a final agency decision. Additionally, parties wishing to challenge a NEPA review should be required to have raised their concerns during the public comment period. This would ensure that agencies are notified of potential issues and have the opportunity to address them before any legal action is taken.
3. **Ensure NEPA remains a procedural statute and project neutral.** The fundamental goal of NEPA is to ensure that federal agencies carefully consider the significant environmental impacts of their decisions. Congress should ensure that NEPA, as a procedural statute, does not favor one particular outcome and that the NEPA process does not elevate certain environmental considerations above others inconsistent with NEPA's objective, project-specific approach. For example, agencies should not be required to consider renewable energy alternatives to fossil fuel projects as mitigation measures, particularly when that does not meet the project sponsor's needs of providing reliable and affordable power, as has been proposed by recent CEQ NEPA Greenhouse Gas Interim Guidance.
4. **Clarify the scope of NEPA reviews.** The scope of NEPA reviews—which CEQ expanded through the NEPA Phase 2 rule—opens up new avenues for litigation challenges thus causing agencies to prepare more expansive, longer, and duplicative NEPA analyses in an attempt to reduce litigation risk. For example, requiring federal agencies to study environmental effects beyond their statutory authority and expertise increases litigation risk and results in permitting delays. The result is overbroad NEPA documents that do not advance NEPA's objective of informing the agency's decision and delay infrastructure projects that are critical to communities across the nation. Congress took meaningful steps to narrow the scope of NEPA reviews through the reforms it enacted last year and should make further amendments to clarify that federal agencies must only analyze environmental impacts that are within their jurisdiction.

Conclusion

Protracted and often unnecessary litigation coupled with lengthy reviews and administrative burdens only add to the challenge of navigating the federal permitting process. Electric cooperatives like Jackson EMC are deeply committed to serving our communities with reliable and affordable electricity. I am grateful for the opportunity to share the cooperative perspective today and look forward to working with this committee to improve the permitting process.

Thank you for your time and I am happy to answer any of your questions.

The CHAIRMAN. Thank you for your testimony, Mr. Jakins. I now want to recognize our next witness, Mr. Keith Pugh. He is the former President of the American Public Works Association, and he is stationed in Asheville, North Carolina.

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

STATEMENT OF KEITH PUGH, PRESIDENT 2022-2023, AMERICAN PUBLIC WORKS ASSOCIATION, ASHEVILLE, NORTH CAROLINA

Mr. PUGH. Thank you, Mr. Chairman, Ranking Member, and members of the Committee. I appreciate the opportunity to testify. My name is Keith Pugh, once again proud to represent the American Public Works Association and our 32,000 members before this Committee.

In 1988, I started my career in public works as a municipal engineer with the City of Greensboro, North Carolina, and I worked my way all the way up to Director of Engineering Services for the City of High Point, North Carolina, a position I held for 15 years. Today, I continue my service with Withers Ravenell, a 100-percent employee-owned, full-service civil and environmental engineering firm.

APWA members serve in the public and private sectors, providing expertise at all levels of government on public works projects. They are dedicated to providing sustainable infrastructure and services to rural and urban communities. Our members survey, plan, design, build, operate, and maintain transportation, water supply and treatment, stormwater and flood control, waste, and recycling systems, emergency planning and response, and other facilities essential to the economy and quality of life nationwide.

APWA supports these efforts through our education and accreditation programs that promote best practices and adoption of latest methods. NEPA serves as the regulatory framework for protecting America's environment while undertaking vital projects.

In the half century since NEPA's enactment, the environment has become a prime consideration in all infrastructure. However, like any policy in place through 10 administrations, NEPA needs modernizing to protect our environment but also to address inefficiencies. APWA appreciates the reforms adopted since I last testified.

The changes, finalized as part of the Fiscal Responsibility Act, are critical to creating a more coordinated permitting process. Extending the One Federal Decision framework to all infrastructure projects is a positive step forward, but more needs to be done.

Many localities face costly increases from new or stricter regulatory requirements, and litigation expenses remain a deterrent to infrastructure improvement. APWA supports a reasonable timeline for judicial review as a logical next step to allow for a more predictable and productive process. Public works professionals are doing what is best for their communities and incorporate feedback from the people they serve daily.

Furthermore, APWA has consistently placed high priority on respecting local control and strongly encouraging the Federal Government and industry to coordinate with state and local governments on infrastructure.

Thanks to anticipatory planning, most public works projects do not entail litigation. However, with more complex projects come more avenues for litigation, which means easier projects may be favored at the expense of projects that could be transformational in terms of benefits for the health, safety, and economic livelihood of some communities.

Some communities are even relying on risky and at times failing infrastructure. They are deterred by the unpredictable cost of litigation, along with the uncertainty of time spent in court with the outcomes. We see the consequences of under-investment from avoiding storm and wastewater improvements that could reduce the hazards of flooding and contamination to stunted transportation systems that are congested, offer few options and limited mobility for travelers, and higher emissions.

While affluent communities may be able to afford sufficient representation, our disadvantaged communities may not. And rather than risk a battle in court of the perfect being the enemy of the good, they choose neither.

Some simple projects may even be intimidating for small tribal and rural communities who are concerned about NEPA. In my experience, when Federal funds were introduced, we projected at least a 25 percent increase in the project budget, though the final cost could be significantly higher than that. This was especially true for small local agencies who lacked other financing resources, staff capacity, and had to contract for outside assistance. For programs to be effective, the whole process should not be so intimidating that it dissuades some of our most-in-need communities from attempting projects.

Accordingly, we are encouraged to see the draft text notes a major Federal action cannot be based solely on the use of Federal funds. The discussion draft maintains opportunity for legal recourse, but reiterates NEPA could be tailored more towards improving a project as opposed to an open-ended process that consumes resources with nothing to show at the end.

If a project proves contentious and requires an EIS and supplemental review, the case with appeals could still take 3 years in court. This, along with limits in place for completing an EIS, means some projects could still take over 5 years before construction begins. Consequently, some in public works may have desired a more limited timetable. And though we understand this legislation would apply to all projects under NEPA, and as practitioners responsible for a diverse array of infrastructure, we believe this represents a sincere attempt at reaching consensus.

Public works with advances in technology is conducting vastly more public engagement and collecting more data for analysis to inform decisions than ever before. We are stewards for our communities and can deliver projects in an efficient manner. It would be a disservice to not incorporate public works and further permitting reform, as this would affect many communities' quality of life.

The CHAIRMAN. Mr. Pugh, I am going to have to interrupt and ask you to wrap up.

Mr. PUGH. Thank you for your continued work on permitting.

[The prepared statement of Mr. Pugh follows:]

PREPARED STATEMENT OF B. KEITH PUGH, 2022–2023 PRESIDENT OF THE AMERICAN
PUBLIC WORKS ASSOCIATION

Chairman Westerman, Ranking Member Grijalva, and Members of the Committee, thank you for the opportunity to provide testimony. My name is Keith Pugh, and I am proud to once again represent the American Public Works Association (APWA), our 32,000 members, and public works professionals before this Committee. I started my career in public works as a municipal engineer with the City of Greensboro, N.C. in 1988 and worked my way up to the role of Director of Engineering Services for High Point, N.C., a position I held for 15 years. Today, I continue my work with WithersRavenel, a 100% employee-owned multidisciplinary civil and environmental engineering firm that delivers engineering, planning, and surveying services across North Carolina.

APWA members serve in the public and private sectors providing expertise at all levels of government. They provide dedicated sustainable infrastructure and services to all people in rural and urban communities, both small and large. Working in the public interest, our members plan, design, build, operate and maintain transportation, water supply and wastewater treatment systems, stormwater management,

drainage and flood control infrastructure, waste and refuse disposal systems, public buildings and grounds, emergency planning and response, and other structures and facilities essential to the economy and quality of life nationwide. APWA supports these efforts through our education and accreditation programs that promote best practices and adoption of new technologies and techniques.

NEPA is important to public works and serves as the regulatory framework for protecting America's environment while allowing the undertaking of vital infrastructure projects. In the half century since NEPA's enactment, environmental protection has become a prime consideration in the planning, design, and construction of infrastructure. Like any policy that has been in place through ten administrations, NEPA has needed to be updated to address societal needs. We need to protect our environment, but also apply lessons learned and identify efficiencies to reduce unhelpful impediments. On behalf of APWA, I would like to express our gratitude for the reforms already adopted since I last testified. The changes initially proposed through the BUILDER Act and finalized as part of the Fiscal Responsibility Act are critical to creating a more coordinated permitting process. Extending "One Federal Decision" to all infrastructure projects is delivering a more predictable, transparent, and timely federal review and authorization process. These commonsense reforms, like joint review schedules with time and page limits that allow for flexibility depending on complexity, build on prior successful work in the Fixing America's Surface Transportation (FAST) Act and the Infrastructure Investment and Jobs Act (IIJA).

Federal funds combined with these changes are encouraging more communities to pursue overdue updates, maintenance, and in some cases full replacement or new critical infrastructure. However, challenges remain while supply chain shortages and inflation have somewhat eased. Many localities are facing costly increases from new or stricter regulatory requirements, and concerns about liability remain a deterrent to some improvements. While much of the agency process has been clarified by the previously enacted reforms, the legal process has not. APWA supports this as a logical next step in continuing the progress in streamlining for all infrastructure. A reasonable timeline for judicial review should allow for a more predictable and productive process. Public works professionals are doing what is best for their communities as they incorporate feedback from the people they serve every day in their work. Furthermore, APWA has consistently placed high priority on respecting and enhancing local control for infrastructure and strongly encouraging the federal government and industry to coordinate with state and local governments on infrastructure.

Thanks, in part, to anticipatory planning, most public works projects do not trigger litigation. However, the more a project becomes complex, the more avenues there are for litigation, which means easier projects may be favored at the expense of projects that could be transformational in terms of the benefits for the health, safety, and economic livelihood of some communities. Some are even relying on risky, aging and at times failing infrastructure. They are not necessarily deterred by the expense of improvements, but rather the accompanying and difficult to predict costs from potential litigation and where they will get the resources for such legal contests along with uncertainty of the outcomes in court. We see the consequences of underinvestment for people and the environment across the country; from avoiding stormwater and wastewater improvements that could reduce the hazards of flooding and contamination; to stunted transportation systems that are congested, offer few options and limited mobility for travelers, and higher emissions. While larger, more-resourced communities may be able to afford sufficient legal representation, smaller or disadvantaged communities may not be able to do this. Rather than risk a court battle over the perfect being the enemy of the good, they choose neither.

Some seemingly simple projects may even be intimidating for small, tribal, and rural communities that are concerned about going through NEPA. In my experience, when federal funds are introduced, we've projected at least a 25% increase in the project budget, though the final cost could be significantly higher. This is due to administrative burdens placed on the local government, design professionals working on the project, the contractor, and the inspection close-out process. This was especially the case for small agencies that could not access other financing sources, lacked staff capacity, and had to contract with outside assistance thereby spending a large portion of project dollars on permitting requirements rather than on infrastructure improvement. For infrastructure programs to be most effective, the whole process should not be so intimidating that it dissuades some of our most-in-need communities from attempting projects. Accordingly, we are encouraged to see the draft text includes a provision that notes an agency action may not be determined

to be a major federal action solely based on an interstate effect or the provision of federal funds for the action or related project.

The draft legislation also maintains the opportunity for legal recourse, if necessary, but reiterates that NEPA is a procedural statute and could be tailored more toward finding solutions, such as improvements to a project as opposed to an open-ended process that consumes resources with nothing to show at the end. If a project proves contentious and requires an Environmental Impact Statement (EIS) and supplemental review, the case with appeals could still take three years in the court system. This, along with the time limits in place for completing an EIS, means some projects could still take more than five years before construction even starts. Consequently, some in public works may have desired a more limited timetable, though we understand this legislation would apply to all projects under NEPA. As practitioners responsible for a diverse array of infrastructure, we believe this represents a sincere attempt at reaching a consensus. Just as agency procedures needed more coordination, legal procedure needs this now.

We further appreciate the legislation seeking to better define the parameters for review and engagement, including:

- The definition of “reasonably foreseeable” being in the area directly affected by the major Federal action, directly under the control of the agency, and having a reasonably close causal relationship between a change in the environment and the project.
- Sensible limits on undertaking new research unless new research is essential to a reasoned choice among alternatives, and if the overall costs and time frame of obtaining this research are reasonable.
- No federal agency shall be required to consider any research after receipt of a completed application, though an agency may consider relevant research made available after a completed application, but not after a final agency action, if the information is peer reviewed and determined to be essential in determining environmental effects.
- Agencies adhere to the scope of their jurisdiction and if errors or deficiencies are found, the agency responsible can address those issues within 180 days and the project can proceed during this period provided the activity does not directly concern the issues and will not pose a risk of a proximate and substantial environmental harm.
- Comments shall be limited to matters relating to the proposed action with respect to which such cooperating agency has jurisdiction by law or special expertise.

As for civil actions:

- When there is a public comment period, the civil action must be pursued by a participant in the proceedings who submitted a comment during the public comment period and the comment was sufficiently detailed to put the applicable Federal agency on notice of the issue upon which the party seeks review and is related to the comment.
- The civil action must concern an alternative or environmental effect and does not challenge categorical exclusions.
- A review of a supplemental environmental document shall be based on information contained in the final document that was not included in a previous document.
- Projects can only be canceled, delayed or stayed by a court when the court determines a project will pose a risk of proximate and substantial environmental harm and there is no other equitable remedy available as a matter of law.
- A project sponsor that approved an extension of a deadline may not obtain review of a failure to act in accordance with such deadline unless the agency is delaying for reasons other than those necessary to complete their review.
- Lastly, the Standard of Review stating a decision shall be upheld by a court if it is supported by substantial evidence in the record taken as a whole, whether such evidence is specifically referenced by the agency. The court shall affirm if there is enough relevant evidence for reasonable minds to accept the decision even if it is possible to draw contrary conclusions from the evidence. Additionally, a decision shall be upheld by a court if a challenging claim is not substantiated by clear and convincing evidence.

Combined, these efforts will help to reduce duplicative work by preventing unnecessarily redoing steps in the process, more clearly delineating responsibilities, and promoting more collaboration from start to finish. Public works, thanks to advances in technology, is receiving more feedback from affected parties and collecting more data for analysis to base their decisions on than ever before.

It is our goal to examine and offer a reasonable number of alternatives for projects that are technically and economically feasible. Whether it is roads, bridges, emergency management, sanitation or water, we are stewards for our communities and know we can deliver these projects in an efficient manner and to not incorporate public works in further permitting reform would be a disservice to the public in terms of quality of life and taxpayer resources.

Chairman Westerman, Ranking Member Grijalva and Members of the Committee, thank you and your staff for holding this hearing and your continued work on permitting. We are especially grateful for the opportunity to submit this statement and speak to the experiences of our members. APWA remains committed to assisting you and Congress as you progress on these reforms.

QUESTIONS SUBMITTED FOR THE RECORD TO KEITH PUGH, FORMER PRESIDENT,
AMERICAN PUBLIC WORKS ASSOCIATION

Questions Submitted by Representative Westerman

Question 1. Mr. Pugh, you mentioned localities are facing costly increases from new or stricter regulatory requirements, could you go into greater detail what some of those might be?

Answer. Yes, for water infrastructure alone there are new regulations for PFAS in drinking water along with pending ones for wastewater, and by October 16, 2024, we are expecting a tighter Lead and Copper Rule. With an estimated 9.2 million lead service lines across the country, according to EPA's 7th Drinking Water Infrastructure Needs Survey and Assessment (April 2023), the total estimated cost to replace all lead service lines alone could exceed \$90 billion. The national cost of the PFAS drinking water rules is estimated by the EPA to be upwards of \$15 billion, or \$1.5 billion annually. However, analysis requested by the American Water Works Association using EPA data shows the annualized cost of the final rule could be three times higher than the EPA's estimate. The updated cost analysis determined that during the next five years, more than 7,000 water system entry points will need capital improvement investments to install PFAS treatment systems for drinking water at a collective cost of from \$37.1 billion to \$48.3 billion. This is highly plausible given that EPA has already been forced to significantly revise upwards their cost estimates between the proposed and finalized rules. These combined with more pending rules will outstrip federal funds and force many communities to absorb much of the cost burden.

Additionally, more broadly there is still uncertainty with regards to the most recent update of the National Environmental Policy Act (NEPA) regulations in terms of the cost and ability to achieve compliance with the climate and community engagement provisions. We have witnessed advances in emissions reductions over the lifetime of projects and utilizing technology to better inform the public and receive feedback. However, there remains a lack of clarity as to how these metrics will be measured and they could counteract gains in streamlining from the agreement reached in the Fiscal Responsibility Act.

Question 2. Mr. Pugh, you mentioned that public works, thanks to advances in technology, is conducting more engagement with affected parties and collecting more data for analysis to base their decisions on, could you speak more to that?

Answer. Certainly, a lot of members like myself and their communities are on social media and using different channels through the internet to tailor communications and receive and process feedback from the communities public works serves in addition to traditional means like city and council meetings and other public meetings where we can interface with people in-person. Additionally, public works professionals are also embracing opportunities through the use of technology such as drones and other modeling that allows for better mapping of impacts of different scenarios. Increasingly public works are also exploring applications for Artificial Intelligence in these processes, and this is something APWA is working on keeping members informed. We do this through online learning and seminars, but also our conferences like our big annual one, PWX which we just held in Atlanta.

Question 3. Mr. Pugh, in your testimony you reference litigation as the perfect being the enemy of the good, could you elaborate more on examples of that or types of projects like water infrastructure and transportation?

Answer. For water infrastructure, some of our members are dealing with older cities attempting to address combined sewer systems where stormwater and wastewater are mixed and discharged into larger bodies of water particularly when there is higher precipitation/rain. Unfortunately, some cities are hesitant to address this issue out of fear that the improvements they approve are deemed insufficient and result in litigation and substantially higher expenses as evidenced in the upcoming Supreme Court case, San Francisco vs. EPA. In the meanwhile, this means water quality in some communities sees further deterioration as actions are put off, which leads to more harm to the environment, like aquatic species, and further limits on public use. The same can also extend to levees and dams where communities are stretching these pieces of infrastructure past their useful life and risking failure, this can mean a lower quality of life from regular flooding or devastating consequences in terms of property destruction and loss of life from a major storm event.

For transportation, a possible good example is the Reconnecting Communities program, which is meant to help reconnect neighborhoods that were historically divided by highway construction. Unfortunately, there are already multiple cases going on such as in Portland, Oregon and Buffalo, New York that are delaying changes that would allow for the construction of new parks/greenspace by capping existing highways. These types of litigation also create a chilling effect amongst other communities that may reconsider pursuing such projects in the future. Additionally, the same can apply to mass transit projects which would allow more efficient movement of large groups of people and lower emissions, we have seen this happen before in cities like a light rail extension in Saint Paul, Minnesota and another in Los Angeles, California which took nearly five years to reach a legal conclusion after the Environmental Impact Statement (EIS) was issued.

Question 4. Mr. Pugh, in your testimony you indicated that the provision if errors or deficiencies were found was very important to your members, could you elaborate?

Answer. Yes, our members work every day to address issues with projects and the fact they can proceed during the agency's 180-day remediation period with other parts of the project is extremely valuable since this can help significantly limit delays. In turn, when the error or deficiency is addressed by the agency, our members can shift focus to working on that part of the project and thereby remain productive while looking out for the communities they serve in terms of safety and the environment. Public works professionals already make similar shifts in resources when dealing with projects that include federal and non-federal components in order to keep making progress toward completion and adhere to timelines.

The CHAIRMAN. Thank you for your testimony. Our next witness is Mr. John Beard, Jr. He is the Founder, President, and Executive Director of the Port Arthur Community Action Network, and is stationed in Port Arthur, Texas.

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

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

Mr. BEARD. Good morning to you and the Ranking Member, members of this Committee, and thank you for this opportunity to provide testimony today.

Before I go any further, I would like to say that I am wishing Ranking Member Grijalva a speedy recovery and all the best in his current situation.

My name is John Beard, and I live in Port Arthur, Texas, an environmental justice community affected by institutionalized racism. I am a second generation petrochem worker and founder of

the Port Arthur Community Action Network, which I am also a CEO.

Port Arthur is a predominantly Black community along the Gulf Coast of Texas that has been an economic and energy sacrifice zone for the fossil fuel industry. Port Arthur is home to one of the largest refineries in the country, the largest, as well as three other major refineries and eight additional oil and gas operating facilities. And it is the epitome of the afflictions directly associated with environmental pollution. For instance, the asthma rate for children in Port Arthur is twice the national average.

While the Environmental Protection Agency has set the sulfur dioxide threshold at 75 parts per billion, nearby facilities in West Port Arthur routinely surpass 100 parts per billion, proving the sage words of environmental scholars and practitioners Dr. Beverly Wright and Dr. Robert Bullard, who described communities like mine as having the wrong complexion for protection.

The Gulf Coast has been lucrative for fossil fuel executives who are benefiting financially from fossil fuel extraction at the cost of the health and well-being of fenceline communities, predominantly low-income communities of color who breathe in toxins released from these facilities. From Port Arthur, to Houston, to Saint James Parish, Louisiana, our communities are interconnected by a shared struggle that is intensifying in severity.

Communities in the Gulf Coast stand at the intersection of social justice movements rooted in environmental justice, climate justice, civil rights, feminist economies, and much more. Our fight for justice goes beyond the Gulf Coast, as communities of color throughout the United States disproportionately bear the brunt of toxic facilities.

The National Environmental Policy Protection Act, or NEPA, is one of few Federal laws that provides some protections and requires environmental review and meaningful community engagement for proposed actions in those communities like mine. And that is why NEPA has been called the people's environmental law. This is not my first time coming here to provide testimony on proposed reforms to NEPA.

In February 2023, I came to Washington from Port Arthur to share the experiences of my community, my experiences with NEPA, and my recommendations for how Congress should look at reforms in legislation. Specifically, I was here to discuss H.R. 1571, the BUILDER Act. I warned this body that the legislation of the BUILDER Act, and other attempts to deregulate and weaken NEPA, represent a clear and present danger for residents of Port Arthur and similar communities.

Now, just over a year later, this Committee is once again considering a draft discussion that would not only codify all the pieces of the BUILDER Act, but would go even further in preventing democratic due process and government accountability.

In addition, under consideration today are two other bills, H.J. Resolution 168 and H.R. 6129, which, taken together, will essentially codify a climate denial and further entrench environmental injustice and advance the pernicious myth that NEPA is somehow a barrier to development. This suite of legislation is a deafeningly, loud and alarmingly clear message to my community that our

voices simply just don't matter, and that Federal Government should be able to spend our tax dollars on projects with complete disregard for our opinions and the impacts on our health and safety.

The legislation under consideration today are brazen attempts to undermine these core guarantees, and I urge the Committee to oppose these measures. Port Arthur Community Action Network has submitted a separate letter, along with a number of other organizations, outlining our concerns with the individual bills.

As we discuss the future of NEPA, we must shift away from determining ways that NEPA should be reformed, and instead imagine ways in which NEPA can be strengthened to better serve and protect communities like mine, based on the best scientific understanding and analysis available today.

The science is clear: communities of color disproportionately bear the brunt of polluting industries and the accompanying health impacts. The science also shows the climate crisis already has and will continue to be a threat multiplier wherein communities struggling today will be the first and worst impacted by impending climate disasters.

Inequality in the United States continues to grow, from disparities in life expectancy to the racial wealth gap. But to speed up development of renewable energy the Federal Government doesn't need to limit democratic participation and planned or environmental protections.

We cannot bring equality, let alone equity, in our nation without intentionally putting protections for communities of color into law. As such, if this Committee is interested in meaningful permit reform, it should focus on legislation such as the Clean Electricity and Transmission Acceleration Act, or the Donald McEachin Environmental Justice Act for All, which ensures a transition to a just and equitable clean energy economy and future.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Beard follows:]

PREPARED STATEMENT OF JOHN BEARD, JR., FOUNDER AND CEO OF PORT ARTHUR
COMMUNITY ACTION NETWORK

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

The gulf coast has been lucrative for fossil fuel executives, who benefit financially from fossil fuel extraction at the cost of the health and wellbeing of fenceline communities, predominantly low-income communities of color, who breathe in the toxins released by these facilities. From West Port Arthur, Texas, to Houston, Texas, to St. James Parish, Louisiana—our communities are interconnected by a shared struggle that is intensifying in severity. We are the fenceline of polluting industries and the frontline of climate catastrophes as increasingly powerful hurricanes

continue to batter our coasts and are anticipated to become more powerful and calamitous if we continue to pollute our atmosphere with toxic emissions that result from the extraction, refining, and emitting of fossil fuels. With each storm, we witness the destruction of our communities, coupled with the massive displacement of our communities and deeper entrenchment into poverty.

Port Arthur, home to one of the largest concentrations of oil refineries in the nation, with three major refineries and 8 additional oil and gas operating facilities, is the epitome of the afflictions directly associated with redlining. For instance, the asthma rate for children in West Port Arthur is twice the national average. In comparison to the average Texan, Black residents in Jefferson County, where Port Arthur is located, are 15% more likely to develop cancer and 40% more likely to die from cancer.¹ Sulfur dioxide, a hazardous chemical that is released by fossil fuel facilities like those in West Port Arthur, has been correlated with an increase in strokes, pulmonary diseases, and death.² While the Environmental Protection Agency (EPA) has set the Sulfur Dioxide threshold at 75 parts per billion, nearby facilities in West Port Arthur routinely surpass 100 parts per billion,³ proving the sage words of environmental justice scholars and practitioners Dr. Beverly Wright and Dr. Robert Bullard who describe communities like mine as, “the wrong complexion for protection.”⁴

And while the fossil fuel industry argues that oil and gas development placement in West Port Arthur supports the local economy, the unemployment rate of my community has continued to grow in spite of fossil fuel industry expansion.⁵ Additionally, the proximity of West Port Arthur to fossil fuel facilities and operations continues to exhibit an adverse impact on property values—in effect, reducing them to levels that are lower than when some of them were originally purchased. The impacts of redlining are still felt in communities like West Port Arthur and other cities and states nationwide—in “blue states” just as much as in “red states” and throughout Indigenous communities.

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

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

This is not my first time coming here to provide testimony on proposed reforms to NEPA. In February of 2023, I came to Washington D.C. from Port Arthur, Texas to share the experience of my community, my experience with NEPA, and my recommendations for how congress should look at “reforms” in legislation. Specifically,

¹“Fumes Across the Fence-Line: The Health Impacts of Air Pollution from Oil & Gas Facilities on African American Communities”, National Association for the Advancement of Colored People (NAACP); November 2017. Article found at: <https://naacp.org/resources/fumes-across-fence-line-health-impacts-air-pollution-oil-gas-facilities-african-american>

²“Port Arthur, Texas: American Sacrifice Zone”, Natural Resources Defense Council; Article found at: <https://www.nrdc.org/onearth/port-arthur-texas-american-sacrifice-zone>

³“Any Way the Wind Blows: A Koch-owned chemical plant in Texas spent years running from the Clean Air Act. New evidence suggests it bent the law until it broke,” Naveena Sadasivam, Clayton Aldern; Grist, February 2023; Article found at: <https://grist.org/project/accountability/koch-oxbow-port-arthur-texas-clean-air-act-pollution/>

⁴“The Wrong Complexion for Protection: How the Government Response to Disaster Endangers African American Communities”, Robert D. Bullard, Beverly Wright, 2012, Article found at: <https://muse.jhu.edu/book/17926>

⁵“Inequity in consumption of goods and services adds to racial-ethnic disparities in air pollution exposure”, Tessum et. al, March 2019, Article found at: <https://www.pnas.org/doi/full/10.1073/pnas.1818859116>

⁶“The 2020 Report of the Lancet Countdown on Health and Climate Change: Responding to Converging Crises,” The Lancet, vol. 397, no. 10269, pp. 129-170, 9 January 2021. [https://www.thelancet.com/article/S0140-6736\(20\)32290-X/fulltext](https://www.thelancet.com/article/S0140-6736(20)32290-X/fulltext).

I was here to discuss H.R. 1577, the “BUILDER Act.” I warned this body that legislation like the BUILDER Act and other “attempts to deregulate and weaken NEPA represent a clear and present danger for residents of West Port Arthur and surrounding communities.” At that time, I urged this committee that “as we discuss the future of NEPA, we must shift away from determining ways that NEPA should be “reformed” and instead imagine ways in which NEPA can be strengthened to better serve and protect communities based on the best scientific understanding and analysis available today. The science is clear—communities of color disproportionately bear the brunt of polluting industries and the accompanying health impacts. The science also shows us that climate change already has, and will continue to be, a threat multiplier, wherein communities struggling today will be the first and worst impacted by impending climate catastrophes. Inequality in the United States continues to grow—from America’s disparities in life expectancy to the racial wealth gap. We cannot bring equality, let alone equity, in our nation without intentionally putting protections for communities of color into law.”

Unfortunately for the residents of Port Arthur, and the millions of other people living in sacrifice zones near polluting facilities around the country, many parts of the BUILDER Act were passed into law as a part of the Fiscal Responsibility Act just months after my testimony. Now, just a little over a year later, this committee is considering a discussion draft that would not only codify other pieces of the BUILDER Act, but would even go further in preventing due process and government accountability. In addition, under consideration today are two other bills, H.J. Res. 168 and H.R. 6129, which, taken together, will essentially codify climate denial, further entrench environmental injustices, and advance the pernicious myth that NEPA is somehow a barrier to development. This suite of legislation is a deafeningly loud and alarmingly clear message to my community that our voices don’t matter and that the federal government should be able spend our taxpayer dollars on projects with complete disregard for the impacts on our health and safety.

Before turning to a discussion of the legislation under consideration today, it is worth noting why NEPA is an absolutely critical tool for frontline communities like Port Arthur. NEPA enshrines four core, common sense principles into government decisions. First, NEPA ensures the government will not make a decision, spend taxpayer dollars, or build infrastructure without first looking at the impacts. For decades, courts have made it clear that to fulfill this responsibility, agencies need to look not just at environmental, but also economic, health, climate, and environmental justice impacts. Second, the law rightly requires agencies to be transparent by disclosing those impacts to the public so that decisions on how our taxpayer dollars are spent are not shielded from public scrutiny. Third, NEPA guarantees decisions are democratic by making clear the government needs to meaningfully engage the public before approving actions that may impact their communities. Finally, the law provides for justice and accountability—if the government ignores impacts, tries to operate behind closed doors, or avoids engaging the public, then we can hold it accountable in the courts.

The legislation under consideration today are brazen attempts to undermine these core guarantees, and I urge the Committee to oppose these measures. Port Arthur Community Action Network (PACAN), along with our partners, is submitting a separate letter outlining our concerns with the individual bills and I am including that below:

H.J. Res. 168:

Unfortunately, H.J. Res. 168 is an unwarranted and ill-conceived attack on congress’ bipartisan agreement that would weaken environmental protections and slow environmental review and permitting decisions at federal agencies. A key driver of a more effective permitting process is providing clarity and certainty to agencies, project sponsors, and the public on exactly how and when agencies should conduct reviews under NEPA. By increasing community participation, the “Bipartisan Permitting Reform Implementation Rule” will result in improved energy and infrastructure projects. Too often, unresolved conflicts between communities and project developers can result in prolonged reviews, delayed project timelines, and costly litigation. Studies have shown that federal agencies can help resolve these conflicts by proactively engaging with communities early and often.

Furthermore, by passing H.J. Res. 168, under the Congressional Review Act, Congress would forbid CEQ from issuing any future regulations substantially similar to the current rule. Paradoxically, the stated purpose of the legislation that its sponsor has advanced is to ensure the proper implementation of the FRA. This rule faithfully implements the changes included by Congress in the FRA and changes required to comply with repeated court rulings on the application of NEPA to issues

including climate change and environmental justice. These changes align the implementation of NEPA with the law. The effect of passing this resolution would be to make it nearly impossible for CEQ to effectively implement the changes to NEPA regulations that Congress required in the FRA or have been required by courts.

As such, this resolution is counterproductive and would only create legal uncertainty for federal permitting decisions to the detriment of project sponsors and the public alike.

Discussion Draft of H.R. ____ (Rep. Westerman), To amend the National Environmental Policy Act of 1969, and for other purposes:

Similarly, Representative Westerman’s legislation is an attack on the principles of government accountability, public input, and review provided for under NEPA and its implementing regulations. The bill radically limits the scope of reviews by federal agencies and entirely eliminates government accountability when agencies fail to adequately consider the health, environmental, or economic impacts of their decisions. **If passed, this legislation would fundamentally undermine the purpose of NEPA, codify climate denial, and essentially silence the voices of frontline communities and local governments.**

As an initial matter, the entirety of this bill is seemingly premised on the persistent but demonstrably false myth that NEPA reviews are the primary cause of permitting delay. This theory has been comprehensively examined and thoroughly debunked by administrations of both parties through numerous studies, including those conducted by the Congressional Research Service (CRS), the Government Accountability Office (GAO), the U.S. Department of Treasury, and other federal agencies and academia.¹ CRS has repeatedly concluded that NEPA is not a primary or major cause of delay in project development. Instead, CRS identified causes entirely outside the NEPA process, such as lack of project funding, changes in project design, and other factors. Subsequent studies have confirmed that to the extent that there are delays within the NEPA process, they are not attributable to the law or regulations themselves but rather to lack of staff and funding—a problem that Congress began addressing in the Inflation Reduction Act (IRA) by including historic investments for environmental review. Building a more robust process for a federal environmental review workforce is an essential reform needed to ensure the timely permitting of projects.

Concerningly, this bill would also essentially eliminate meaningful judicial review. **The ability to challenge violations under NEPA and obtain an injunction before a project impacting the health, economy, and environment of frontline communities like mine and the broader public is essential to accountability and the underlying purpose of requiring environmental review. An environmental review process without meaningful judicial review would undermine the ability of communities to have their voices heard by allowing agencies to simply look the other way regardless of public input.** Meanwhile, legal challenges to NEPA decisions are rare, contrary to the often-repeated myth that NEPA is simply a tool for frivolous litigation. Agency data and a review of court filings demonstrate that less than .25% of actions subject to NEPA result in litigation.² Overwhelmingly, the clear majority of actions subject to NEPA go unchallenged.

This legislation must consider the extensive actions that have been taken by the Biden-Harris Administration and Congress to promote effective and efficient environmental reviews and ensure time for robust implementation for proposed projects. Alongside several reforms made by Congress in the FRA and implemented by the “Bipartisan Permitting Reform Implementation Rule,” this Administration has taken several actions to reform federal permitting. As a result of these changes, the Biden-Harris Administration has cut six months off the median time it takes agencies to complete environmental impact statements. In particular, the Department of Energy has reduced the time it takes to complete environmental impact statements by half. These changes, aided by investments made by Congress in the IRA and Infrastructure Investment and Jobs Act (IIJA), are also a direct result of regulatory changes made in the last year by the Biden-Harris Administration. **Additional actions taken by Congress threaten to increase uncertainty and undo the progress made by this administration in creating a more inclusive and efficient environmental review process.**

H.R. 6129 (Rep. Yakym)—Studying NEPA’s Impact on Projects Act

Despite its title, this legislation seems to completely disregard the impacts of NEPA on projects. Singularly focused on page lengths, time frames, and litigation, the bill entirely ignores what the actual impacts the NEPA process may have on improving project outcomes and fulfilling the statutory purpose of NEPA to improve the human environment for present and future generations. If CEQ is required to issue an annual report on the impacts of NEPA on projects, it should be charged with evaluating how negative health, environmental, and economic impacts were avoided or mitigated by going through the required review process. If this were a serious attempt to assess the impacts of NEPA, then there would also be a requirement for CEQ to determine how many public comments were received and how projects or decisions were improved by meaningful engagement with communities. A sincere interest in how review and meaningful engagement impact federal decisions would also include a requirement to determine what kinds of costs were avoided by avoiding impacts, improving project designs, or reducing health impacts. If the goal of this bill is to improve NEPA, then it should include an assessment by CEQ of agencies staff and resources and how lack of funding may be impacting the ability of agencies to efficiently and meaningfully conduct reviews. However, there are no such requirements in this legislation.

As we discuss the future of NEPA, we must shift away from determining ways that NEPA should be “reformed” and instead imagine ways in which NEPA can be strengthened to better serve and protect communities based on the best scientific understanding and analysis available today. The science is clear—communities of color disproportionately bear the brunt of polluting industries and the accompanying health impacts. The science also shows us that the climate crisis already has, and will continue to be, a threat multiplier, wherein communities struggling today will be the first and worst impacted by impending climate catastrophes. Inequality in the United States continues to grow—from America’s disparities in life expectancy to the racial wealth gap. We cannot bring equality, let alone equity, in our nation without intentionally putting protections for communities of color into law. As such, if this committee is interested in meaningful “permitting reform”, it should focus on legislation such as the “Clean Electricity and Transmission Acceleration Act” or the “A. Donald McEachin Environmental Justice For All Act,” which ensures a transition to a just and equitable clean energy economy future.

The CHAIRMAN. Thank you for your testimony, Mr. Beard. Our final witness is Ms. Heather Reams. She is the President of Citizens for Responsible Energy Solutions, and is based in Washington, DC.

Ms. Reams, you are now recognized for 5 minutes.

STATEMENT OF HEATHER REAMS, PRESIDENT, CITIZENS FOR RESPONSIBLE ENERGY SOLUTIONS (CRES), WASHINGTON, DC

Ms. REAMS. Thank you, Mr. Chairman, Ranking Member Grijalva, and members of this Committee. Thank you for the opportunity to be here on behalf of Citizens for Responsible Energy Solutions, known as CRES, and to testify on this important pending legislation. I am Heather Reams, President of CRES, and an advocate for innovative solutions that reduce emissions and meet global energy demands while increasing America’s competitive edge.

I am pleased to be here today to support the permitting reform bills under consideration because of four key reasons: our nation has growing energy demands; our nation needs to be economically competitive; our nation needs to reignite manufacturing; and our nation needs to take care of the environment.

First, permitting reform will help meet growing energy demands. By 2050, forecasts show both domestic and global energy demand and consumption rising. Permitting reform measures like those

being considered today will help many of the bottlenecks and uncertainty energy developers face, and will enable a more predictable Federal policy to review, approve, and deploy new energy projects faster and at greater scale. This allows the United States to continue to be a net energy exporter, providing emissions reductions at home and abroad.

Second, permitting reform will enhance America's economic competitiveness. America leads the world in American innovation and clean energy innovation, but lacks deployment in part due to a cumbersome permitting process. These inefficiencies delay projects, discourage investment, and increase costs. Streamlining the Federal permitting system means lower energy costs for consumers, attracting new investments, maintaining current investments, and the timely completion of projects, all of which are crucial to maintaining a competitive edge.

Third, permitting reform will drive manufacturing dominance. As this Committee well knows, the United States is more reliant than ever on foreign sources for minerals and resources needed by our advanced manufacturing and clean technology sectors. Once again, the Federal permitting process is working against our national interest, and the opportunity for a manufacturing resurgence and clean tech leadership is compromised by bureaucratic hurdles and frivolous litigation.

Fourth, permitting reform supports environmental progress. Without question, the current permitting system is inconsistent with the environmental benefits of the advancement of clean energy. In fact, according to the American Clean Power Association, 100 gigawatts of domestic clean energy projects are at significant risk of delay due to permitting issues, equating to an additional 550 million metric tons of carbon emissions into the atmosphere in just this decade.

So, for those who oppose modernizing NEPA, not scrapping NEPA, modernizing NEPA, and other permitting reforms because of the risks to the environment, ignore environmental risks and climate impact of delays inherent in the current inefficient permitting system. Simply put, every day that clean energy projects are delayed is a day we are not lowering emissions.

Fortunately, the momentum on permitting reform is building. With the recent Senate action and increased House engagement evidence, why we are here today, there is opportunity to enact meaningful, bipartisan permitting reform. CRES is proud to support the three bills under consideration today and offer our thoughts on how they could improve Federal permitting.

First, CRES is pleased to support Chairman Westerman's NEPA reform discussion draft. This is a meaningful step to updating the NEPA process. Specifically, reducing unnecessary delays both in the Federal agency processes and in the court; ensuring access to courts for those who meaningfully engage in the process, while setting limits to ensure that adjudication is timely and comes with certainty; clarify and focus what triggers a major Federal action so that there is uniformity throughout the Federal Government; and providing long-needed direction to agencies on what to study within impact analysis, which would reduce opportunities for frivolous litigation.

CRES also supports Representative Graves' Congressional Review Act to overcome CEQ's NEPA Phase 2 implementing regulations. Congress directed CEQ to simplify the NEPA process, but instead we have a 430-page rule. Simply, that made it more complex. The bipartisan CRA signals to seek to CEQ to indeed simplify and implement the law as Congress intended.

Finally, CRES supports Representative Yakym's bipartisan Studying NEPA's Impact on Project Act, because it increases transparency and public information around NEPA.

We encourage the Committee to move each of these bills forward, and continue its work enacting robust and bipartisan reforms. Increasing America's competitiveness, meeting growing energy demand, recapturing American manufacturing dominance, and achieving the environmental progress we all desire should be the outcomes we are looking for.

Thank you, and I look forward to your questions.

[The prepared statement of Ms. Reams follows:]

PREPARED STATEMENT OF HEATHER REAMS, PRESIDENT, CITIZENS FOR
RESPONSIBLE ENERGY SOLUTIONS

Chairman Westerman, Ranking Member Grijalva and distinguished members of the House Natural Resources Committee, thank you for the opportunity for Citizens for Responsible Energy Solutions (CRES) to testify today on pending legislation. We are grateful for this committee's demonstrated leadership in pursuing permitting reforms and appreciate the opportunity to testify on three bills that seek to address facets of our broken permitting system.

I am Heather Reams, president of CRES, and we are a non-profit advocacy organization, founded over a decade ago, supporting responsible, conservative solutions to address our nation's energy, economic and environmental security while increasing America's competitive edge. CRES supports energy innovation that reduces emissions, rather than focusing on the source of energy. Based in Washington, D.C., CRES advocates for the advancement and deployment of cutting-edge clean energy technologies with the goal of both reducing global emissions and ensuring reliable and affordable energy.

Permitting reform is critical for advancing innovative technologies and unlocking the American resources necessary to meet growing energy demands.¹ Permitting reform will also increase American competitiveness, recapture American manufacturing dominance, reduce our reliance on adversarial nations and achieve the environmental progress we all desire. I would like to touch on these key themes that underline the necessity of the bills we are considering today.

Meeting Energy Demand: As our country enters a period of increased energy demand due to advanced manufacturing and data centers, permitting reform is the key to unlocking reliable, resilient and abundant energy. The largest expected increases for energy consumption by 2050 are in the industrial sector where energy consumption increases as much as 32 percent and in the transportation sector where energy consumption increases as much as eight percent.² To meet growing demand at home, time is not on our side. However, when coupled with international demand, the urgency for faster project permitting in the U.S. becomes even clearer.

Since 2019, U.S. energy production is greater than U.S. energy consumption—allowing the U.S. to become a net-exporter of energy.³ Looking forward, worldwide energy demand will continue to increase, and the U.S. plays a central role in meeting global demand while mitigating emissions as our energy exports offer a

¹ CRES Forum, "Permitting Modernization and Reform", June 2, 2022, <https://cresforum.org/publications/permitting-modernization-and-reform/>.

² U.S. Energy Information Administration, "Annual Energy Outlook 2023: Narrative", March 16, 2023, <https://www.eia.gov/outlooks/aeo/narrative/index.php#ExecutiveSummary>.

³ U.S. Energy Information Administration, "U.S. Energy Facts Explained", July 15, 2024, <https://www.eia.gov/energyexplained/us-energy-facts/>.

carbon advantage.⁴ In the 2023 International Energy Outlook, the U.S. Energy Information Administration (EIA) indicates that global energy consumption is expected to increase through 2050, outpacing efficiency gains and driving continued emissions growth.⁵ Specifically, their projections show:

- Primary energy demand will increase by up to 57 percent by 2050 compared to 2022.
- EIA expects renewables will meet the bulk of new energy demand through the projection period.
- EIA projects demand for oil and natural gas to increase through 2050 along with growth in global energy demand, including up to 57 percent increased global demand for natural gas.

When we consider our domestic needs with expected international demand forecasts, it becomes clear the U.S. must continue its leadership role in all forms of energy production. But meeting those demands will be increasingly difficult under today's federal permitting regime. Permitting reform measures, like those being considered today, will help address many of the bottlenecks and uncertainty developers are facing and will enable a more predictable federal process to review, approve and ultimately deploy new energy projects faster and at greater scale.

Economic Competitiveness: The United States is an undeniable leader in developing clean energy and innovative technologies. However, we must regain our leadership role in deployment. On federal lands, it takes roughly four years to construct utility-scale wind and solar projects, seven to 10 years to obtain a mining permit and 10 years to build a new transmission line.⁶⁻⁸

Whether a new solar or wind farm, transmission line, hydrogen or natural gas facility, or other traditional infrastructure projects—each of these technologies and their related infrastructure are subject to an antiquated permitting system that too often results in unnecessary delays. Additionally, most major projects face years of litigation uncertainty, which further increases costs and can significantly prolong the time between an initial proposal and actual deployment.

A streamlined federal permitting system would significantly enhance business efficiency, attract investments and benefit consumers by ensuring timely project completion. Without predictable project timelines and efficient access to resources and energy, the U.S. risks falling behind in attracting and retaining global investments. To truly capitalize on domestic innovation, the U.S. must adopt agile permitting processes that prioritize clarity and speed, thereby fostering an environment where American innovations are developed and first deployed at home.

Manufacturing Dominance: In 2006, United States' manufacturing output was double that of China. Today, China's manufacturing output is double that of the United States, and our reliance on China for goods and resources has similarly grown. This is a trend that must be reversed for not only national security and economic reasons, but also environmental reasons. According to analysis by the Climate Leadership Council, the average product manufactured in China results in three times the emissions than if that product were manufactured in the United States.⁹

Bringing back American manufacturing dominance—particularly for industries utilizing advanced clean and innovative technologies—reduces our reliance on adversarial nations for products, energy or resources such as critical minerals. For example, China continues to flex its strategic monopoly on critical minerals such as

⁴The Climate Leadership Council, "America's Carbon Advantage: Unleashing the Power of Markets to Solve Climate Change," September 2020, <https://clcouncil.org/reports/americas-carbon-advantage.pdf>.

⁵U.S. Energy Information Administration, "EIA projections indicate global energy consumption increases through 2050, outpacing efficiency gains and driving continued emissions growth," October 11, 2023, <https://www.eia.gov/pressroom/releases/press542.php>.

⁶World Resources Institute, "Clean Energy Permitting Reform in the U.S.," February 9, 2023, <https://www.wri.org/insights/clean-energy-permitting-reform-us>.

⁷National Mining Association, "Delays in the U.S. Mine Permitting Process Impair and Discourage Mining at Home," accessed September 8, 2024, <https://nma.org/wp-content/uploads/2021/05/Infographic-SNL-minerals-permitting-5.7-updated.pdf>.

⁸National Academies of Sciences, Engineering, and Medicine, "Accelerating Decarbonization of the U.S. Energy System," January 2021, <https://nap.nationalacademies.org/catalog/25932/accelerating-decarbonization-of-the-us-energy-system>.

⁹The Climate Leadership Council, "America's Carbon Advantage: Unleashing the Power of Markets to Solve Climate Change," September 2020, <https://clcouncil.org/reports/americas-carbon-advantage.pdf>.

gallium, germanium and graphite by tightening its export controls.¹⁰ Today, the U.S. is more reliant on foreign sources than ever for the minerals needed by our manufacturing, technology, energy, transportation, infrastructure and defense sectors—with imports making up more than half of U.S. consumption for nonfuel mineral commodities.¹¹

Unfortunately, the federal permitting process is working against our manufacturing sector, hindering efforts to onshore supply chains and provide affordable, abundant, clean energy. Companies often get stuck in extensive environmental reviews, bureaucratic hurdles and meritless litigation, adding years to project timelines and increased production costs, further burdening our manufacturing sector.

When we consider future minerals demands needed for domestic manufacturing, it is clear that the U.S. is behind China. National Environmental Policy Act (NEPA) reforms that increase domestic exploration, extraction, refining and processing are crucial to our attempts to catch up.

Environmental Progress: An antiquated permitting system delays environmental progress. Without question, the current permitting system is inconsistent with timely realization of the environmental benefits of clean energy innovation. Those who oppose modernizing NEPA and other permitting reforms because of “risk to the environment” ignore the environmental risks and climate impact of delays inherent in the current inefficient permitting system. If we truly care about the environment, we should embrace the classic environmental phrase of “think globally, act locally.” In this case, acting locally translates to meaningful and comprehensive reform to our permitting system. We can modernize our permitting system in a way that does not sacrifice environmental protection but, rather, enhances and accelerates environmental progress.

Innovation is meaningless if it remains on the drawing board and not in the market. Every day that innovation, particularly clean energy innovation, is delayed is a day without lower emissions and a cleaner environment. Whether it is next generation nuclear power, advanced clean hydrogen, energy storage, carbon capture technologies or renewables, each of these technologies and their supporting infrastructure are subject to an antiquated permitting system that too often results in unnecessary delays. While estimates vary on the impact of an inefficient permitting system, one study by the American Clean Power Association, an association that advocates for renewable energy, estimates that 100 gigawatts of domestic clean energy projects are at risk of significant delay due to permitting issues.¹² In their estimate, these delays will cause an estimated additional 550 million metric tons of carbon emissions this decade.¹³

The lost environmental benefit resulting from an inefficient permitting system is not limited to only the emissions reductions associated with domestic deployment of clean innovative technologies. Of equal, if not greater environmental concern, is that every delay caused by the antiquated permitting system makes it increasingly difficult for innovation to reach the necessary commercial scale and penetrate the global market.

Just 20 years ago, carbon emissions in Organization for Economic Cooperation and Development (OECD) nations were nearly identical.¹⁴ Today, non-OECD emissions are double that of OECD countries and growing fast, while the investment in energy in these countries is increasing significantly.¹⁵ If our goal is to reduce global emissions, it is imperative for new, cleaner and affordable innovative technologies to be available in global markets as soon as possible. Permitting inefficiencies in the United States not only delay domestic utilization of cleaner technologies, but also global access to affordable, commercial-scale innovation.

With these key themes of meeting growing energy demand, economic competition, manufacturing dominance and environmental progress in mind, we can see why

¹⁰ FTI Consulting, “China’s Export Controls on Critical Minerals—Gallium, Germanium and Graphite,” December 19, 2023, <https://www.fticonsulting.com/insights/articles/chinas-export-controls-critical-minerals-gallium-germanium-graphite>.

¹¹ National Mining Association, “U.S. Reaches Highest Recorded Mineral Import Reliance,” January 31, 2023, <https://nma.org/2023/01/31/u-s-reaches-highest-recorded-mineral-import-reliance/>.

¹² American Clean Power Association, “U.S. Permitting Delays Hold Back Economy, Cost Jobs,” April 2023, <https://cleanpower.org/resources/u-s-permitting-delays-hold-back-economy-cost-jobs/>.

¹³ Ibid.

¹⁴ Global Carbon Atlas, “Carbon Emissions Data,” accessed September 8, 2024, <https://globalcarbonatlas.org/emissions/carbon-emissions/>.

¹⁵ U.S. Energy Information Administration, “International Energy Outlook 2023,” October 11, 2023, <https://www.eia.gov/outlooks/ieo/>.

both Republicans and Democrats increasingly recognize our permitting system is too long, too complex and too often delaying the completion of critical projects. To be clear, ensuring future prosperity as a nation requires a permitting system that is both meaningful and efficient.

Fortunately, congressional momentum to address this broken system continues to build.

There was tremendous optimism at the beginning of this Congress that meaningful federal permitting reform was finally within reach. Last March—over 18 months ago—the House passed a collection of permitting provisions contained within the *Lower Energy Costs Act* (H.R. 1). This Committee, led by Chairman Bruce Westerman along with Subcommittee Chair Pete Stauber, Representative Garret Graves and many other members, played a vital role in important reforms included in H.R. 1. CRES was proud to support that bill, which unfortunately has not been considered by the Senate.

This was soon followed by notable permitting reforms included in the Fiscal Responsibility Act (FRA), which was signed into law last year. The FRA permitting deal was a tangible, positive step forward on what was hoped to be a comprehensive bipartisan deal for broader permitting reform. Unfortunately, there have been bumps in the road, such as the Council of Environmental Quality's (CEQ) NEPA Implementing Regulations Revisions Phase 2, which are a step backwards, appear counter to both the letter and the intent of the FRA, and reduce optimism for a broader bipartisan deal.

But hope springs eternal. Bipartisan talks to modernize NEPA have continued in the House. I want to acknowledge the efforts of those on both sides of the aisle for their tireless, good-faith negotiations to reach a bipartisan agreement. We hope those conversations continue and that we can tackle this challenge being faced across America.

Additionally, we recently saw the Senate Energy and Natural Resources Committee advance bipartisan permitting measures led by Chairman Joe Manchin and Ranking Member John Barrasso. As acknowledged during the markup of that bill, there are still some outstanding issues that need to be resolved, but we are confident that an agreement can be reached, paving the way for consideration by the full Senate. CRES supported the committee's action, and we encourage Senate leadership to schedule floor time for the bill. We look forward to supporting its Senate passage and hope that the House will give it due consideration should it comes over.

With Senate action and increased House engagement—evidenced by this hearing today—we once again have momentum that could lead to meaningful, comprehensive modernization of our federal permitting system. Congress should seize this moment, and the work of this committee is key to turn that momentum into progress.

The Discussion Draft, introduced by Chairman Westerman, Representative Graves' bipartisan Council on Environmental Quality (CEQ) NEPA Implementing Regulations Revisions Phase II Congressional Review Act (H.J.Res.168) and Representative Rudy Yakym's bipartisan *Studying NEPA's Impact on Projects Act* (H.R. 6129), offers momentum to the conversation surrounding permitting reform. **CRES is proud to support these provisions and will offer our thoughts on their respective role in improving our broken permitting system.**

Discussion Draft of H.R. ____ (Rep. Westerman)

Chairman Westerman's discussion draft is a meaningful step in updating the NEPA process and builds on the current momentum. I am pleased to be here in support of this bill and encourage the committee to move it expeditiously. Let me speak to a couple of specifics in the bill that result in meaningful reform that will accelerate the permitting process without sacrificing environmental protection.

The bill implements important changes to reduce unnecessary delays both in agency processes and in the courts. It continues to provide important access to the courts for those who meaningfully engage in the process, while setting limits to ensure that adjudication is timely and comes with certainty.

It further clarifies and narrows what is defined as a triggering "major federal action" so that there is uniformity and clarity throughout the federal government. It provides much needed process direction and controls while staying true to NEPA's intent. It would modernize NEPA in a way that recognizes today's realities and needs, and it would give long-needed direction to agencies on what to examine within impact studies, greatly reducing the opportunity for frivolous litigation.

These reforms will not only help to advance America's manufacturing and security future, but it will also result in significant environmental progress—accelerating

emissions reductions at home and expanding the most environmentally friendly manufacturing and resource development in the world.

H.J. Res. 168 (Rep. Graves of Louisiana)

Let me also emphasize CRES' support for Representative Graves' Congressional Review Act (CRA) legislation (H.J.Res.168), which CRES expressed when the bill was introduced in June. We are concerned that CEQ's Phase II regulations add burdens to an already overburdened NEPA process and missed the opportunity to capitalize on the progress included in the FRA. This bipartisan, bicameral legislation will allow CEQ to go back to the drawing board to align with the law and congressional intent to reduce redundancies and provide greater simplicity for federal reviews.

H.R. 6129 (Rep. Yakym)

Likewise, I am pleased to offer CRES' support for the bipartisan *Studying NEPA's Impact on Projects Act* (H.R. 6129) which would reconstitute and increase transparency of public information surrounding NEPA. We support increased transparency, information availability and public disclosure as projects progress through the review process.

In conclusion, it is imperative that we translate current momentum into tangible legislative action by advancing comprehensive permitting reform. CRES is committed to the further exploration of today's proposals and encourages a collaborative, bipartisan effort. We believe that through continued work, Congress can craft a robust and bipartisan permitting reform package that aligns with our shared interests for innovation, job creation and environmental sustainability.

CRES appreciates the opportunity to discuss these bills and share our perspectives on the importance of finding congressional consensus to advance commonsense permitting reforms. Such reforms will accelerate the deployment of important projects that will spur American innovation, support good-paying jobs and economic development, and ultimately lower global emissions.

Thank you again for the opportunity to testify. I look forward to your questions.

QUESTIONS SUBMITTED FOR THE RECORD TO HEATHER REAMS, PRESIDENT, CITIZENS
FOR RESPONSIBLE ENERGY SOLUTIONS

Questions Submitted by Representative Westerman

Question 1. Ms. Reams, during the hearing, you pointed out that an increasing volume of renewable energy projects have been delayed by cumbersome NEPA reviews and lawsuits since 2022.

1a) Can you elaborate on how the reforms in this bill will help to streamline environmental reviews for renewable energy projects?

Answer. The National Environmental Policy Act (NEPA) is a process statute which governs federal agencies when they assess the potential impact(s) of any proposed project—such as a renewable project, manufacturing plant, bridge, highway, or a pipeline—that has a federal nexus (i.e. crosses federal lands or waterways or receives federal funding). Thus, NEPA applies when a proposed project may involve a “major federal action” and subsequently outlines the steps agencies must take to review, assess, solicit public input, and produce an environmental assessment or more stringent environmental impact statement to mitigate any impacts.

With recent and significant increases in federal clean energy tax incentives, programs, and funding, there has also been a disproportionate increase in proposed renewable projects subject to the NEPA process. As we have seen, the current NEPA process is lengthy and complex, while subjecting project applicants to indeterminate and costly litigation risks. The current NEPA process is holding back or even preventing potential renewable projects, which require certainty and predictability.

Left unaddressed, the current NEPA process will stifle deployment of innovative technologies and impede the scaling of more clean energy generation. For example, an American Clean Power (ACP) Association report (April 2023) quantified the “average timeline for a project to obtain necessary National Environmental Policy Act (NEPA) reviews is 4.5 years. For transmission projects, the average timeline is even longer—6.5 years.” Further, ACP estimates this inefficient permitting is leading to \$100 billion in lost investment, 150,000 fewer good-paying jobs, and more than 550 million more metric tons of carbon dioxide emissions over 10 years.

Additionally, a recent Breakthrough Institute report (July 2024) found that “litigation delayed fossil fuel and clean energy project implementation by 3.9 years on average, despite the fact that [federal] agencies won 71% of those challenges.” Further, “On average, 4.2 years elapsed between publication of an environmental impact statement or environmental assessment and conclusion of the corresponding legal challenge at the appellate level. Of these appealed cases, 84% were closed less than six years after the contested permit was published, and 39% were closed in less than three.”

Here are some specific examples of how the Chairman’s discussion draft will streamline the NEPA process for renewable and other projects:

The discussion draft would ensure that “major federal action”—the threshold that triggers NEPA—means just that. This will filter out ancillary actions, such as simply receiving a federal grant for a renewable project, from triggering a review. Reducing the number of projects that trigger NEPA will return NEPA to its original intent of focusing on those actions that are significant in nature and will ensure time and resources are spent on fewer projects, accelerating the process for those projects and reducing the regulatory burden of projects never intended to be captured by a NEPA review.

The discussion draft would continue to allow agencies to utilize their expertise in performing environmental reviews. And, importantly, it would ensure that these agencies effectively stay focused only on the issues that are within the jurisdiction of the agency as opposed to allowing agencies to be involved outside their statutorily defined expertise. Keeping agencies focused on their expertise will reduce unnecessary expansion of review that can delay a final outcome, including for both a renewable project or for the infrastructure necessary for that project (i.e. transmission lines).

The discussion draft also delineates a judicial review process with actions and deadlines laid out in statute to ensure that process is not weaponized by special interests whose sole intent is to delay or thwart a project. Instead, the process in the discussion draft ensures generous vetting, information gathering, and transparency, without sacrificing efficiency. This would provide important guardrails for the judiciary and protect agencies and projects from never-ending litigation.

The discussion draft also ensures that last-minute, non-peer reviewed studies are not required to be considered in the NEPA process. By setting out in statute what information is required and not required of a NEPA review, the discussion draft would once again reduce exposure to frivolous lawsuits that cause uncertainty and result in unnecessary delays.

In sum, the Chairman’s discussion draft addresses key elements of these permitting challenges facing developers by narrowing the timeline and scope of frivolous litigation and focusing agencies to review the relevant potential impacts of a project. It also would clarify what is defined as a “major federal action” triggering a NEPA review so that there is uniformity and clarity throughout the federal government.

CRES appreciates the Committee’s recognition of the permitting issues facing all types of projects, including in the renewable energy sector, and stands ready to be a resource as Congress considers meaningful improvements to the NEPA process while upholding strong public input and environmental standards.

The CHAIRMAN. Thank you, Ms. Reams, for your testimony.

The Chair will now recognize Members for 5 minutes for questions, and I recognize the gentleman from California, Mr. McClintock.

Mr. MCCLINTOCK. Thank you, Mr. Chairman.

First, I want to voice my extreme frustration that this Committee has not prioritized expansion of the Tahoe Basin categorical exclusion to the entire U.S. Forest System. That measure provided a categorical exclusion from NEPA for forest thinning projects up to 10,000 acres under certain circumstances. It received broad bipartisan support. It was signed into law by President Obama in 2016. Since then, it has increased the timber yield on the Federal forests in the Tahoe Basin from 1 million to 9 million board feet a year. It has tripled the treated acreage in the basin.

It literally saved the City of South Lake Tahoe from the Caldor Fire that wiped out the town of Grizzly Flats that sadly wasn't covered by this law. It has taken the environmental review process for forest thinning projects at Tahoe from an average of 4½ years down to just a few months, and the environmental reports from an average of 850 pages down to a few dozen.

Forest Service Chief Randy Moore recently confirmed to this Committee that we have now lost a quarter of the entire U.S. Forest System to catastrophic wildfire in the past decade, a quarter gone. UCLA recently documented that wildfires in California in the single year of 2020 produced twice as much carbon dioxide as California has prevented from all of its destructive and expensive CO₂ restrictions since 2003 combined.

Now, here we have a law that is proven its effectiveness in reducing the severity and frequency of catastrophic fire beyond any question, and yet it took this Committee a year to take it up, and it has not yet taken it up on the House Floor. So I ask, if we can't get a simple bill using a proven process out of the House in the span of 2 years, I sincerely question the likelihood of these bills being enacted in the closing days of the 118th Congress.

I strongly endorse all of the measures before us today, but I can't understand why we have not pressed to extend an effective policy already proven in Tahoe to protect the rest of our forests while we still have forests to protect.

Now, this is no longer a theoretical discussion. NEPA was passed 50 years ago with the promise that it would improve our forest environment. And after 50 years, I think we are entitled to ask, how is the forest environment doing? The answer is all around us. Our forests have become morbidly overgrown. They are falling victim to disease, pestilence, drought, and ultimately catastrophic wildfire.

I have watched the left obsess over a 1 degree increase in temperature over a century, but they couldn't care less that their policies are making it impossible for a growing number of families to heat their homes in the winter and cool them in the summer.

The Ranking Member's remarks brought home the broader issues that are before us today. He and his ilk have had their way in California for years, and the result is chronic water shortages in one of the most water-abundant regions of our country, utterly devastated forest land, chronic traffic congestion in a state that once had the finest highway system in the world, one of the highest prices for basic necessities like electricity, water, gasoline, and housing in the entire country, and now a record number of people voting with their feet and leaving for the other 49 states. That is what my friend's policies have done to California, and they are now doing the same thing to our country.

The point of this hearing is that Republicans are trying to restore the policies that produced affordable energy, abundant water, healthy and resilient forests, and the prosperity that we once took for granted. And let's remember when Donald Trump left office less than 4 years ago, America was energy independent for the first time in our lifetimes, and a gallon of gasoline averaged \$2.39 a gallon. By the way, it was \$5.19 at the Sacramento Airport on Monday.

So, that is the basic question before this Committee today, and it is the overriding question before the American people in 55 days.

Mr. Pugh, how much of our crumbling infrastructure would you say is directly attributable to the costs imposed by endlessly time-consuming and ultimately cost-prohibitive government regulations?

Mr. PUGH. Well, I guess we have to put that into perspective.

I am also working on the American Society of Civil Engineers, the Report Card Committee, which comes out with our nation's grade—

Mr. MCCLINTOCK. I have very limited time, Mr. Pugh. A lot? A little?

Mr. PUGH. Understood. Obviously, from my perspective, it impacts us a lot.

Mr. MCCLINTOCK. Ms. Reams, let me ask you. What do you foresee as the quality of life in America if we continue much farther down the road we are on?

Ms. REAMS. With declining infrastructure, I think a poorer quality of life.

Mr. MCCLINTOCK. I yield back.

The CHAIRMAN. The gentleman's time has expired, and I appreciate the gentleman's work on the forestry seed, which has been very effective. And I will remind him we did pass his bill out of Committee and recommended it to the Floor, and also included it in the Fix Our Forests Act, which is scheduled to be on the Floor later this month. So, I do appreciate his work on that.

I now recognize the gentlelady from Michigan for 5 minutes, Mrs. Dingell.

Mrs. DINGELL. Thank you, Mr. Chairman.

This is always an interesting time for me because many of you know how hard my husband, John Dingell, worked on NEPA. He was the lead author, and he believed in it. He believed in it because he was a conservationist and a hunter, and I still believe today it continues to be one of our nation's strongest tools in ensuring communities across the country have meaningful input on major Federal actions.

NEPA's directive is clear: the government must consider how a project will affect the environment; and the communities and the people affected by the projects have the right to have a fair chance to weigh in on its merits. Included in that is the consideration of environmental justice, climate change, and the full range of impacts.

As our nation continues to face a worsening climate crisis, it is imperative that the voices of the communities that are impacted are heard. And that is why I have concerns that some of the bills we are considering today weaken our nation's long-standing environmental laws like NEPA, and undermine communities roles in decision-making.

We do care. I do want people to be able to have heat in the winter. I want them to be able to have air conditioning in the summer. I care deeply about keeping manufacturing leadership in this country. But I care about kids' asthma. I care about the floods we are getting in the Midwest. I care about increased hurricanes, and I care about increased wildfires, as well.

I think there is a misconception here that we need to choose between protecting bedrock environmental laws or accelerating clean energy permitting. We can and we must do both.

Unfortunately, the draft resolution in front of us today not only weakens, but it adds strict limitations on judicial review, including shortening the statute of limitations from 6 years to 4 months.

And one of the points that worries me the most is whoever is filing the lawsuit needs to have filed a public comment during the comment period on the exact issue being sued over. And if you all had lived through the town hall meetings and the angry citizens I have in the last 2 weeks because a site that was approved and not one community spoke during the public comment period but Manhattan nuclear waste is headed for them, you wouldn't want to tell them they didn't have a right to do an injunction or talk about this, because I have yelled at them all that is what public comment periods are for, but I am not telling them that they don't have any rights.

So, having said that, Mr. Beard, how would this restriction impact those in your community?

Are you always able to file public comments on every agency action?

What barrier does that restriction pose?

Mr. BEARD. The restrictions that are proposed in that bill would make it much more difficult for communities like mine to have public engagement. Why? Because people have lives that they have to carry out and live on.

As we speak right now, there are those in southeast Texas, as well as southwest Louisiana under the threat of Hurricane Francine. And the problem with that is that there were meetings being carried on during that time, it took efforts by the community to get them postponed because otherwise the government was going to continue.

By having that situation, as you mentioned, it doesn't give us the equity of access, and it also doesn't deal with language justice. And those are things that are critical in those communities because they are for and about the people.

Mrs. DINGELL. Thank you. Mr. Beard, can you tell us why consideration of climate change through the NEPA process is so important?

Mr. BEARD. It is so important for just what I said regarding Francine. These are more powerful, stronger storms and hurricanes. Louisiana has been hit by six in the past 5 years. And in the past 17 years, Port Arthur has been hit by five or six also. And without considering the weather and those impacts, we are not seeing what is going to adversely hurt people because those poor and under-marginalized or marginalized communities have the most burden to bear. They get the least help and support, and they are hurt the most because those are poor communities.

Mrs. DINGELL. Thank you, Mr. Chairman.

As I have made clear many, many times, I remain open to working with Republicans. I think it is critical on bipartisan permitting reform efforts, but we have to do it in a way that ensures we protect our climate, our environment, and our nation's frontline communities. Thank you, and I yield back.

The CHAIRMAN. Mrs. Dingell, I appreciate that offer, and that is why we are having this hearing on a discussion draft to figure out how to work together in a bipartisan manner.

I now recognize the gentleman from Louisiana, Mr. Graves, for 5 minutes.

Mr. GRAVES. Thank you, Mr. Chairman. I just noticed my good friend's poster back there, Project 2025, and I was talking to some folks on the team. Apparently, he linked that poster to Chairman Westerman's bill.

I can't tell you how much I pause, and I have hesitation about undermining your messaging here, but the Chairman's bill is actually based on legislation that was filed in 2021 and based on the BUILDER Act. I mean, it is based on the BUILDER Act, which was, I believe, 2021. So, to suggest that this Project 2025, which I am not even certain what that is, and if you could provide me a copy of the document that would be helpful, the Project 2025, that would be 2025. Mr. Westerman's bill was based upon 2021 legislation.

Again, I can't tell you how much I hesitate to ever undermine your messaging, but it is wrong.

Secondly, Mrs. Dingell just talked about bipartisan support and working together.

And Mrs. Dingell, I share that sentiment. And that is why the CRA that we have introduced has not only bipartisan, but bicameral support. We have Republicans and Democrats in both the House and the Senate that are very concerned about the White House's refusal to actually promulgate regulations that are consistent with the negotiation that we had. That is what this is about.

And I want to point out some examples. At the end of my statement in introducing this legislation I talked about how the majority of infrastructure projects carried out across the country don't have to comply with NEPA. They don't because it doesn't trigger Federal permitting or impact Federal resources, and it doesn't include Federal funding. So, I do think that we need to have a little bit of faith in our state and local governments in that there are already protections in place, not to mention what I believe are a strong desire within the public to make sure that the environment is protected.

I just listened to Mr. Beard talk about my home state of Louisiana. The district that I represent, the people that I represent are getting ready to get pounded by a hurricane. And the area where this hurricane is getting ready to hit, the strong side of the storm, the east side of the storm, it looks like it is going to be Saint Mary and Terrebonne parishes. There are projects in each of those parishes that have been sitting around for decades, for decades.

The Morganza-to-the-Gulf project, which is the project that protects Terrebonne Parish, that project started in 1992, 1992. It took 30 years to get the first dollar in construction funds for that project because it had just been stuck in regulatory hell.

So, look, if we are going to go out there and we are going to build these resilience projects, if we are going to go out there and go build charging stations, I can do like my friend from California, and I can UC in stories in the newspaper, you all wanted to build

500,000 charging stations, 500,000. And I think that Senator Merkley is quoted as saying that they have a few dozen of them built right now. Last time I looked, there were seven.

You can go back, and you can look at the American Rescue Plan, you can look at the infrastructure bill, and you can look at the IRA, all bills that you all pushed. And according to Politico, 70 percent of the money is still sitting in the bank because this Administration's regulatory agenda is completely incompatible with their infrastructure agenda. These people can't get out of their own way. These are self-inflicted wounds.

This is what they used to do. I used to build stuff. I used to do NEPA. And it is disastrous, what these people are doing, not to mention breaking trust with an agreement that they shook my hand on and said that they would abide by, only to have the Chair of CEQ sit right there and admit that she intentionally avoided provisions in the law. This is outrageous, what is going on.

I have eaten up most of my time. Ms. Reams, I want to ask you a question. You are just simply doing math. You are connecting the dots. There is increased energy demand and need. We need mining projects for renewable energy. We need oil and gas projects for that demand. Can you talk about that relationship, about how an overly complex regulatory process blocks our ability to implement all-of-the-above energy?

Ms. REAMS. Well, I think also one of the pieces is thinking about the supply chains. It is the road to get to the mining. All our supply chains are crumbling or they don't exist. We need to rebuild these in some way. This puts some sanity back into the process. If we are going to manufacture, if we are going to lead in this world, I guess it is, are we serious about that or not? Because it seems like the incompatibility that you talk about is rampant. It is like we are without a strategic plan about how to lead, how to build, and we are sending the wrong signals by a cumbersome process.

We need to show that we are serious about building, we are serious about energy independence, and we are serious about also reducing emissions, which also would bring on more clean energy.

Mr. GRAVES. Thank you.

Ms. REAMS. There is a disconnect now.

Mr. GRAVES. Thank you.

Mr. Chairman, I didn't realize how big Mr. Bentz's head is. He is blocking two whole people.

[Laughter.]

Mr. GRAVES. I have never seen anything, that is fascinating. I hope that thing is filled with brains. This could be amazing.

I yield back.

The CHAIRMAN. Is that a request to have Mr. Bentz duck when you are talking?

The gentleman's time has expired. The Chair—

Mr. HUFFMAN. Without objection.

Mr. Chairman, may I ask for a unanimous consent request, please?

The CHAIRMAN. Sure.

Mr. HUFFMAN. Since Mr. Graves has invited it, I think this is probably a good time to enter all 920 pages of Trump's Project 2025 into the record, where you can see on page 61, for example, the call

for giving project proponents more control over regulatory clocks; page 524, for example, which rescinds the Biden rules and reinstates Trump rules under CEQ reforms; for NEPA, page 533, for example, where the Department of the Interior is mandated to reinstate Secretarial Orders under the Trump administration, including time and page limits on NEPA documents; page 533, for example, where consideration of eliminating judicial review and the challenges to the adequacy of NEPA documents. It goes on and on, and I would request unanimous—

Mr. GRAVES. Reserving the right to object.

Mr. CARL. I object also.

Mr. GRAVES. I reserve the right to object, Mr. Chairman. I have a question. How many trees would it take to print that? I am just—

Mr. HUFFMAN. And they didn't even print the secret fourth pillar that is their radical emergency orders for the first 180 days. It is a great question.

Mr. CARL. Mr. Chairman—

Mr. GRAVES. I withdraw, withdraw.

Mr. CARL. I think President Trump and his campaign has denied any dealings with 2025. Last night he said in the debate that he never has read it, nor does he want to read it. So, to say that is Trump—

Mr. HUFFMAN. He said some parts are good.

Mr. CARL. Excuse me, I have the floor. To say that this is his project, I think, is wrong, and it is wrong to enter it into the record.

Mr. HUFFMAN. Mr. Chairman, this is about this Committee not even waiting for Donald Trump actually, proceeding now to implement parts of Project 2025. I can't imagine anything more relevant, given the subject matter of this hearing. So, I will request unanimous consent to enter it into the record so we can demystify this for Mr. Graves and others who seem to think that there is not a direct line.

The CHAIRMAN. So, is there objection to entering the 2025 report that is not the Trump report, as stated by Mr. Huffman?

Mr. HUFFMAN. Just written by Trump's complete inner circle, but yes.

Mr. CARL. Yes.

The CHAIRMAN. There is objection.

Moving right along, the Chair now recognizes the gentlelady from New York, Ms. Ocasio-Cortez, for 5 minutes.

Ms. OCASIO-CORTEZ. I must say I find that surprising. Rarely in the history of this Committee or any other have I seen an objection to a unanimous consent report for documents, regardless of party submitting to it. I do not object to Republican submissions as opposed, personally opposed, as I am to them on their grounds, including when I think they are factually incorrect. So, I find that extraordinarily disappointing.

Given the fact that Representative Huffman was not allowed to submit his unanimous consent on Project 2025, perhaps we should talk about it a little bit more. President Trump denied association with it last night. He also said a lot of other things. He talked about eating pets and transgender operations on migrants in

prisons. And he talked about being the leader of fertilization. I mean, his denial doesn't really carry much weight here.

The fact of the matter is that the Heritage Foundation, which has drafted Project 2025, has had a history, documented, of extraordinary influence over the Trump administration, including those individuals that were part of his administration, as well as the broader agenda of the Republican Party, which is what we are seeing play out here today.

Project 2025 threatens to completely overturn abortion rights, women's rights, LGBT rights, civil liberties, free speech, and environmental protections for everyday Americans who deserve the right to clean air and clean water, and to not be poisoned by the projects that are happening around them. It is no surprise that Project 2025 attacks the National Environmental Policy Act, one of our bedrock environmental laws intended to protect communities from harm and give them voice in Federal decision-making.

If there is a project that is going to potentially be installed next to your home that could spill cancerous chemicals and expose your kids to substances that could delay their mental and cognitive development, you would want to know. If there is a project or a fracking site that gets put in, and when you wake up in the morning your lungs burn because there is something in the air that you can't see, you would want to know, and you would want the right to intervene and have a say in what gets put where.

Mr. Beard, are you familiar with Project 2025 and its intersections with NEPA?

Mr. BEARD. Yes, I am.

Ms. OCASIO-CORTEZ. And just so we are clear, again, because the document was not allowed to be submitted, I will read page 60 from Project 2025. "The President should instruct the Council on Environmental Quality to rewrite its regulations implementing NEPA along the lines of the 2020 effort, and restoring its key provisions such as banning the use of cumulative impact analysis." Banning the use of analyzing the cumulative impact of a given project.

Mr. Beard, what exactly is cumulative impact analysis, and can you briefly tell us about the Trump-era 2020 regulations that they are referring to here?

Mr. BEARD. Yes. That in which you are speaking of in particular addresses with Project 2025 the cumulative and environmental justice impacts, as well as the environmental justice impacts to communities like mine, communities across the country. It is important because, as the climate changes and gets worse, those people are made to suffer and get the worst of the damage.

With environmental justice impact, it talks about the access to being able to speak to the situations you mentioned that would affect you if something of that nature moved next door to you, but it also looks at the cumulative impacts because over time those impacts worsen. We know the releases, we know what they are doing beforehand, but it takes time for that to materialize. And if it goes beyond 120 days, then we are stuck. So, we have a problem with that.

And we have to consider climate, environmental justice, and the cumulative impacts of these projects.

Ms. OCASIO-CORTEZ. Thank you very much.

I think when we look at the broad impact of what is happening here, what we are also looking at, especially in terms of Project 2025, is handing over all of the tools of our democracy and governance that is supposed to be wielded by the people and the public for the people and the public, and handing those keys over directly to industry to rewrite them however they see fit to maximize their own pocket, to line their own pockets at the expense of the health and dignity of the American people.

Profit should not drive absolutely everything. And governance is where we are here to assert the rights and protections of people when a profit incentive or a profit motive then comes at odds with people's human rights. It may be profitable to poison a community, but that is not what we are here to do. There have to be lines.

And again, I am disappointed, and I would like to seek unanimous consent once again to submit Project 2025 under my personal request.

The CHAIRMAN. Without objection, so ordered.

[The information follows:]

Information on PROJECT 2025 can be found at:

<https://www.project2025.org/>

Ms. OCASIO-CORTEZ. Thank you very much.

The CHAIRMAN. The gentlelady's time has expired. The Chair now recognizes Mr. Fulcher for 5 minutes.

Mr. FULCHER. Thank you, Mr. Chairman. With your permission, I would like to steer back the conversation to the topic of the day.

Today, we are here to talk about the NEPA reform discussion draft led by Chairman Westerman that is much needed in this country to fix the ongoing problems that are associated with the National Environmental Policy Act. In its current form, it is being used to drive a so-called environmental agenda that is really not environmentally friendly. And what I mean by that is simply not managing resources isn't environmentally friendly. Appropriate management is.

In its current form, NEPA focuses more on procedural compliance, rather than substantive environmental outcomes, which leads to major delays, high costs, non-stop legal challenges, litigation. I know that firsthand. That happens in my state a lot. Sixty-three percent of the landmass in the state of Idaho is under Federal control. There are dozens of projects in Idaho, my district specifically, that are stalled by the current NEPA process. And one example is an Idaho Power project.

Idaho Power is an electric utility company that services southern Idaho and eastern Oregon. It uses 17 hydroelectric power dams on the Snake River, and has been working to upgrade their existing transmission lines and construct new lines to meet their goal of having electricity sourced from clean energy by 2045. There is a project called the Boardman to Hemingway Project, initiated in 2007. The Northwest's only new regional transmission line, this

transmission line is estimated at having a completion date of an environmental review and permitting by December of this year. It started in 2007. Projects like this cannot take 17 years.

I have a question I would like to refer to Ms. Reams.

In light of NEPA's comprehensive environmental review requirements, how do you assess the balance between thoroughness of reviews to potential delays regarding energy infrastructure projects? If you can, just speak to that.

Ms. REAMS. Yes, thank you for the question.

NEPA is a process. It is not to degrade environmental standards. It is a process to evaluate environmental standards. I know there is a concern, there has been talk here and conflating the two. It is indeed a process. We need to look at the process, and make sure the process is adequate and modernized to meet today's needs and demands.

But no question, we need community input. We need to make sure that agencies are armed with the right kinds of materials. All the things I think we are all showing that we have value for, that we want to have, those aren't changing here. It is a process. And I think that they can be compatible with both what we need for our environment, for our energy security, and, of course, for our economic competitiveness.

Mr. FULCHER. OK, let me ask you a follow-up to that then. There is investment that is needed for these projects. How do these legal challenges based on NEPA compliance affect investor confidence?

If you are an investor in all this, in the overall financial viability of the project?

Ms. REAMS. It has a chilling effect. The government and the NEPA process is giving signals to investors, both domestically and abroad, that it is going to be more costly to build, that it is OK for these very timely delays that are increasing costs, and we are leaving a lot of projects on the sideline.

We are also leaving a lot of innovation on the sideline. If innovation is sitting on the drawing board, we are not spurring innovation. We are not leading as a country. So, it has a cascading effect. We are talking about shoring up the process so that we can have strong pulls to build on.

Mr. FULCHER. OK, that touches on the next question I have, and then I would like to go just a little bit deeper on it.

In light of ongoing discussions about energy independence and economic growth, how do you address the concerns that NEPA's procedural requirements may contribute to increased energy costs and reduce competitiveness by U.S. energy sectors?

Ms. REAMS. There are a number of ways this is happening. I will give one.

For instance, in providing critical minerals and resources that we need for clean energy there is a significant demand for all of those, which this Committee well knows. If we are not able to build the energy with the right components, we won't have it: solar panels, that is wind turbines, that is battery infrastructure. And that is just on the renewables side. I am not getting into some of the other advanced technologies.

So, we are talking about really treading water or even going backwards without providing a mechanism to unleash what we have here domestically.

Mr. FULCHER. I think that is great feedback.

Mr. Chairman, I think that is also just evidence that we need to move forward on this. I yield back.

The CHAIRMAN. The gentleman yields back. The Chair now recognizes the gentlelady from Nevada, Ms. Lee, for 5 minutes.

Mr. HUFFMAN. And Mr. Chairman, if I could just quickly request unanimous consent for a list prepared by House Democratic staff for the Committee showing that at least 10 of the authors and contributors of Project 2025 have testified before this Committee, one at least six different times.

The CHAIRMAN. You really like this Project 2025, don't you?

Mr. HUFFMAN. We really don't.

[Laughter.]

The CHAIRMAN. Ms. Lee, you are recognized.

Ms. LEE. Thank you, Mr. Chairman. I want to thank you for hosting this hearing, as well as all the witnesses.

Ms. Reams, I wanted to address you first. You recently wrote an Op Ed titled, "To Make America Great We Need Federal Permitting Reform." In it, you called on Congress to advance bipartisan legislation that can move through both chambers, make it to the President's desk, and stand the test of time.

Would you say that the discussion draft that we are talking about today qualifies as bipartisan?

Ms. REAMS. I do, ma'am. I know it has just been signed by Mr. Westerman, but I think the fact that it is a discussion draft is encouraging to me, to have a hearing.

I am here talking about the benefits of clean energy. I acknowledge that the climate is changing and we need to reduce emissions. I don't know if I am a normal witness here, but it is my first time being here. So yes, I think this is an opportunity to have engaged conversation that I am hearing from your side of the aisle.

Ms. LEE. Well, thank you for that. Unfortunately, I disagree with you on that because when the Senate Energy and Natural Resources Committee passed its Energy Permitting Reform Act on July 31, Senator John Barrasso of Wyoming credited Manchin and the staff for their outreach, understanding that the result was through their patience and perseverance in working together. And it was truly a bipartisan bill. I wish the same was true of what we are doing today, but it is not.

And this draft is not rooted in the difficult work of consensus building. Instead, it is quite unlike what happened in the Senate. And, in fact, E&E News has characterized this as another one-sided, Republican-only effort led by the House Majority.

I want to get to permitting reform. I represent Nevada. We are at the forefront of the transition to renewable energy. I am very interested in working across the aisle on this issue. I hope we can get back to that.

Mr. Beard, I wanted to turn to you. You underscored how improving and front-loading community involvement is so important not only to help people who have historically been pushed to the side, but also borne the effects of impacts, negative effects of

development. But also, it aids developers in establishing a kind of trust that we hope reduces legal challenges in the end.

Does today's partisan NEPA legislation help get that done?

Mr. BEARD. No, I don't think it will do so because of the limitations that are being imposed. You have to give this thing time and opportunity because you are coming into areas and regions that may not have the information, so it takes time to disseminate that information, to get it to people, and then to get input from them. It is never easy. It takes a lot of work, and you have to go beyond the call to do it.

Ms. LEE. Thank you.

And I have said it before, I want to work together in this Committee on a bipartisan solution and understanding all the challenges that we face.

You underscore this, Ms. Reams, that the American Clean Power Association has warned that Congress' failure, our failure, to do this is costing upwards of \$100 billion of lost investment in clean energy projects alone. The average wait time for a transmission project to obtain necessary NEPA reviews is 6½ years, stretching to a decade or more for some projects. That is twice the time it took to build the Hoover Dam. So, I believe it is wrong, I believe the time is now.

And I just want to end on a hopeful note. Representatives Yakym and Panetta, I want to thank them for their bill, Studying NEPA's Impact on Projects Act. Requiring annual reporting from CEQ on NEPA litigation paperwork and timelines would provide Congress with consistent and reliable data, and help us pinpoint areas of continued improvement within the NEPA process.

So, I look forward. I really do want to work in a bipartisan manner, and I hope that we can move forward from this discussion and really try to get to a point, because the time we are wasting with partisan games is really putting the United States at an economic disadvantage.

Thank you, and I yield.

The CHAIRMAN. The gentlelady yields back, and I also, Ms. Lee, want to thank you for your willingness to work in a bipartisan effort. And I say here is your opportunity. That is why we are having this hearing on a discussion draft. I look forward to your input and your feedback and constructive ideas on how to do bipartisan permitting reform.

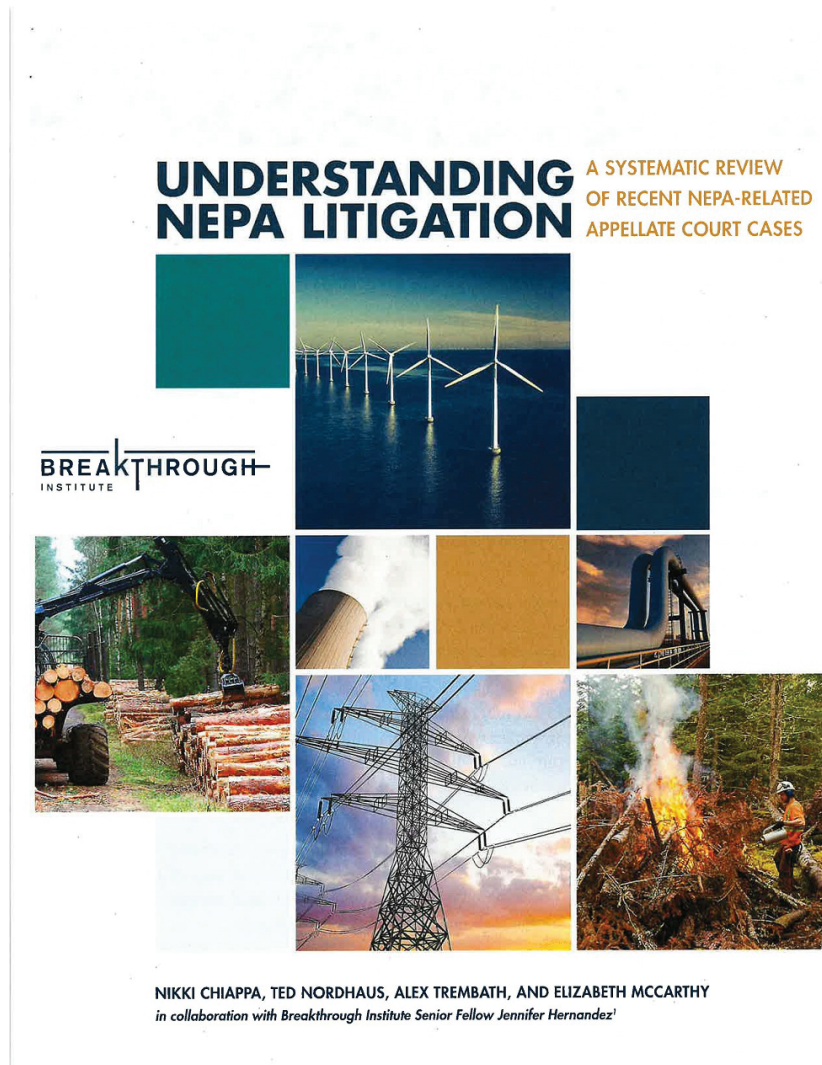
Without objection, I would like to submit to the record this report called, "Understanding NEPA Litigation: A Systemic Review of Recent NEPA-Related Appellate Court Cases." This is from the Breakthrough Institute from July 11, 2024. And in this document we will find that from 2013 to 2022, NGOs instigated 72 percent of NEPA litigation, with only a 26 percent success rate. Only 10 organizations are responsible for over 35 percent of these cases. Excessively long and complicated NEPA analysis exclude the public from the NEPA process in favor of well-funded special interest groups. Additionally, only 2.8 percent of NEPA cases raise environmental justice issues.

The bill seeks to ensure that litigation is based on legitimate environmental concerns raised during the public comment period, not as an afterthought to delay projects. This change will reduce

unnecessary delays in litigation costs while preserving the right to challenge true environmental harms.

Without objection, so ordered.

[The information follows:]



The full document is available for viewing at:

<https://thebreakthrough.org/issues/energy/understanding-nepa-litigation>

The CHAIRMAN. I now recognize myself for 5 minutes of questions.

Ms. Reams, data from the FPISC dashboard indicates that out of 6,432 projects that are being tracked, the vast majority are related to renewable energy production, electricity transmission, or water resources, while only 68 projects total are related to conventional energy and mining. How do you see this legislation benefiting the renewable energy sector, contrary to claims that the discussion draft is just a wish list for dirty energy?

Ms. REAMS. Thank you, Chairman, for the question.

I wanted to update what Mr. Huffman had said about the number of clean energy projects versus fossil fuel projects. With the influx of money that is coming in from the IRA, we are seeing an unprecedented amount of dollars going into clean and renewable energy projects. So, I would just caution from the report from 2022 to now in 2024, that difference is making a lot of difference for clean energy projects, and it is worth noting. It shouldn't be surprising that we are going to see a lot of the NEPA challenges coming online for renewable energy projects.

So, I think the balance here of affecting all kinds of projects, whether it is on the fossil fuel or the clean energy side, it is going to affect either way. But we are going to see a disproportionate amount because of the new investments in clean tech which will allow us to continue to be a leader nationwide.

But I will go back to the American Clean Power Association. It is talking about the money that is sitting on the sidelines. We are talking about \$100 billion in private investment. We are talking about 150,000 jobs. We are talking about more control of our supply chains, a manufacturing renaissance, and, of course, spurring innovation that is going to get it off the drawing board and into our lives to improve our lives.

Is it going to impact renewable and clean energy? Yes. And is it going to impact our lives? Absolutely.

The CHAIRMAN. Thank you, Ms. Reams.

Mr. Jakins, does this bill give preference to one source of energy over another?

Mr. JAKINS. No, and we wouldn't want it to, because we need every tool in the toolbox to meet the demands of our members.

The CHAIRMAN. Does the bill create carve-outs for any particular sector, project, or process under NEPA jurisdiction?

Mr. JAKINS. Not to my knowledge.

The CHAIRMAN. So, would you say it is not picking winners and losers, but it is reforming a process?

Mr. JAKINS. That is correct.

The CHAIRMAN. Do you believe that the current NEPA process is conducive to achieving energy independence and grid reliability?

Mr. JAKINS. The current process? No. I am looking at the board behind you there that kind of describes the NEPA process—

The CHAIRMAN. That will make your head hurt, won't it?

[Laughter.]

Mr. JAKINS. It will make your head hurt. So, no, it is not conducive.

The CHAIRMAN. How would a holistic permitting approach that streamlines the process for all types of energy production, like this

bill, ensure Jackson EMC and other rural electric co-ops are able to continue to provide affordable, reliable, and clean energy?

Mr. JAKINS. Again, anything that makes the production of power more predictable, easier to understand, easier to plan for is going to make it more beneficial for our members.

I mentioned earlier in my testimony that our members pay, dollar for dollar, everything that we spend. And each of those dollars, 75 percent of it, is dedicated to the cost of power. So, when you delay, extend, or litigate projects like these that are much needed to meet the demands, when \$0.75 of every dollar we spend on that, it has a direct impact on our members in a big, big way.

The CHAIRMAN. And Mr. Pugh, how does NEPA dissuade small communities and governments for applying for Federal funding?

Mr. PUGH. Well, I know in my experience, when I worked for the City of High Point, 110,000 people, that is not really a small community, but I know I avoided NEPA projects or Federal funding as much as I possibly could, simply because I did not have expertise on my staff in order to handle the full permitting process. So, we always would have to go outside and hire an outside engineer in order to handle those type projects.

The CHAIRMAN. And to reiterate a point Mr. Graves made before, you personally built a lot of projects without going through NEPA. And did you destroy the environment in doing that?

Mr. PUGH. I certainly hope not, sir. It was never our intent.

The CHAIRMAN. I appreciate you doing that.

I would like to yield the remainder of my time to Mr. Graves.

Mr. GRAVES. Bingo, Mr. Chairman. We have a bingo sheet that we use for Mr. Huffman primarily, but as well as others, because he uses the same terms every time. And about 8 minutes ago we got a bingo, and I just wanted to call it.

And the good thing is, on this one, Mr. Chairman, I didn't even have to use the free box: team extreme, bedrock environmental law, climate crisis, EJ for All, and IRA.

So, I think I get a free copy of the Project 2025 document. I am really excited about this.

Mr. HUFFMAN. We will get you a barrel of oil.

Mr. GRAVES. And bingo.

[Laughter.]

Mr. GRAVES. But Mr. Chairman, I have a UC request, and I plan to take 10 minutes, like Mr. Huffman did, in introducing it.

First of all, ongoing EIS reviews are consistent with what Ms. Reams just said. Ongoing NEPA EIS reviews for energy projects, showing that there are more renewable ones.

Before anybody takes a picture, do I have spinach in my teeth? Thanks. All right.

Second of all, let's see. This one is one of my favorites, because Mr. Huffman often says, "the skills of big oil," but the skills of big oil, according to math and science, is actually the Democrats because every time Democrats are in power the conventional fuel companies make more money than when Republicans are in power. So, just once again, bringing a little bit of fact to the table.

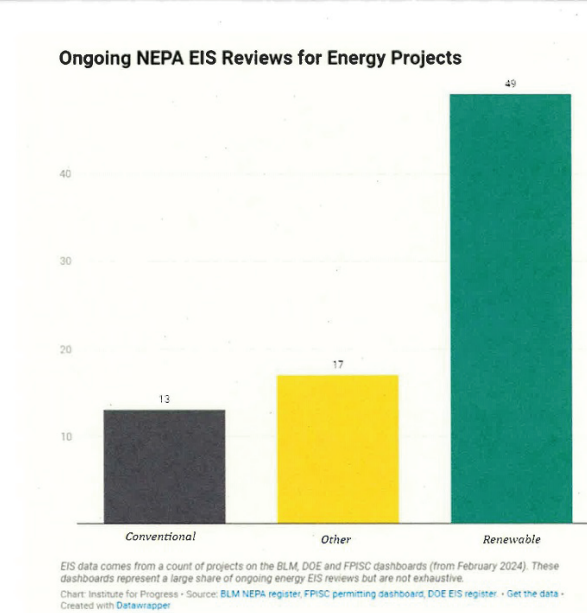
One of my favorites, U.S. Energy Information Administration, demonstrating that the Trump administration emissions went down. Under Biden, sorry, they have gone up.

And the last one that I will email you is a document showing that the average price of gasoline in the state of California reached \$6.44 as a result of the ingenious policies of the Democrats that have led that state that they are trying to now nationalize.

I yield back.

The CHAIRMAN. Without objection, so ordered.

[The information follows:]



The CHAIRMAN. The Chair now recognizes the gentlelady from New Mexico, Ms. Stansbury, for 5 minutes.

Ms. STANSBURY. Thank you, Mr. Chairman, and it is always an interesting adventure here in Congress, and especially this morning in this unexpectedly spicy hearing.

As a water resources professional, I spent my entire career working to make sure our communities have access to clean water and a sustainable future. I was expecting to come into this hearing this morning to talk about NEPA, to talk about the importance of making sure that our communities have a seat at the table as we are developing infrastructure and decisions are being made on their behalf and with their consent.

And I heard some conversation this morning about the need, obviously, for expediting infrastructure. We all support building infrastructure for our communities. That is why we passed a bipartisan infrastructure bill in the fall of 2021. But unfortunately, it was bipartisan but many of the people in this room did not vote for it.

But I spend a lot of my time when I am back home in New Mexico working across the aisle with my community partners to get that infrastructure built. It is water pipelines, it is broadband. And that was made possible because of the visionary leadership in the Congress that happened before this, and by President Biden and Kamala Harris.

But what is shocking to me this morning, walking into this room, and I share my colleague AOC's just absolute shock a few moments ago, if you roll back the tape, I saw something, I have worked in the Federal Government for over a decade, and I have never seen anyone object to a unanimous consent to put evidence into the record. I hope people will take note of that. I have never seen that before. And we had multiple Members object to putting Project 2025 in the record today.

And what is shocking about that, truly shocking, is, first of all, it doesn't even have to be in the record, you guys. It is online. You can just Google it. It is right here. And if you read it, AOC actually read from page 61 of this report, which was written by Donald Trump's OMB director. The section on CEQ is specifically about the provisions that are in the bills that are on this agenda today. It literally is calling for the things that are in this bill. That is literally what it says. You can read it. It is right here online.

And not only does it say that it should implement what Donald Trump did during his administration, it says right here on page 61 it should go further. It says that it should use the judicial review that the Supreme Court just put into place by overturning Chevron deference to make it possible for the administration to go further.

So, when my friends across the aisle, and I respect and I want to work with you all in a bipartisan basis, say that Project 2025 has nothing to do with what is happening here today, it has everything to do with what is happening here today because it is all right here in this document.

So, I am just genuinely shocked. I hope people will replay the clip over and over again of the objection that just happened here a few moments ago, because I have never seen that happen.

Now let's talk about NEPA for a moment. NEPA was put into place in the late 1960s. It passed and then was signed by President Nixon. It was signed and passed on a bipartisan basis.

I just heard a comment about how Democrats have broken trust over the Fiscal Responsibility Act. OK, you all, we are about to take a vote on a CR today that breaks trust on the Fiscal Responsibility Act. It actually violates the handshake deal that was made with the President over your desire to tank the economy, to shrink the budget, to take away resources, and through which you shove through a NEPA bill that tried to gut environmental regulations. So, if you want to talk about breaking trust, let's talk about that, because you are about to take a vote on a bill. And if you don't want to break trust, how about you vote for a CR to keep the government operational?

But NEPA was put there as public trust to support our communities because, as Mr. Beard has pointed out in his testimony, our communities were systematically excluded across the country in opportunities for economic advancement, for meaningful jobs, and

were often used in siting and putting infrastructure that not only did not benefit them, but directly harmed them.

And that is why the Biden administration, and that is why the soon-to-be Harris administration includes consideration of cumulative impacts, because our communities deserve a chance to have a seat at the table. They deserve the opportunity to have economic development, and they deserve to have the opportunity to build a future that they believe in. And that is what this Administration is about. It is about what the Democratic leadership of this Congress is trying to advance. It is what those of us on this side of the aisle are trying to do to help our communities.

And I am frankly just shocked by some of the rhetoric I hear around this dais today. You had a bite at the apple. You tried to tank our economy over it. You got what you wanted, and now you are back here asking for more. Well, our communities' lives are on the line.

And with that, I yield back.

The CHAIRMAN. The gentlelady yields back.

And to clarify the record, Ms. Stansbury, I am not sure if you were here when the Project 2025 report was accepted to the record. I think the objection was to something called the Trump Project 2025 report, which, if you or Mr. Huffman or anybody else can produce that report, a legitimate report that has not been photoshopped, then we would probably more than likely unanimously accept that to the record, too.

Ms. STANSBURY. Mr. Chairman, I respect that. And I have deep respect for you, as well. But I think you can replay the tape and that is not what was objected to. So, thank you.

The CHAIRMAN. We could argue about that, but we will move on.

Mr. GRAVES. For the record, Mr. Chairman, I have had Democrats object to my UC request last Congress when they were in charge.

Mr. HUFFMAN. Really? Which one?

The CHAIRMAN. The Chair recognizes Mr. Carl for 5 minutes.

Mr. CARL. Do I have to?

[Laughter.]

Mr. CARL. At this point?

The CHAIRMAN. You can yield back. You can yield your time to Mr. Graves.

Mr. CARL. No, I want my time, but thank you, and I appreciate it. That is what I was objecting to, is trying to tie Project 2025 to Trump. I don't care about that document, and if it goes in the record. And I think AOC said it a little different. But having that tied to Trump and put in the record was actually my objection. I don't care about the Project 2025. I haven't read it, don't want to read it, don't need it.

So, the NEPA process was intended as a tool for protecting the environment. But over time, it has become an unnecessary burden for infrastructure projects, like those managed by the Alabama Port Authority, which is in my district. Federal agencies often spend too much time and resources studying different options, which lead to delays in important public projects. These delays can affect public safety and slow down economic growth.

Additionally, setbacks only worsen the issue as multiple agencies sometimes conduct separate reviews, and groups file lawsuits even if they didn't participate during the public comment period.

As Congress looks at a way to improve NEPA, it is important to streamline the process without weakening the environment protection by clarifying what has made an alternative reasonable; limiting lawsuits to those who took part in the public comment period, not those that did not; and encourage agencies to use trustworthy data. Reforms can help reduce delays and costs while still ensuring strong environmental oversight.

Mr. PUGH, I am going to run out of time here. But for you, sir, agencies often spend a lot of time studying options like I was just talking about that are not practical, causing delays for important infrastructure projects like the one I mentioned a while ago on our Port Authority. In your experience, what should Congress do to better define reasonable alternatives in the NEPA process to avoid wasting time and resources?

Mr. PUGH. Well, personally, I do believe that looking at alternatives is always prudent. I mean, you really want to find the best alternative.

Reasonable alternatives, you have to look at tons of different things which involve common sense, environmental impact, dollars you are going to have to spend, and ultimately how long it is going to take you to deliver that particular project so that you can benefit the community. Because at the end of the day, that is really what we are after. We are trying to benefit our communities.

Mr. CARL. Would you say setting clear guidelines for initial assessment would help speed up the process?

Mr. PUGH. Absolutely.

Mr. CARL. OK. How about this Chevron law? Do you think we can start using that and start sifting through some of all this bureaucracy that we have that has formed itself, that has just created over a matter of time?

Mr. PUGH. Yes.

Mr. CARL. I think the Chevron law should be studied by this Committee. I think the Chevron law should be applied to all these different requirements. I think it is a missed opportunity if we don't do that, because I think we have an agency that is way out of control, like so many things in Washington, DC.

With that, Mr. Chairman, I yield my time to Mr. Tiffany.

Mr. TIFFANY. Yes, just in this closing minute here I want to build on the Chevron deference question, Mr. Chairman.

This really is a great opportunity for Congress to return some of the power to this body. We have seen the executive branch grab so much authority. I mean, we see the rulemaking that has been going on, and it has been going on, administrations of both parties, for decades now, and pulling more and more power to the executive branch. What a great opportunity for us in Congress to pull back some of that authority from the executive branch and make sure that we are writing laws much more precisely.

This is one of the things that we did in the Wisconsin State Legislature after 2010. Rather than writing on the very bottom of a bill, "subject to rulemaking," we started writing our laws much

more precisely, and we got the intent of the legislature much better that way.

I yield to the gentleman.

Mr. CARL. Mr. Chairman, I yield my time.

Mr. STAUBER [presiding]. Thank you very much. The Chair recognizes Mr. Levin from California for 5 minutes.

Mr. LEVIN. Thank you, Mr. Chairman. Look, we don't always agree on everything, but I am hopeful that we can try to find some common ground when it comes to permitting.

I think we all can agree that promoting an efficient permitting process and advancing the build-out of infrastructure is critical to achieving energy security and reducing energy costs for the American people. It is especially true, I believe, for clean energy and other large-scale grid infrastructure across the country. And to accomplish this goal, we need to fully fund our agencies to ensure that they have the expertise and the resources to complete efficient environmental reviews.

We also need to be early, upfront collaborators engaging in communities, setting projects up for success. I am a recovering environmental attorney, and I have seen firsthand in my career how early and effective engagement doesn't slow down the process, as some might believe, but often can help projects identify and solve potential conflicts early on in the process.

For several years, I have championed something called the Public Land Renewable Energy Development Act, PLREDA, which would direct our Federal land managers to conduct programmatic reviews to engage communities in renewable energy development early, before conflicts could delay a project.

I have additionally introduced legislation with my friend and colleague, Sean Casten, the Clean Electricity and Transmission Acceleration Act, which would address the real permitting issues preventing us from being able to build out our electricity grid to meet increasing energy demand from things like new data centers and manufacturing facilities. This type of legislation, I believe, demonstrates it is possible to make our permitting system more efficient without sacrificing key environmental or community protections.

I would like to ask unanimous consent to enter into the record this report from the Natural Resources Defense Council, which details, and I quote, "The NEPA process has saved money, time, lives, historical sites, endangered species, and public lands while encouraging compromise and cultivating better projects with more public support."

Mr. STAUBER. Without objection.

[The information follows:]

Never Eliminate Public Advice: NEPA Success Stories

NRDC, February 1, 2015 by Elly Pepper

The full document is available for viewing at:

<https://www.nrdc.org/resources/never-eliminate-public-advice-nepa-success-stories>

Mr. LEVIN. This report details over 50 case studies from across the country where the NEPA process actually improved projects and resulted in better outcomes for local communities.

Smart-from-the-start planning, like programmatic reviews, can make crucial public input go quicker and smoother. Programmatic reviews, including the recently-finalized proposed update to the Western Solar Plan, will allow agencies to work with stakeholders to identify lands that are suitable for development and those that aren't, reducing conflict and possible permitting delays down the road.

Turning now to my questions, Ms. Reams, would you agree that permitting goes more smoothly when local communities are on board?

Ms. REAMS. Absolutely. Early engagement is very important.

Mr. LEVIN. Well, I would say first of all, I agree with you. I would say that the bills before us today would really weaken the process for local communities to participate and collaborate in the permitting process.

I firmly believe that we have to accelerate our build-out of infrastructure. I think that is particularly true for clean energy and transmission. Would you concur with that?

Ms. REAMS. I do concur.

Mr. LEVIN. And I think we can achieve this by ensuring our agencies have the resources and the capacity to permit projects quickly, by adopting more programmatic reviews to help streamline permitting, by improving transparency in the permitting process, and by encouraging engagement with communities early and meaningfully. Would you agree with all of that?

Ms. REAMS. I would. I am sure it is packed with details, but yes.

Mr. LEVIN. Always, the devil is in the details.

Ms. REAMS. It always is.

Mr. LEVIN. And it is important that we have that dialogue, we don't just talk over one another, but we have that dialogue.

Unfortunately, the discussion draft that I see today, to me anyway, seems to be a far cry from what this moment really needs, from a permitting perspective, permitting reform, which is bipartisanship. What I see before me today would undermine responsible permitting processes; would tip the scales in favor of the project sponsors and private profits rather than the public interest; would drastically subvert the ability of communities to seek judicial review to ensure accountability when a project has a substantial impact on the health of our environment, frontline communities, or climate.

But look, I remain hopeful that we can work in a bipartisan fashion on permitting reform, particularly to address issues unique to renewable energy and transmission infrastructure. But sacrificing our environment and sacrificing our local communities to polluting industries to do their bidding, like this legislation appears to do, simply should not be the price for improving government processes.

Thank you, and I will yield back.

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

I have just been handed a note for Members. Lunch is available in our conference room for those of you who are hungry.

I will now recognize myself for 5 minutes. I want to thank the Chairman for holding this hearing today, as well as for the leadership that he has shown on the Natural Resource Committee.

We know too well that NEPA has grown out of control. It is grown from a five-page NEPA statute passed over five decades ago, which we should remember is only a procedural statute to what we have today, over 136 pages of regulations and rules to follow in order to adopt the NEPA rules.

The Biden-Harris administration's 136-page NEPA Phase 2 completely disregards the laws passed by this Congress and agreed to by the current administration.

Before I begin my questions, I am going to ask unanimous consent that the following letters of support for this draft legislation from the following organizations be entered into the record: The International Union of Operating Engineers Local 49; Jobs for Minnesotans; Up North Jobs; Better in our Backyard; the Area Partnership for Economic Expansion; and Minnesota Mining.

Without objection, they will be entered.

[The information follows:]

**INTERNATIONAL UNION OF OPERATING ENGINEERS
LOCAL 49**

September 6, 2024

Hon. Bruce Westerman, Chairman
House Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Westerman and Members of the House of Representatives:

On behalf of the International Union of Operating Engineers, Local 49 (Local 49), I am writing to express our strong support for your legislation aimed at improving the permitting of projects under the National Environmental Policy Act (NEPA). Local 49 is a construction labor union that represents over 15,000 heavy equipment operators, mechanics, and stationary engineers across Minnesota, North Dakota, and South Dakota.

This legislation would have a positive impact on several major proposed copper-nickel mining projects in our region through improved transparency and efficiency in the federal permitting process. The communities in northeast Minnesota stand to benefit from these projects through their ability to bring significant economic contributions and job opportunities to an area of Minnesota that has been in economic decline for decades. Yet, the companies proposing to responsibly bring these projects forward have faced a series of unnecessary setbacks and delays in the federal environmental review and permitting process.

Permitting reform is critically needed to ensure these problems no longer persist, and to ensure proposed projects are reviewed in a coordinated and efficient manner while simultaneously ensuring our strong environmental standards are met. These reforms will give projects the opportunity to prove that by using the most highly skilled workforce and cutting-edge technologies critical minerals can be safely and efficiently mined.

The copper-nickel mining projects in our region are essential to the revitalization of our local communities and to ensuring we meet our nation's goals of bolstering domestic supplies of critical minerals.

Therefore, we at Local 49 fully support your proposed NEPA reform legislation, as it would greatly benefit our member companies and communities.

Sincerely,

JASON A. GEORGE,
Business Manager—Financial Secretary

JOBS FOR MINNESOTANS
St. Paul, MN

September 10, 2024

Hon. Bruce Westerman, Chairman
 House Natural Resources Committee
 1324 Longworth House Office Building
 Washington, DC 20515

Dear Chairman Westerman and Members of the House of Representatives:

I am writing today on behalf of Jobs for Minnesotans, a coalition co-founded by the Minnesota Building and Construction Trades Council and the Minnesota Chamber of Commerce and strengthened by labor unions, community leaders and business members from across the state. We represent 70,000 union workers, 6,300 companies and 500,000 employees in Minnesota.

Our coalition is in strong support for your legislation aimed at improving the permitting of projects under the National Environmental Policy Act (NEPA). As a coalition, we have consistently advocated for a fair regulatory process—fair to the public, the government agencies and investors alike. The three pillars of a fair process include transparency, predictability and timeliness. Without any of these, the regulatory process loses credibility and fairness for projects being reviewed in our country.

This legislation strengthens the regulatory process and would have a positive impact on several major proposed copper-nickel mining projects in our region through improved transparency and efficiency in the federal permitting process.

The communities in northeast Minnesota stand to benefit from these projects through their ability to bring significant economic contributions and job opportunities to an area of Minnesota that has been on economic decline for decades. Yet, the companies proposing to responsibly bring these projects forward have faced a series of unnecessary setbacks and delays in the federal environmental review and permitting process.

The copper-nickel mining projects in our region are essential to the revitalization of our local communities and to ensuring we meet our nation's goals of bolstering domestic supplies of critical minerals.

In the last decade, since we've been advocating for federal agencies to uphold the regulatory process outlined in law, there has been very little accountability to encourage federal agencies to advance the review of a proposed mine plan in a timely and fair manner. Moreover, mining in our region has been used as a high-stakes political game with a mining moratorium and the unjustified pulling of minerals leases.

Permitting reform is needed to ensure these problems no longer persist, and to ensure proposed projects are reviewed in a coordinated and efficient manner while simultaneously ensuring our strong environmental standards are met. The review of these projects should be taken seriously and not used as a partisan political football where the advancement of the review only moves forward dependent on which party holds office. Our communities in northeast Minnesota deserve better. This legislation will help do just that.

Therefore, we at Jobs for Minnesotans fully support your proposed NEPA reform legislation.

Sincerely,

DAVID CHURA,
Board Chair

UP NORTH JOBS INC.

September 9, 2024

Hon. Bruce Westerman, Chairman
 House Natural Resources Committee
 1324 Longworth House Office Building
 Washington, DC 20515

Dear Chairman Westerman and Members of the House of Representatives:

On behalf of the Ely Area Development Association and Up North Jobs Inc., I write to document the record and to express our strong support for your legislation to improve the permitting of projects under the National Environmental Policy Act (NEPA).

Both of the nonprofit organizations of which I serve as President and CEO, promote job growth and economic development in Northeastern Minnesota. The Ely Area Development Association was first chartered in 1959 and was responsible for the development of numerous Ely projects. Up North Jobs is a 10-year-old membership organization with more than 4,000 company and individual members and supporters who financially support its activities and whom support the development of copper-nickel mining in the Rainy River Watershed of the Superior National Forest.

The aforementioned legislation would have a positive impact on several major copper-nickel mining projects proposed in our region by improving the transparency and efficiency in the federal permitting process. The communities in Northeastern Minnesota stand to benefit from these projects and would make significant economic contributions and provide important job opportunities in Northeastern Minnesota, where the economy has been in decline for decades. Yet, sadly, the companies proposing to develop these projects, have experienced decades of unnecessary setbacks and delays in the federal environmental review and permitting process.

Reforming the permitting process is urgently need to ensure these problems no longer persist, and to ensure that proposed projects are reviewed in a coordinated and efficient manner while simultaneously ensuring that tough environmental standards are met.

The proposed copper-nickel mining projects in our region are essential to the revitalization of our local communities and to ensure that we meet our nation's goals of bolstering domestic supplies of critical minerals.

Therefore, the Ely Area Development Association, Up North Jobs, and its many members and supporters, fully support your proposed NEPA reform legislation, since it would greatly benefit our region's companies and communities.

Sincerely,

GERALD M. TYLER,
President, Chairman and CEO

BETTER IN OUR BACK YARD

September 10, 2024

Hon. Bruce Westerman, Chairman
 Hon. Raúl Grijalva, Ranking Member
 House Natural Resources Committee
 1324 Longworth House Office Building
 Washington, DC 20515

Dear Chairman Westerman and Members of the House of Representatives:

I'm writing on behalf of Better In Our Back Yard to support your proposed legislation to improve project permitting under the National Environmental Policy Act (NEPA). Better In Our Back Yard is a coalition of dedicated leaders who understand that responsible industry creates a thriving economy.

Permitting reform is crucial for unlocking economic prosperity in northeast Minnesota and throughout the U.S. The country stands on the brink of another industrial revolution, but progress is stalled by unnecessary legal challenges from

project opponents, who use them as delay tactics, harming our regional economy and quality of life.

Minnesota's Iron Range hosts several key copper-nickel projects managed by responsible and reputable companies that have spent decades navigating the appropriately rigorous permitting process. However, these companies continue to face unwarranted setbacks and delays in the federal environmental review and permitting procedures. According to a recent S&P Global report, it takes an average of 29 years to permit a mine after discovering a resource. This lengthy process should be an embarrassment to policymakers on the global stage.

The legislation you've proposed would positively impact several major proposed copper-nickel mining projects in our region by adding transparency and improving efficiencies in the federal permitting process. Our local communities are counting on these projects to bring significant economic contributions and job opportunities to areas of Minnesota that have been in economic decline for decades.

Thank you for proposing much-needed changes to ensure these problems no longer persist. Better in Our Back Yard and our members want to see proposed projects reviewed efficiently and fairly while also adhering to Minnesota's strong environmental standards. We support statewide and national clean energy goals, and we know a cleaner and more sustainable future is only possible through responsible domestic mining. A more fair and efficient federal permitting process is critical.

Better in Our Back Yard believes there is no better place than here, right in our backyard, to lead the world in responsible mineral procurement, and we are pleased to lend our full support for your proposed NEPA reform legislation.

Thank you,

RYAN SISTAD,
Executive Director

APEX

September 10, 2024

Hon. Bruce Westerman, Chairman
Hon. Raúl Grijalva, Ranking Member
House Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Westerman and Members of the House of Representatives:

On behalf of the Area Partnership for Economic Expansion (APEX), I am writing to express our strong support for your legislation aimed at improving the permitting of projects under the National Environmental Policy Act (NEPA). APEX is a private sector-led business development engine established to promote sustainable growth in Northeast Minnesota and Northwest Wisconsin. APEX investor-members represent many of the largest and most influential organizations with a vested interest in driving progress and economic vitality.

This legislation would have a positive impact on several major proposed copper-nickel mining projects in our region through improved transparency and efficiency in the federal permitting process. Our communities in Northeast Minnesota will benefit from these projects through new investment, new business and job opportunities, improving areas challenged by economic decline in recent years.

The copper-nickel mining projects in our region are essential to meeting our nation's goals of bolstering domestic supplies of critical minerals.

Permitting reform is urgently needed to ensure proposed projects are reviewed in a timely and coordinated manner while simultaneously upholding our strong environmental standards essential to the prosperity and safety of future generations.

Our region can play a key leadership role in the development of these natural resources and innovative new industries in the clean energy economy value chain.

In conclusion, as a collaborative, solutions-orientated organization, APEX fully supports your proposed NEPA reform legislation, as it will benefit our investor-member companies and communities. Please do not hesitate to reach out with any questions related to the support of this important legislation.

Sincerely,

RACHEL JOHNSON,
President & CEO

MINING MINNESOTA

September 10, 2024

Hon. Bruce Westerman, Chairman
House Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Westerman and Members of the House of Representatives:

On behalf of MiningMinnesota, I am writing to express our strong support for your legislation aimed at improving the permitting of projects under the National Environmental Policy Act (NEPA). MiningMinnesota is a coalition of industry and community leaders who advocate for safe and environmentally responsible mining in Minnesota.

This legislation would have a positive impact on several major proposed copper-nickel mining projects in our region through improved transparency and efficiency in the federal permitting process. The communities in northeast Minnesota stand to benefit from these projects through their ability to bring significant economic contributions and job opportunities to an area of Minnesota that has been in economic decline for decades. Yet, the companies proposing to responsibly bring these projects forward have faced a series of unnecessary setbacks and delays in the federal environmental review and permitting process.

Permitting reform is critically needed to ensure these problems no longer persist, and to ensure proposed projects are reviewed in a coordinated and efficient manner while simultaneously ensuring our strong environmental standards are met.

The copper-nickel mining projects in our region are essential to the revitalization of our local communities and to ensuring we meet our nation's goals of bolstering domestic supplies of critical minerals.

Therefore, we at MiningMinnesota fully support your proposed NEPA reform legislation, as it would greatly benefit our member companies and communities.

Sincerely,

JULIE C. LUCAS,
Executive Director

Mr. STAUBER. Ms. Reams, would you agree that the discussion draft before us today treats all industries and all projects equally?

Ms. REAMS. Yes, it does.

Mr. STAUBER. Your organization is, of course, a strong proponent of developing renewable energy projects such as wind and solar. These renewable energy projects require significant amounts of critical minerals, which we are largely getting currently from overseas adversarial countries. If Congress were to enact permitting reforms that only benefited renewable energy projects or policies that only made it easier to build transmission lines, but failed to enact reforms that benefit domestic mining, would we still be dependent on foreign adversarial nations for the critical minerals necessary to expand renewable energy?

Ms. REAMS. Yes, sir. We are dependent, about 80 percent of the rare earth minerals are imported from China.

Mr. STAUBER. Mr. Pugh, in your written testimony you note that on projects you have worked on in your career you have typically increased the project budget by about 25 percent. And you have done this because if and when the project met certain "major Federal action," the project would be forced to undergo the NEPA process and the local communities would incur the significant compliance cost along with it.

Under the Chairman's legislation, this automatic trigger would be removed, likely saving communities like the ones that you serve from additional costs. I know it would do so for many of the rural communities in northern Minnesota that I am proud to represent. In your experience, Mr. Pugh, how do small, rural communities find the additional funds to deal with these compliance costs?

Can you explain further how this is a burden on small, rural communities?

Mr. PUGH. Yes, small and rural communities are working off of limited budgets, anyway. So, any time you put a layer on top of that, it is just an additional burden.

And, again, in my case, I am not the smallest community, I would avoid Federal funding literally as often as I possibly could.

Mr. STAUBER. And in your view, do the bills before us eliminate all the NEPA challenges you face, or would NEPA remain significantly stringent?

Mr. PUGH. I don't know that it would eliminate all of them, because we still have to go through permitting processes with the Corps of Engineers, for example, on our regularly-funded projects. So, we are still having environmental reviews, even without the full NEPA process.

Mr. STAUBER. Would any of these bills jeopardize the clean water or clean air in the communities that you serve?

Mr. PUGH. Not that I can tell.

Mr. STAUBER. So, even after these reforms, comprehensive environmental protections would remain in place, and projects will still need to comply with strict environmental standards. Is that correct?

Mr. PUGH. Yes, sir.

Mr. STAUBER. Thank you.

Mr. Beard, I represent northern Minnesota, where we have mining. We mine the iron ore that makes about 82 percent of America's steel. And we know that is a strategic national security interest. We currently have the biggest untapped copper nickel find in the world, as Ms. Reams says, as she wants to transition and bring wind and solar on board. Would you rather get those minerals mined by union labor in northern Minnesota under the strict environmental and labor standards that we have, or would you rather purchase those minerals from 15 of the 19 industrial mines in the Congo that use forced child labor? Where would you rather get those minerals?

Mr. BEARD. Sir, when it comes to jobs, I look at doing whatever we can, or I believe we do whatever we can to help our own people and our own country, not to sacrifice. It is not an either-or case. However, if rules are not in place to protect Native American lands

in your community there, or voices are not heard from the people who would be affected by the mine, because mining in that form or fashion is very intensive and it destroys the land if we don't take those under consideration.

Mr. STAUBER. Mr. Beard, where would you like to get those minerals, mined domestically in northern Minnesota with the best environmental and labor standards that we have, or mined in China or the Congo, owned by the Chinese Government? Would you rather have them mined with United States domestic mines and domestic labor standards, rather than the Chinese for slave labor? That is an easy question. It is not a trick question. Where would you rather have them mined?

Mr. BEARD. As I said, I would rather have the mining done here.

Mr. STAUBER. Thank you very much.

Mr. BEARD. But the problem with that is that the laws aren't in place.

Mr. STAUBER. Mr. Beard, we have been trying to permit one of the mines for 21 years, and another major mine for 14 years. At the same time, we are purchasing these minerals from foreign adversarial nations that aren't in our best interest. So, in order for us to be able to transition, let's domestically mine. We have to bring these additional sources of energy in place. And we can do that by domestically mining.

My time is up, and we will go to Representative Leger Fernández from New Mexico. Thank you.

Ms. LEGER FERNÁNDEZ. Thank you so much, Chair, and thank you for raising the issue around our adversaries and mining.

And I would just like to remind everybody that the Republicans on this Committee and in this Republican-controlled House refused to adopt an amendment initially proposed by one of their own Members, and then by Ms. Stansbury and myself, and Rules, and on the Floor that would have prevented foreign adversaries from mining our precious resources in the United States and taking them for free.

So, if we care about keeping precious minerals out of our foreign adversaries' hands, they should have supported that amendment. The hypocrisy of saying we don't want foreign adversaries to have this and to sort of eat our lunch or whatever it is, you should have supported that amendment which would have kept those precious resources for Americans and for Americans' companies.

Mr. STAUBER. Will the gentlelady yield for a minute?

Ms. LEGER FERNÁNDEZ. No, I want to get to my questions. If you want to give me more time at the end, I will do that. I would love to do that. But I wanted to get to the issue of the timelines of things.

I do understand that it is important to speed up environmental reviews. And listen, we have mining in New Mexico. I was in Silver City, visited that mine. We do copper. We also have the Gila River. We are doing it a lot better now. But I also know that we need to speed up the permitting process, and that you can't do that without people, right? It is people who actually do those reviews, and we recognize that.

So, Congressional Democrats passed the Inflation Reduction Act and provided \$1 billion to Federal agencies to build their capacity

to process permits and environmental reviews. And we did not get a whole lot of Republican support for that. But we know that it is important to give those resources to be able to do the work that is needed.

Mr. Beard, what additional steps can Congress take to further build capacity and better equip the Federal Government to process permits and environmental reviews?

Mr. BEARD. What the government can do is not to weaken NEPA, but to strengthen it, to make sure that you have the ability to address the cumulative impact and the environmental impact, as well as the other impacts that normally are not taken into consideration. They can be done timely.

But I must also say that any delays are not simply the fault of NEPA. A lot of times those delays are in large part because the companies are slow and don't want to do it, so they foot drag.

But we need to have these things in place. Strengthening NEPA will protect those communities and still give us what we need to be dependent on our own labor, on our own natural resources.

Ms. LEGER FERNÁNDEZ. And I think it is really important. As I pointed out, I represent a district that has mining in it, but it also has the legacy of mining where we did not pay attention to this. There are presently 500 abandoned uranium mines on Navajo and in the uranium belt in New Mexico, and they pose grave environmental and health concerns. I visited the communities that are impacted by those mines, and it is heartbreaking. It is just heartbreaking to look at those people who have been displaced from their land, who are suffering birth defects generation after generation, and those kinds of harms flow when we do not apply good environmental oversight, when we do not apply and have community input into that.

Can you just talk a little bit more? What does that community input look like?

And that way, if we have some time, I will be able to yield. But I wanted to make sure we could get to the questions.

Mr. STAUBER. Absolutely.

Ms. LEGER FERNÁNDEZ. Thank you.

Mr. Beard?

Mr. BEARD. Yes, that community input is essential because those are the people that are being affected. And in a lot of cases, it is being done with projects that use their tax dollars. So, to do anything less by not involving them would be irresponsible, would not be giving power to the people. It would be allowing others to dictate what is going to happen and where it is happening without even giving them any consideration for the impacts. And that is why it is essential that NEPA be strengthened, not weakened.

Ms. LEGER FERNÁNDEZ. Right. I loved it, I had one of my colleagues say I am a real conservative because I want to conserve the Clean Air Act, the Clean Water Act. I want to conserve the resources that are valuable, resources that belong to the American people.

And the American people deserve to have input into this process, especially when they are the most impacted. And you can have mining, you can have oil and gas that proceeds in an environmentally conscious manner.

I am sorry, I have run out of time. If you want to give me some more time, I will yield and be able to respond back to you. But you are sitting in the chair, Mr. Stauber.

Mr. STAUBER. I will thank you for your indulgence, but we are going to go to Representative Collins, and he is going to yield some time. Thank you, though.

Mr. COLLINS. Thank you, Mr. Chairman. I will tell you what, I will go ahead and yield you a little bit of time right now, before I get started, because I may get on a rant.

Mr. STAUBER. Yes, thank you. Thank you very much. I just want to be clear: 21st century mining and the technology that we use and have has greatly brought the mining industry to the safety and labor standards that we need.

Occupation and use of our public lands, including investments and partnerships with mining companies, are subject to regulatory scrutiny, particularly regarding national security concerns, foreign investment regulations, and labor and environmental law compliance. Disallowing domestic mining will only drive our allies and ourselves into further reliance on the communist country of China, which controls over 60 percent of global production of critical minerals.

China's global mineral dominance is not just a threat, it is a reality and a national security threat. By breaking even the first link in the Chinese global supply chain, we can send strong market signals to American companies looking to invest in domestic mining and processing ventures here. We can mine here, we can process here. We can manufacture here.

The U.S. mining industry is already disadvantaged by permitting delays and legislative restrictions that discourage investment and restrict long-term mineral supply. In fact, delays during the permitting process cause U.S.-based mines to lose over one-third of their value.

And I will turn it over to Representative Collins.

Thank you for your time.

Mr. COLLINS. Thank you, Mr. Chair. I am going to get right into this, and then if I have time, I have a couple other points here.

Mr. Jakins, Oglethorpe Power Cooperative. I appreciate your time being here.

The electric cooperatives own and operate several natural gas power plants in my district that help meet peak demands. The cooperatives and your partners at Georgia Power and MEAG were the first utilities in the United States to successfully bring on two new advanced nuclear units at Plant Vogtle. And now you are telling everyone that the cooperatives are investing in new natural gas assets just to meet Georgia's growth. If Congress doesn't pass permitting reform and your new gas units are delayed due to frivolous litigation, are you concerned about having these plants up and running on time?

Mr. JAKINS. Yes, we are. And I do sit on the board of Oglethorpe Power, and I am here representing them, as well.

I point back to Plant Vogtle, which you mentioned in that question. It took 17 years to bring Plant Vogtle online. It is the largest clean energy plant in the nation. And as we turn to sort of meet shorter-term demands with gas, it is critically important. We are

in a capacity-constrained environment right now. We need that new capacity in a very predictable way. And if these plants are delayed by frivolous litigation or any pieces of the kind of web of bureaucracy that sometimes those can fall under, it could really harm our ability to serve Georgians and our members.

Mr. COLLINS. Well, I appreciate that, and I think that answers the next question, that it is the right time to be looking at some NEPA reforms and permitting.

Mr. JAKINS. Yes, sir.

Mr. COLLINS. Mr. Chairman, I have sat here, I was here yesterday, was here last month, this morning, as a matter of fact. And all we talk about is overreach from these Federal Government agencies, these out-of-control agencies that think that they don't have to answer to anyone and they are never called into account, never brought in to be questioned. And that is what we have been doing during this Congress.

The person from the other side of the aisle said that they wanted to accelerate build-out, accelerate build-out in infrastructure. Yes, we do.

I just left a group of people. The guy works for the county. He said they are trying to expand the intersection. It is going to cost them \$400,000 in a year-and-a-half just to inspect and go back and research the history. That is ridiculous. That is part of NEPA.

Dragging feet? From a company's standpoint, Mr. Beard, why would a company drag its feet? Because that is only going to cost them more money. That makes absolutely no sense.

What doesn't make sense is the fact that we have an EPA out there that doesn't want to answer, doesn't feel like they have to answer, doesn't have a timeline to answer, and really don't care what kind of money they are costing the American people.

With that, Mr. Chairman, I yield back.

Mr. STAUBER. Thank you very much. The Chair now recognizes my colleague and friend, Representative Porter from California.

Ms. PORTER. Thank you very much, Mr. Chair.

Permitting sometimes feels like a dirty word in this Committee, a word that provokes, a fighting word almost. And all too often, we discuss how long it takes to get a permit and the causes of delays, forgetting why we need permits in the first place, to protect people from industry abuses.

So, we need to return to this most basic fact, which I think is getting lost in the debate. If so-called permitting reform guts basic environmental protections, we have lost sight of why we do permitting at all. We can and must, and I think my colleagues on my side of the aisle today, the Democrats, have repeatedly said this. We are in favor of speeding up permitting timelines in ways that do not sacrifice the health of the people of this country.

And there are common-sense solutions. For example, as my colleague Mr. Levin mentioned, funding the agency staff needed to responsibly review projects as Democrats did through the Inflation Reduction Act. And guess what? We are already seeing the benefits of that.

And let me tell you about a bipartisan solution right in front of this Committee with zero opposition. My bill, the Electronic Permitting Modernization Act, passed out of this Committee by

unanimous consent. My co-sponsor, Republican Doug LaMalfa, sitting right here with us today. Unanimous consent out of this Committee. What would that bill do? It would centralize links to all of the Department of the Interior permitting systems on a single webpage to make it easier for Americans to apply for permits and for us to make sure the permitting process is efficient.

But thus far, Chair Westerman and the Republicans have, for some reason unknown to me, refused to bring it to the Floor. So much for a serious commitment to permitting reform. So, instead of discussing actual bipartisan solutions and moving them into law, we are once again discussing cutting the public's access to justice and biased environmental reforms. Who does this benefit? How does it help?

Let's look at just one major loophole. Under current law, NEPA analysis is required for any major Federal action, including those funded by Federal dollars, which makes sense. But under this bill, projects would be exempt from NEPA review if they are considered major Federal actions solely because they are federally funded.

We heard Mr. Carl, my Republican colleague, say that we should streamline permitting. I am willing to talk about streamlining permitting. But what this would do, Mr. Westerman's bill, is exempt projects from permitting entirely. It is dishonest to talk about streamlining when what we are talking about is just gutting and eliminating the process itself.

Mr. Beard, would you say that projects receiving public funds should receive public oversight?

Mr. BEARD. Yes, I do.

Ms. PORTER. And why does he give that answer? I will give you one example: history. It shows us what happens when the government funds large-scale infrastructure projects without public input.

Before NEPA was enacted, Federal funds were used to construct the Interstate Highway System. Many of these highways went straight through disadvantaged communities, cutting off entire neighborhoods. In Southern California, where I represent, the construction of Interstate 210 cut directly through central and northwest Pasadena, predominantly Black neighborhoods, destroyed thousands of homes and businesses, exposed residents to health hazards, and devalued property.

Mr. Beard, would you say that highway project benefited those marginalized communities?

Mr. BEARD. I would say it did not.

Ms. PORTER. It did not. And since then, NEPA has been in place to help us make smarter decisions with taxpayer dollars by listening to communities so that public projects using our public tax dollars are used in the interest of the public, not in the interest solely of private industry at the expense of the public. It is time we put our constituents first, stop polluter giveaways, and get serious about meaningful permitting reform.

I will return to where I started. I have a bill that has garnered unanimous consent of this Committee. If you have been listening to this hearing today, you know how contentious it has been. I have done the work across the aisle to get unanimous consent on a bipartisan bill, and yet the Chair of this Committee will not move it to the House Floor.

Mr. Chair, before I yield back, I would like to ask unanimous consent to enter into the record this article from CNN that documents the involvement of over 250 former officials from the Trump administration in the drafting of the Heritage Foundation's Project 2025.

Mr. TIFFANY [presiding]. Is there any objection?

So, ordered.

[The information follows:]

Trump claims not to know who is behind Project 2025. A CNN review found at least 140 people who worked for him are involved

CNN, July 11, 2024 by Steve Contorno

(CNN)—Donald Trump has lately made clear he wants little to do with Project 2025, the conservative blueprint for the next Republican president that has attracted considerable blowback in his race for the White House.

"I have no idea who is behind it," the former president recently claimed on social media. Many people Trump knows quite well are behind it.

Six of his former Cabinet secretaries helped write or collaborated on the 900-page playbook for a second Trump term published by the Heritage Foundation. Four individuals Trump nominated as ambassadors were also involved, along with several enforcers of his controversial immigration crackdown. And about 20 pages are credited to his first deputy chief of staff.

In fact, at least 140 people who worked in the Trump administration had a hand in Project 2025, a CNN review found, including more than half of the people listed as authors, editors and contributors to "Mandate for Leadership," the project's extensive manifesto for overhauling the executive branch.

Dozens more who staffed Trump's government hold positions with conservative groups advising Project 2025, including his former chief of staff Mark Meadows and longtime adviser Stephen Miller. These groups also include several lawyers deeply involved in Trump's attempts to remain in power, such as his impeachment attorney Jay Sekulow and two of the legal architects of his failed bid to overturn the 2020 presidential election, Cleta Mitchell and John Eastman.

To quantify the scope of the involvement from Trump's orbit, CNN reviewed online biographies, LinkedIn profiles and news clippings for more than 1,000 people listed on published directories for the 110 organizations on Project 2025's advisory board, as well as the 200-plus names credited with working on "Mandate for Leadership."

Overall, CNN found nearly 240 people with ties to both Project 2025 and to Trump, covering nearly every aspect of his time in politics and the White House—from day-to-day foot soldiers in Washington to the highest levels of his government. The number is likely higher because many individuals' online resumes were not available.

In addition to people who worked directly for Trump, others who participated in Project 2025 were appointed by the former president to independent positions. For instance, Federal Communications Commissioner Brendan Carr authored an entire chapter of proposed changes to his agency, and Lisa Correnti, an anti-abortion advocate Trump appointed as a delegate to the United Nations Commission on the Status of Women, is among the contributors.

Several people involved in Project 2025 didn't serve in the Trump administration but were influential in shaping his first term. One example is former US Attorney Brett Tolman, a leading force behind the former president's criminal justice reform law who later helped arrange a pardon for Charles Kushner, the father of Trump's son-in-law. Tolman is listed as a contributor to "Mandate for Leadership."

The extensive overlap between Project 2025 and Trump's universe of allies, advisers and former staff complicates his efforts to distance himself from the work. Trump's campaign has sought for months to make clear that Project 2025 doesn't speak for them amid an intensifying push by President Joe Biden and Democrats to tie the Republican standard bearer to the playbook's more controversial policies.

In a statement to CNN, campaign spokeswoman Danielle Alvarez said Trump only endorses the Republican Party platform and the agenda posted on the former president's website.

"Team Biden and the (Democratic National Committee) are lying and fear-mongering because they have nothing else to offer the American people," Alvarez said.

Heritage plan becomes a political headache

Behind Project 2025 is the Heritage Foundation, a 51-year-old conservative organization that aligned itself with Trump not long after his 2016 victory. Heritage is led by Kevin Roberts, a Trump ally whom the former president praised as "doing an unbelievable job" on a February night when they shared the same stage.

Heritage conceived Project 2025 to begin planning so a Republican president could hit the ground running after the election. One of its priorities is creating a roadmap for the first 180 days of the new administration to quickly reorient every federal agency around its conservative vision. Described on its website as "a movement-wide effort guided by the conservative cause to address and reform the failings of big government and an undemocratic administrative state," Project 2025 also aims to recruit and train thousands of people loyal to the conservative movement to fill federal government positions.

One organization advising Project 2025, American Accountability Foundation, is also putting together a roster of current federal workers it suspects could impede Trump's plans for a second term. Heritage is paying the group \$100,000 for its work.

Many of Project 2025's priorities are aligned with the former president, especially on immigration and purging the federal bureaucracies. Both Trump and Project 2025 have called for eliminating the Department of Education.

But Project 2025 has lately become a lightning rod for other ideas Trump hasn't explicitly backed. Within "Mandate for Leadership" are plans to ban pornography, reverse federal approval of the abortion pill mifepristone, exclude the morning-after pill and men's contraceptives from coverage mandated under the Affordable Care Act, make it harder for transgender adults to transition, and eliminate the federal agency that oversees the National Weather Service.

Its voluminous and detailed plans also run counter to Trump's desire for a streamlined GOP platform absent any language that Democrats could wield against Republicans this cycle.

Roberts recently faced backlash as well for saying in an interview that the country was "in the process of the second American Revolution, which will remain bloodless if the left allows it to be."

Three days later, Trump posted to Truth Social: "I know nothing about Project 2025."

"I disagree with some of the things they're saying and some of the things they're saying are absolutely ridiculous and abysmal," he wrote.

In response to Trump's social media post, a Project 2025 spokesperson told CNN in a statement it "does not speak for any candidate or campaign."

"It is ultimately up to that president, who we believe will be President Trump, to decide which recommendations to use," the spokesperson said.

Trump's campaign has repeatedly said in recent months that "reports about personnel and policies that are specific to a second Trump Administration are purely speculative and theoretical" and don't represent the former president's plans. Project 2025 and similar policy proposals coming from outside Trump's campaign are "merely suggestions," campaign managers Susie Wiles and Chris LaCivita wrote in a statement.

Vast network of Trump allies

However, Trump's attempts to distance himself from Project 2025 have already encountered credibility challenges. The person overseeing Project 2025, Paul Dans, was a top official in Trump's White House who has previously said he hopes to work for his former boss again. Shortly after Trump's Truth Social post last week, Democrats noted a recruitment video for Project 2025 features a Trump campaign spokeswoman. On Tuesday, the Biden campaign posted dozens of examples of connections between Trump and Project 2025.

CNN's review of Project 2025's contributors also demonstrated the breadth of Trump's reach through the upper ranks of the vast network of organizations working to move the country in a conservative direction—from women's groups and Christian colleges to conservative think tanks in Texas, Alabama and Mississippi.

New organizations centered around Trump's political movement, his conspiracy theories around his electoral defeats and his first-term policies are deeply involved in Project 2025 as well. One of the advisory groups, America First Legal, was started by Miller, a key player in forming Trump's immigration agenda. Another is the Center for Renewing America, founded by Russ Vought, former acting director of the Office of Management and Budget, who wrote for Project 2025 a detailed blueprint for consolidating executive power.

Vought recently oversaw the Republican Party committee that drafted the new platform heavily influenced by Trump.

In addition to Vought, two other former Trump Cabinet secretaries wrote chapters for "Mandate for Leadership": Housing and Urban Development Secretary Ben Carson and acting Defense Secretary Christopher Miller. Three more former department heads—National Intelligence Director John Ratcliffe, acting Transportation Secretary Steven Bradbury and acting Labor Secretary Patrick Pizzella—are listed as contributors.

Project 2025's proposals for reforming the country's immigration laws appear heavily influenced by those who helped execute Trump's early enforcement measures. Former acting US Customs and Border Protection chief Mark Morgan and former Immigration and Customs Enforcement chief Tom Homan—the faces of Trump's polarizing policies—contributed to the project, as did Kathy Nuebel Kovarik, one of the policy advisers pushing to end certain immigrant protections behind the scenes. The Project 2025 chapter on overhauling the Department of Homeland Security was written by Ken Cuccinelli, a top official at the department under Trump.

Some of Trump's most contentious and high-profile hires are credited with working on "Mandate for Leadership," including some whose tenures ended under a cloud of controversy.

Before Trump adviser Peter Navarro went to prison for refusing to comply with a congressional subpoena as part of the House investigation into the January 6, 2021, US Capitol attack, he wrote a section defending the former president's trade policies and advocating for punitive tariffs.

Other contributors include: Michael Pack, a conservative filmmaker who orchestrated a mass firing at the US Agency for Global Media after he was installed by Trump; Frank Wuco, a senior White House adviser who once promoted far-right conspiracies on his talk radio show, including lies about President Barack Obama's citizenship; former NOAA official David Legates, a notable climate change skeptic investigated for posting dubious research with the White House imprint; and Mari Stull, a wine blogger-turned-lobbyist who left the Trump administration amid accusations she was hunting for disloyal State Department employees.

The culmination of their work, spread across 900 pages, touches every corner of the executive branch and would drastically change the federal government as well as everyday life for many Americans. In summarizing the undertaking, Roberts wrote in "Mandate for Leadership" that Project 2025 represented "the next conservative President's last opportunity to save our republic."

"Conservatives have just two years and one shot to get this right," Roberts said. "With enemies at home and abroad, there is no margin for error. Time is running short. If we fail, the fight for the very idea of America may be lost."

Ms. PORTER. Thank you. I yield back.

Mr. TIFFANY. The gentlelady yields. I now recognize myself for 5 minutes.

First, I would ask unanimous consent to enter into the record a bill by the gentlelady from New York City, the Green New Deal, and then also enter into the record an article from CNBC, "Does Alexandria Ocasio-Cortez Really Want to Get Rid of Farting Cows?" The quote here is, "We set a goal to get to net zero, rather

than zero emissions in 10 years, because we aren't sure that we will be able to fully get rid of farting cows and airplanes that fast." Without objection, so ordered.

[The information follows:]

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[~116HR109]

(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. RES.

Recognizing the duty of the Federal Government to create a Green New Deal.

IN THE HOUSE OF REPRESENTATIVES

Ms. OCASIO-CORTEZ submitted the following resolution; which was referred to the Committee on _____

RESOLUTION

Recognizing the duty of the Federal Government to create
a Green New Deal.

Whereas the October 2018 report entitled "Special Report on Global Warming of 1.5 °C" by the Intergovernmental Panel on Climate Change and the November 2018 Fourth National Climate Assessment report found that—

- (1) human activity is the dominant cause of observed climate change over the past century;
- (2) a changing climate is causing sea levels to rise and an increase in wildfires, severe storms, droughts, and other extreme weather events that threaten human life, healthy communities, and critical infrastructure;

**Does Alexandria Ocasio-Cortez really want to get rid of ‘farting cows’?
Not yet, at least**

CNBC, February 7, 2019 by Kevin Breuninger

<https://www.cnn.com/2019/02/07/alexandria-ocasio-cortezs-green-new-deal-keeps-farting-cows-for-now.html>

KEY POINTS

The ambitious “Green New Deal” resolution put forward by freshman Rep. Alexandria Ocasio-Cortez, D-N.Y., and Sen. Ed Markey, D-Mass., aims to fundamentally reimagine the U.S. economy with the environment at top of mind.

Among its proposals, the resolution would have the U.S. creating “net-zero” greenhouse gases in 10 years.

Why “net zero”? We set a goal to get to net-zero, rather than zero emissions, in 10 years because we aren’t sure that we’ll be able to fully get rid of farting cows and airplanes that fast,” a summary of the proposal says.

The “Green New Deal,” unveiled Thursday, sets sky-high goals to cut greenhouse gases to nearly zilch-but it’s not committed to getting rid of “farting cows” just yet.

That’s according to an initial outline of the ambitious new resolution put forward by freshman Rep. Alexandria Ocasio-Cortez, D-N.Y., and Sen. Edward Markey, D-Mass., which aims to fundamentally reimagine the U.S. economy with the environment at top-of mind.

Markey and Ocasio-Cortez, the 29-year-old democratic socialist, called for completely ditching fossil fuels, upgrading or replacing “every building” in the country and “totally overhaul transportation” to the point where “air travel stops becoming necessary.”

They also aimed to have the U.S. creating “net-zero” greenhouse gases in 10 years.

Why “net zero”? The lawmakers explained: “We set a goal to get to net-zero, rather than zero emissions, in 10 years because we aren’t sure that we’ll be able to fully get rid of farting cows and airplanes that fast.”

At the time this story was published, the FAQ page with the phrase “farting cows” appeared to have been removed from Ocasio-Cortez’s website. Fox News’ John Roberts reported that the language was tweaked to “emissions from cows” in an update, which also appears to have been deleted.

John Roberts’ tweet: latest version of FAQ’s on her blog has removed the “f” word in favor of “emissions from cows” Holy cow

Language notwithstanding, greenhouse gas emissions from cows have a bigger environmental impact than one might expect.

Methane gas produced by bovine flatulence contributes a significant portion of the greenhouse gases contributing to global warming, according to the United Nations.

Livestock farming produces about 18 percent of all those environmentally damaging gases—and about a quarter of that chunk comes from cow farts and burps, the U.N. says.

The lawmakers appear to recognize this. One of the Green New Deal’s 14 infrastructure and industrial proposals is to “work with farmers and ranchers to create a sustainable, pollution and greenhouse gas free, food system that ensures universal access to healthy food and expands independent family farming.”

Spokespersons for Markey and Ocasio-Cortez did not immediately respond to CNBC’s questions about the reference to cow farts in the summary of their Green New Deal.

In the meantime, America’s nearly 100 million cows can look forward to years of munching grass and passing gas still ahead of them.

Mr. TIFFANY. Mr. Pugh, over the last 30 to 50 years, has the environment gotten cleaner in the United States of America?

Mr. PUGH. Yes, sir.

Mr. TIFFANY. It has gotten cleaner.

Ms. Reams, has the environment gotten cleaner the last 30 to 50 years?

Ms. REAMS. Yes, we have record low emissions.

Mr. TIFFANY. Mr. Pugh, is China building more coal plants?

Mr. PUGH. I have no direct knowledge of that.

Mr. TIFFANY. Mr. Jakins, do you know?

Mr. JAKINS. Yes.

Mr. TIFFANY. How many coal plants are they building? Do you have some knowledge of that?

Mr. JAKINS. A lot more than the United States.

Mr. TIFFANY. Ms. Reams?

Ms. REAMS. Yes, it is at least a dozen a year.

Mr. TIFFANY. China is building at least a dozen coal plants a year.

Ms. REAMS. Yes, sir.

Mr. TIFFANY. Where do those emissions go over the course of time?

Ms. REAMS. They are called global emissions, sir.

Mr. TIFFANY. And the prevailing winds are? To the east?

Ms. REAMS. They are blowing to the east. Yes, sir.

Mr. TIFFANY. I was just up in Alaska with Representative Stauber, and it was interesting. When we were flying with the Governor we had a beautiful day, there were a few clouds in the sky, but we could also see some grayness that was on the horizon. And I asked the Governor what that is, and he said, "It is probably pollution from Asia."

Ms. Reams, does this bill that we are considering here, getting an initial look at, do they weaken numeric standards?

Ms. REAMS. No, this is on process. The bill that we are talking about is on process.

Mr. TIFFANY. So, it doesn't increase numeric standards that you could put out greater amounts of emissions. Is that accurate?

Ms. REAMS. It has nothing to do with emissions, sir.

Mr. TIFFANY. But it does have to do with timelines, right?

Ms. REAMS. Indeed. And also, I think focus, as well. We have been talking about the need to have oversight. But there are a number of cases where we have seen abuse.

For instance, there is a Supreme Court case that is now going to be considered, and it is about a railroad building in Utah, but it has been sued based on emissions coming from Louisiana. So, we have Utah and Louisiana emissions. Could that have been foreseeable? I think we need to rein in what we are looking at. This is an example where we do need rail to supplant moving back and forth in the communities in Utah where the state government has deemed they need that. They have their own environmental laws, and they are being superseded by the Federal Government because of emissions in Louisiana.

Mr. TIFFANY. So, for those that may be geographically challenged, are Utah and Louisiana neighboring states?

Ms. REAMS. Louisiana is in the southeast and Utah is at least 2,000 miles away.

Mr. TIFFANY. So, they are quite a ways apart.

Ms. REAMS. Yes, sir.

Mr. TIFFANY. OK. I am just going to take the final minute here.

The gentlelady from New Mexico chastised us in regards to input. Well, I would urge you to go back and look at the record over the last few months, as the Alaskan tribes have been shouldered to the side by the Biden-Harris administration and said, "We are not going to take input from you." In fact, we heard from those tribes.

In fact, we heard from one of those tribes, as a result of the discovery of gas and oil in Alaska, they now live 13 years longer because they can afford to have a clinic in their community way up there on the North Slope which, I found out a few weeks ago, is a long ways from a major city like Anchorage.

And she went on to say that, "You are going to tank the economy." We are going to tank the economy? Have you taken a look at the data that is out there? Have you talked to the American people, what is going on? Food, fuel, everything is up, double digits, many of it 20 to 50 percent. And even cheese curds. Cheese curds in Wisconsin are up 50 percent. That is what is going on. Tank the economy? I think we have seen it already, and we have been watching that show for 3½ years, and the American people are tired of it.

I yield back.

Mr. HUFFMAN. Thank you, Mr. Chair, which is why it is a good thing that inflation is coming down in this country faster than any of the other industrialized countries, all of which have been dealing with the global inflation problem caused by the emergence from the pandemic.

Mr. TIFFANY. Yes, let's provide some——

Mr. HUFFMAN. But it is my time, Mr. Chair.

Mr. TIFFANY. Can we provide some context to that?

Mr. HUFFMAN. No.

Mr. TIFFANY. Has inflation reduced——

Mr. HUFFMAN. Let's go to your time, and we will have a great conversation. But I think it is my time, and I would like to use my time to provide a little bit of context for this conversation we are having.

There have been references to the——

Mr. TIFFANY. Hold it. Are you doing your 5 minutes now?

Mr. HUFFMAN. I am, is that all right?

VOICE. You have to recognize——

Mr. TIFFANY. I have to recognize you in order to do that.

Mr. HUFFMAN. Let's do this by the book, by all means.

[Laughter.]

Mr. TIFFANY. Yes, I recognize the gentleman from California for 5 minutes.

Mr. HUFFMAN. All right, got it. Thank you, Mr. Chairman. I love regular order.

So, for my 5 minutes I would like to bring back a little bit of context for this discussion we have been having.

References to the Manchin-Barrasso bill in the Senate, a “permitting bill” that actually slashes judicial review, gives handouts to the oil and gas industry, creates new authorities for mining companies to dump toxic waste on Federal lands, forces mandatory offshore oil and gas leases, and requires the Department of Energy to approve, mandates the approval of LNG export infrastructure, but it does contain a few good provisions for transmission and clean energy development. But there are a lot of handouts to the fossil fuel industry.

That mandatory approval of LNG infrastructure comes in spite of everything we know about liquefied natural gas when you actually do the accounting of the methane losses from the wellhead all the way to liquefaction and transportation and the burning at the back end. It is worse than coal. And just a few moments ago, there was a great alarm that China continues to build coal plants. Well, we are doing something that is even worse under the Manchin-Barrasso bill. And let me be clear. I don’t support that bill. It sacrifices our most vulnerable communities in the name of marginal progress on clean energy. It takes us backward on decarbonization.

But here in our chamber, team extreme, there is another one for the bingo card, doesn’t think it is draconian enough. And Chairman Westerman has brought forward a bill that takes the worst parts of the Senate bill, and then goes even further when it comes to communities who are affected by these projects, and even more handouts for polluters.

So, look, I know there are people right now who think the waning days of this dumpster fire of a Congress is a good time to cut a deal on permitting. But I hope, when you see Chair Westerman’s bill and understand it to be a negotiating position, a line in the sand, this is not a good time to be cutting a bill with team extreme on something, you have to use air quotes, but we will call it permitting reform.

This is a ransom note that we are considering today, not serious legislation. It is the umpteenth regurgitation of H.R. 1, more of the same. It is the congressional equivalent of the Rocky Horror Picture Show cult movie, where we have all seen it so many times that everybody knows the words. And Mr. Graves’ CRA invites us to “Do the Time Warp Again,” using the Rocky Horror Picture Show frame again. It would prevent the Federal Government from considering climate change or environmental justice in NEPA procedures ever again. It would take us a long way backward on those important policies.

The regulations that my Republican friends are trying to repeal do an important thing. They establish long-needed updates to how agencies incorporate climate change and environmental justice into environmental reviews. This is important for so many communities that have requested these reforms for years, and I was proud to join 100 other Members of Congress in a bicameral letter asking CEQ to incorporate these very protections.

I would ask, Mr. Chairman, unanimous consent to enter that letter from October 13, 2023, to CEQ into the record.

Mr. TIFFANY. Without objection.

[The information follows:]

October 13, 2023

Hon. Brenda Mallory, Chair
 Council on Environmental Quality
 730 Jackson Place, N.W.
 Washington, DC 20503

Re: Docket ID No. CEQ-2023-0003 National Environmental Policy Act
 Implementing Regulations Revisions Phase II

Dear Chair Mallory:

We applaud the Council on Environmental Quality's (CEQ's) leadership in proposing National Environmental Policy Act (NEPA) Phase II Regulations to restore and strengthen community protections that were undermined by the previous administration. The previous administration's 2020 NEPA regulations put our nation's resources and communities at risk, with the worst effects felt by communities of color and low-income communities. Prior to the 2020 NEPA regulations, NEPA and its implementing regulations helped promote meaningful local involvement, sustainable development, and informed federal decision-making for decades. Restoring and enhancing CEQ's regulatory standards to more fully consider climate change and environmental justice is urgently needed and fully consistent with CEQ's regulatory authority. We applaud the proposed Phase II Regulations and provide additional comments below to support and improve climate change and environmental justice considerations in the final Phase II Regulations.

Climate Change Considerations

Climate change remains the greatest environmental challenge we face. CEQ rightfully acknowledges that climate change effects are environmental effects, and consequently, NEPA requires federal agencies to assess climate-related impacts associated with proposed federal actions. For years, CEQ and the courts have correctly noted that this obligation requires federal agencies to conduct robust analysis of climate change effects.¹ Despite this clear obligation, some federal agencies still conduct little or no climate analysis beyond a general statement that a proposed action represents a small fraction of global or domestic emissions. Such limited analysis simply repeats the well-known observation that climate change is caused by numerous actions with individually minor but collectively significant effects and fails to satisfy NEPA's requirement to seriously consider the environmental impacts of proposed actions.

The final Phase II Regulations should clearly enumerate climate-related NEPA requirements, including requirements for federal agencies to properly quantify, consider, and disclose the greenhouse gas (GHG) emissions of major proposed actions and alternatives. Relatedly, the final Phase II Regulations should clearly describe the need for federal agencies to use an accurate baseline to properly consider the environmental effects and GHG emissions associated with a proposed action and its alternatives. This should include direction for agencies to assess the current and future state of the environment under a no-action alternative, an estimate of greenhouse gas emissions without the proposed action, and a requirement for agencies to consider the full lifetime of the proposed action and its effects—including the full lifecycle of associated upstream and downstream emissions where relevant. Without clear standards, many federal agencies will use an inaccurate baseline to compare proposed federal actions to alternatives and underestimate reasonably foreseeable GHG emissions and climate impacts associated with a proposed action.

Furthermore, because climate change is caused by numerous actions with individually minor but collectively significant effects, it is essential that the final Phase II Regulations direct agencies to consider the broader context of how proposed actions and alternatives help meet or detract from larger federal climate goals, international agreements, and commitments, including GHG reduction commitments. Toward this end, CEQ should direct agencies to presume that proposed projects or actions that increase emissions are inconsistent with emission reduction goals, and agencies should consider whether there are reasonable alternatives that avoid such conflicts. Consistent and accurate assessment, measurement, and consideration of GHG emissions associated with major proposed actions will be essential in achieving our GHG emission reduction targets.

¹See for example *Center For Biological Diversity v. National Highway Traffic Safety Administration*, 538 F.3d 1172 (9th Cir. 2008).

Environmental Justice Considerations

It is critical that CEQ's final Phase II Regulations be responsive to widely stated environmental justice community priorities and needs, including the need for more accessible public input processes and full consideration of disproportionate environmental burdens.² To advance more accessible public input processes, CEQ rightly proposes to eliminate major public engagement barriers imposed by the Trump administration in their 2020 NEPA regulations. The final Phase II Regulations should also direct agencies to conduct broad outreach to non-English speaking communities, or those with limited English proficiency (LEP), during the NEPA process, including through translation and interpretation services based on the most widely spoken languages in affected communities. This should include translation and direct dissemination of environmental impact statements and environmental assessments in culturally relevant and accessible ways.

Similarly, CEQ should direct agencies to hold public hearings in environments that are safe, inclusive, and fully accessible to all persons affected by a federal action and exclude the use of venues that require documentation of citizenship status. Recognizing that many communities must contend with poor broadband infrastructure and limited internet access, the final Phase II Regulations should also highlight the need for federal agencies to balance internet-based outreach and physical outreach to reach all impacted communities.

Furthermore, CEQ's Phase II Regulations should stress the need for agencies to communicate information using language that is clear and fully accessible to both impacted communities and the public at large, especially when discussing technical issues like greenhouse emissions. CEQ should also direct agencies to hold public meetings early and often in a manner that facilitates broad community participation, including by providing multiple participation options during daytime and evening hours as well as telephonic and remote participation options. In addition, CEQ should include direction and mechanisms in the Phase II Regulations for agencies to invite environmental justice communities to propose reasonable alternatives and mitigation measures during the NEPA process. By using an inclusive, transparent, community-led, and community-driven NEPA process, federal agencies can help ensure that environmental justice communities throughout the country are responsibly engaged and that environmental justice needs are properly considered in federal decisionmaking.

To better address disproportionate environmental burdens, CEQ's final Phase II Regulations should include clear direction to federal agencies to center and thoroughly analyze environmental justice (EJ) impacts throughout their NEPA analyses. As CEQ has previously noted, climate change raises significant environmental justice concerns because it has disproportionate and adverse public health and environmental impacts in communities of color, low-income communities, Tribal Nations, and Indigenous communities.³ Accordingly, "[u]nderstanding the comparative risks to vulnerable populations is critical for developing effective and equitable strategies for responding to climate change."⁴ Additionally, the communities most affected by climate change impacts are often the same communities that face the greatest localized harm from poor air and water quality and other local environmental hazards. Consequently, the final Phase II Regulations should ensure that agencies fully analyze and seek to mitigate both disproportionate climate impacts as well as the other disproportionate impacts associated with local environmental hazards. For example, oil and gas extraction or natural gas pipelines have both local effects as well as reasonably foreseeable global cumulative effects related to GHG emissions; federal agencies should analyze and seek to mitigate harm related to both types of effects.

Finally, the final Phase II Regulations must stress the importance of early consideration of climate and EJ impacts to help agencies properly determine the scope of proposed actions and consider a full range of alternatives and mitigation measures that minimize harmful impacts on communities. The need for robust consideration and mitigation of harmful cumulative impacts is especially important when federal agencies are considering actions that may further overburden communities that are already overburdened by the effects of numerous pollution sources. Additionally, to avoid additional harm to overburdened EJ communities, CEQ must ensure that the environmental impacts of all major federal actions and projects are properly analyzed and that agencies are properly using categorical exclusions. This should

²WE ACT for Environmental Justice and GreenLatinos, *Comment Letter Regarding CEQ Phase II Regulations* (September 29, 2023).

³88 Fed. Reg. at 1197

⁴EPA, *Climate Change and Social Vulnerability in the United States: A focus on Six Impacts*, at 9 (Sept. 2021), *Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts* (epa.gov).

involve periodic reviews of categorical exclusions to ensure that they account for the latest science and design practices, including improved modeling of climate forecasts, as well as improved understanding and research on health impacts associated with categorically excluded activities. It is also critically important that the final Phase II Regulations respect and equitably promote the inclusion of Indigenous Knowledge throughout the federal decisionmaking process.

Overall, CEQ's proposed Phase II Regulations include numerous key provisions that will greatly advance environmental justice—including the first-ever definition of environmental justice in NEPA's implementing regulations (see proposed section 1508.1(k)) and the explicit consideration of environmental justice in the environmental consequences section of environmental impact statements (see proposed § 1502.16 (14)). It is critical that CEQ not eliminate or weaken any of these essential protections in the final Phase II Rule.

Conclusion

Once again, we applaud CEQ's leadership in proposing NEPA regulations to strengthen climate change and environmental justice considerations, consistent with CEQ's regulatory authority. We look forward to continued CEQ engagement and the work ahead to address the climate crisis and environmental injustices across our country.

Sincerely,

U.S. Senators

Tammy Duckworth	Edward J. Markey
Alex Padilla	John Fetterman
Richard J. Durbin	Jeffrey A. Merkley
Bernard Sanders	Thomas R. Carper
Chris Van Hollen	Sheldon Whitehouse
Benjamin L. Cardin	

Members of Congress

Raul M. Grijalva	Barbara Lee
Debbie Dingell	Jennifer L. McClellan
Maxine Waters	James P. McGovern
Robert C. "Bobby" Scott	Jamie Raskin
Bennie G. Thompson	Jerrold Nadler
Mark Takano	Nydia M. Velázquez
Zoe Lofgren	Katie Porter
Jared Huffman	Henry C. "Hank" Johnson, Jr.
Summer Lee	Alexandria Ocasio-Cortez
Adriano Espaillat	Sean Casten
Eleanor Holmes Norton	Nanette Diaz Barragán
Jan Schakowsky	Sheila Jackson Lee
Yvette D. Clarke	Frederica S. Wilson
Julia Brownley	Linda T. Sánchez
Kevin Mullin	Mike Quigley

Doris Matsui	Suzanne Bonamici
Ro Khanna	Mark DeSaulnier
Dwight Evans	Delia C. Ramirez
Pramila Jayapal	Sydney Kamlager-Dove
Jamaal Bowman, Ed.D.	Mike Levin
Grace Meng	Seth Magaziner
Greg Casar	Paul D. Tonko
Ritchie Torres	Steve Cohen
Tony Cárdenas	David J. Trone
Dan Goldman	John P. Sarbanes
Jill Tokuda	Nikema Williams
Emanuel Cleaver, II	Mike Thompson
Ilhan Omar	Earl Blumenauer
Chellie Pingree	Danny K. Davis
Cori Bush	Valerie P. Foushee
André Carson	Melanie Stansbury
Jonathan L. Jackson	Alma S. Adams, Ph.D.
Salud Carbajal	Betty McCollum
Donald S. Beyer, Jr.	Jimmy Gomez
Adam B. Schiff	Grace F. Napolitano
Jesús G. “Chuy” Garcia	Gerald E. Connolly
Diana DeGette	Kweisi Mfume
Darren Soto	Andrea Salinas
C.A. Dutch Ruppersberger	Mark Pocan
Juan Vargas	Rashida Tlaib
Gregorio Kilili Camacho Sablan	Teresa Leger Fernández
Lloyd Doggett	

Mr. HUFFMAN. Thank you.

Undoing these regulations and, worse, stopping the Federal Government from ever going back to considering these types of protections is an extreme and dangerous policy.

Mr. Beard, what do the NEPA Phase 2 regulations that Mr. Graves' legislation seeks to repeal mean to your community?

Mr. BEARD. What it means to my community, first and foremost, is that our voices aren't and can't be heard. The effects that are

cumulative that would happen in our community won't be taken into consideration properly.

And it also doesn't consider what happens to the climate and other environmental justice issues. All of those are impactful to us. And if we don't consider them, then we are sacrificing those communities once again for profit and putting politics over people, and that simply is unacceptable.

Mr. HUFFMAN. Yes, these regulations don't necessarily mean a project can't happen, but they require consideration of these impacts, these environmental justice impacts, and also the reality of climate change. Do you think that is asking too much as part of an environmental review process?

Mr. BEARD. No, it is not asking too much. We need to consider those things because of the impact we already see. To not consider them is to be in absolute denial. It is here. It is happening now, right now, down in southeast Texas, southwest Louisiana with the storms. And we all know about the other storms and the fires. All of those are consequences of that.

Mr. HUFFMAN. Thank you, Mr. Beard.

I yield back.

Mr. TIFFANY. Thank you very much. The Chair now recognizes Representative LaMalfa from California for 5 minutes.

Mr. LAMALFA. Thank you, Mr. Chairman. Just a couple notes on what we are talking about here.

The streamlined process we are talking about ensures that more resources are actually dedicated to addressing the true environmental issues we all care about, rather than being wasted on lengthy and unnecessary hurdles that really don't serve any public interest, and certainly hurt projects and the economy. So, it maintains rigorous standards for evaluating the public health effect, environmental reviews. It focuses on actionable data that can inform decision, rather than making endless cycles of repetitive research that do not add to the process. And that is what we are dealing with, repetitive, over and over again on things that can already be well known.

So, I want to focus a little more on the forestry side of it, as well, because you might know up until recently the United States was the No. 2 importer of wood and wood products, and only now has it gone to No. 1 because China's economy has turned down a little bit. So, we are the No. 1 importer of wood.

And I will remind people that in my own district in Northern California, we have had multiple fires of the six-digit nature in acreage. The Dixie Fire was just under 1 million acres. The most recent one, the Park Fire, 430,000 acres in just my district, as well as you had all the other Western states.

So, when we have a NEPA review required for U.S. Forest Service land, as well as BLM, which together they have about 430 million acres that they oversee or are supposed to oversee, they have to have a NEPA review for stuff they are doing even post-fire, or things that would be preventative fire, such as forest management, removing dead trees, restoration after fire, all these kinds of things that we would think normally are good.

So, the litigation brought time and time again, the weaponization of NEPA, which certainly wasn't intended when Congress passed

it 50-plus years ago, has really made us less safe, less clean, a bigger environmental problem if you want to look at the smoke plume. It just draws out the time and costs for doing forest management projects. And I will tell you, my constituents are pretty tired of it, pretty tired of being in fire danger and the calamity that constantly has happened to their neighbors and maybe even them.

So, the intention of NEPA, I think, has been lost and has been used as a tool, weaponized by environmental groups.

Mr. PUGH, earlier you mentioned that many rural areas like what I am talking about in Northern California are unable to keep up with the cost delays caused by NEPA and, of course, the fear of NEPA litigation, as well as the Forest Service itself seems to be fearful of more litigation so they don't do much. So, we are stuck with the aging infrastructure and lack of action. Can you give us more examples of how this can delay needed projects, and actually makes disasters worse?

Mr. PUGH. I think one of the easier situations here is talk about how we have combined storm and sanitary sewer in several of our communities, and that is not necessarily always a large community that would have that. But those are systems where stormwater is collected along with wastewater, and then point discharged into different bodies of water. And the cost, or the assumed cost for that local community to be able to take that combined storm sewer and be able to split it so that they could treat the stormwater differently than their sanitary, is certainly an impediment that NEPA imposes.

I don't know if that is an example you were looking for, or something else.

Mr. LAMALFA. Well, it is one, yes. Forestry frequently, all the time stopped by that.

Let me turn to Mr. Jakins on energy here.

NEPA litigation is frequently used to slow down or stop energy projects, including CO₂-free ones. Everybody is worried about CO₂, even though it is only 0.04 percent of our atmosphere. NEPA litigation is being used to slow down, such as the nuclear power plants, which are CO₂-free. And they even brought one on an already-existing nuclear power plant, Diablo Canyon, which the state legislature saw finally to add more time to its life there. But they wanted to sue over extending that life.

So, what does that do for cost of electricity when everybody is complaining about the high cost of everything, especially in California?

Mr. JAKINS. Well, the short answer is that it drives it up.

Jackson EMC has been in the electricity business for 85 years, and we are very good at planning and predicting when demand is going to come and when we are going to need to bring resources to bear to meet that demand. But unfettered delay is the web of bureaucracy that we talked about earlier. Litigation costs, other things that add to the delays that could come through the NEPA process need to be looked at. It adds to the cost of our members. Our members bear that cost directly, dollar for dollar.

Again, I pointed to 75 percent of each dollar is directed at power supply. So, when any of these assets get delayed, it has a direct impact on our members in a real and tangible way.

Mr. LAMALFA. Yes, even the projects that the environmentalists seem to love, the solar and wind ones, are delayed because they want to NEPA it to death.

I wonder if there was a NEPA filed on the Klamath River, where the hydroelectric CO₂-free dams were removed, and now so much choking silt and stuff running down that river for 150 miles it has killed all the wildlife in the river. We will come back to that later.

I yield back, Mr. Chairman.

Mr. TIFFANY. Thank you very much. The Chair now recognizes Representative Rosendale for 5 minutes.

Mr. ROSENDALE. Thank you very much, Mr. Chair. And I would also like to thank Congressman Graves and Congressman Yakym for introducing these critical bills aimed at restoring the NEPA process to its original intent, rather than allowing it to continue as a bureaucratic tool to obstruct economic development.

The statements from my colleagues across the aisle would leave you to believe that, without NEPA, there is no permitting or oversight required for projects, completely ignoring the fact that the states that these projects are located in have their own permitting processes that projects have to go through before NEPA is even considered. So, this is a complete duplication of efforts, and it is appalling of additional bureaucracy on top of the states already doing their own work and, as Mr. Chair has said many, many, many times, with the highest standards around the world, with the highest standards around the world.

In my home state of Montana, the overreach of the NEPA process impacts every sector, delaying vital infrastructure projects, hindering energy production, wildfire protection, and agriculture. Montanans feel the effect of this weaponized process in every aspect of their lives.

Chairman Westerman's bill, which enforces timelines and requires litigants to base lawsuits on previously submitted comments, will provide much-needed predictability. This measure will prevent delays, whether intentional or unintentional, from undermining important projects.

In Montana, three coal mines are currently facing seemingly indefinite delays on their EIS, well beyond the point where these mines have enough permitted coal to continue their operations. Two of these mines, Spring Creek and Rosebud, are major economic drivers in my district, employing hundreds of Montanans and generating millions of dollars in Federal, state, local taxes and royalties, including major employment opportunities to members of the Crow Tribe. This bill will ensure that future applicants don't face the same bureaucratic stonewalling.

As currently construed, the NEPA process creates uncertainty and stifles progress in my district. Radical environmental groups supported by weaponized bureaucracy have targeted key economic drivers, leaving communities uncertain about how they provide energy, food, and infrastructure, especially in sparsely populated areas, of which my district has many.

I also want to touch on Congressman Yakym's bill to help level the playing field and increase transparency by requiring CEQ to publish an annual report on frequent litigants and their reasons for suing. This will give NEPA applicants a clearer understanding of

the legal landscape and help Congress monitor the implementation of necessary NEPA reforms.

I want to go right to Mr. Jakins.

As someone representing a district that relies heavily on co-ops for electricity, can you explain how rising inflation has affected your business and the cost passed on to your consumers?

Mr. JAKINS. Yes, sir. Every aspect of our business has been affected by inflation. And I can point to one particular example, transformers, something that we use every day to serve customers. It costs four times more today than they did pre-COVID.

Mr. ROSENDALE. And how much additional efficiency are those transformers going to provide?

Mr. JAKINS. They provide the same exact amount of efficiency.

Mr. ROSENDALE. Yes, as you increase your capacity, which I am sure that you are, what obstacles have the renewable energy mandates caused for you and your consumers in reference to intermittent reliability and cost?

Mr. JAKINS. Electric co-ops are trying to meet the demands, as you stated, and we are trying to do it with all the tools that we have at our disposal, traditional tools to renewables, as well. And as we look at those hurdles that are placed in front of us through these processes or other regulatory processes, it is very, very difficult, as a power provider, to have any sort of predictability, any sort of reasonableness, any sort of expectation of timeliness in the delivery of these projects.

Mr. ROSENDALE. So, are the mandates driving your costs up?

Mr. JAKINS. And they are driving our costs up.

Mr. ROSENDALE. And because the mandates are also for renewable resources, are you having to back those intermittent resources of electric generation up with other sources?

Mr. JAKINS. That is the way the generation has to work. I mean, the sun doesn't shine at night, and solar panels, which are our basic renewable energy in Georgia, is very intermittent. Cloud cover, storms, those sorts of things, we have to have the backup generation there through traditional sources to provide that power through the intermittency of solar panels and others.

Mr. ROSENDALE. Very good. Thank you very much. I appreciate you all being here.

Mr. Chair, I yield back.

Mr. TIFFANY. Thank you very much. Before we go on to the next Member, I ask unanimous consent to enter into the record the Justice40 Initiative, published by the Biden-Harris White House.

The Biden-Harris White House has formally published the Justice40 Initiative multiple times, pushing to eliminate reliable energy sources.

Without objection, it will be entered.

[The information follows:]

JUSTICE 40

A Whole-of-Government Initiative

“We’ll create good jobs for millions of Americans . . . and we’ll do it all to withstand the devastating effects of climate change and promote environmental justice.”

—President Joe Biden, 2022 State of the Union

<https://bidenwhitehouse.archives.gov/environmentaljustice/justice40/>

What is the Justice40 Initiative?

For the first time in our nation’s history, the Federal government has made it a goal that 40 percent of the overall benefits of certain Federal climate, clean energy, affordable and sustainable housing, and other investments flow to disadvantaged communities that are marginalized by underinvestment and overburdened by pollution. President Biden made this historic commitment when he signed Executive Order 14008 on *Tackling the Climate Crisis at Home and Abroad* within days of taking office. To continue delivering on his environmental justice vision, President Biden signed Executive Order 14096 on *Revitalizing Our Nation’s Commitment to Environmental Justice for All* in April 2023.

What kinds of investments fall within the Justice40 Initiative? The categories of investment are: climate change, clean energy and energy efficiency, clean transit, affordable and sustainable housing, training and workforce development, remediation and reduction of legacy pollution, and the development of critical clean water and wastewater infrastructure.

How is the Administration implementing the Justice40 Initiative? A national commitment to environmental justice of this magnitude has never been made before. To meet the goal of the Justice40 Initiative, the Administration is transforming hundreds of Federal programs to ensure that disadvantaged communities receive the benefits of new and existing Federal investments. Through the President’s Investing in America Agenda—including the Inflation Reduction Act, Bipartisan Infrastructure Law, and the American Rescue Plan—Federal agencies are making historic investments to advance environmental justice and benefit disadvantaged communities. These investments will help confront decades of underinvestment in disadvantaged communities and bring critical resources to communities that have been overburdened by legacy pollution and environmental hazards.

What type of direction has the White House provided to Federal agencies to achieve the goals of Justice40 Initiative?

The task of delivering the benefits of hundreds of Federal programs to communities that are marginalized by underinvestment and overburdened by pollution requires fundamental and sweeping reforms to the very way in which the Federal government as a whole operates. Last year, the White House issued formal Interim Implementation Guidance directing all Federal agencies to identify and begin transforming their programs covered under the Justice40 Initiative—which agencies are currently implementing.

In January 2023, the White House issued additional guidance to Federal agencies on how to use the Climate and Economic Justice Screening Tool (CEJST), which is a mapping tool that helps identify disadvantaged communities. Disadvantaged communities, also known as Justice40 communities, include all Federally Recognized Tribes whether or not they have land. Here are some key topics addressed in the formal guidance:

What is a covered Justice40 investment? Covered Federal investments include any grant or procurement spending, financing, staffing costs, or direct spending or benefits to individuals for a covered program in a Justice40 category.

What is a covered Justice40 program? A “Justice40 covered program” is a Federal government program that falls in the scope of the Justice40 Initiative because it includes investments that can benefit disadvantaged communities across one or more of the following seven areas: climate change, clean energy and energy efficiency, clean transit, affordable and sustainable housing, training and workforce development, remediation and reduction of legacy pollution, and the development of critical clean water and wastewater infrastructure. Many existing and new programs created by President Biden’s Investing in America Agenda that make covered investments in these categories are Justice40 covered programs.

All Justice40 covered programs are required to engage in stakeholder consultation and ensure opportunities for local community members to be meaningfully involved in determining program benefits. Covered programs are also required to report data on the benefits flowing to disadvantaged communities.

Agencies that have released their covered programs under the Justice40 Initiative include:

- U.S. Department of Agriculture
- U.S. Department of Commerce
- U.S. Department of Energy
- U.S. Department of Homeland Security/Federal Emergency Management Agency
- U.S. Department of Housing and Urban Development
- U.S. Department of the Interior
- U.S. Department of Health and Human Services
- U.S. Department of Labor
- U.S. Department of Transportation
- U.S. Department of Veterans Affairs
- U.S. Army Corps of Engineers
- U.S. Environmental Protection Agency

The full list of Justice40 covered programs is available, [here](#).

How are communities involved in the Justice40 Initiative?

Communities have been involved in shaping the Biden-Harris Administration's environmental justice agenda and the Justice40 Initiative since the beginning.

President Biden and Vice President Harris are committed to ensuring that the voices, perspectives, and lived realities of communities with environmental justice concerns are heard in the White House and reflected in Federal policies, investments, and decisions. Executive Order 14008 created the first-ever White House Environmental Justice Advisory Council that is charged with providing independent advice and recommendations on how to address current and historic environmental injustice. Members of the council are selected from across a wide range of backgrounds, and have knowledge about or experience in environmental justice, climate change, disaster preparedness, or racial inequity, among other areas of expertise.

Early and meaningful engagement—in particular with communities with environmental justice concerns and the White House Environmental Justice Advisory Council—continues to shape the implementation of the Justice40 Initiative.

How is the Justice40 Initiative promoting meaningful engagement? Community engagement is a critical component of the Justice40 Initiative. Formal Administration guidance directed Federal agencies with Justice40 covered programs to conduct meaningful engagement to ensure community members have the opportunity to provide input on program decisions, including in the identification of the benefits of Justice40 covered programs.

What does the Justice40 Initiative mean for communities? The Biden-Harris Administration is implementing the Justice40 Initiative right now. The Justice40 Initiative is not a one-time investment, nor a single pot of money. Rather, it is a series of changes to improve how the Federal government ensures equitable distribution of the benefits of many programs. Existing and new programs—including programs created by the President's Investing in America Agenda—are covered by the Justice40 Initiative if they meet the eligibility requirements. To meet the goal of the Justice40 Initiative, agencies are changing their programs to ensure the benefits reach disadvantaged communities that need them most.

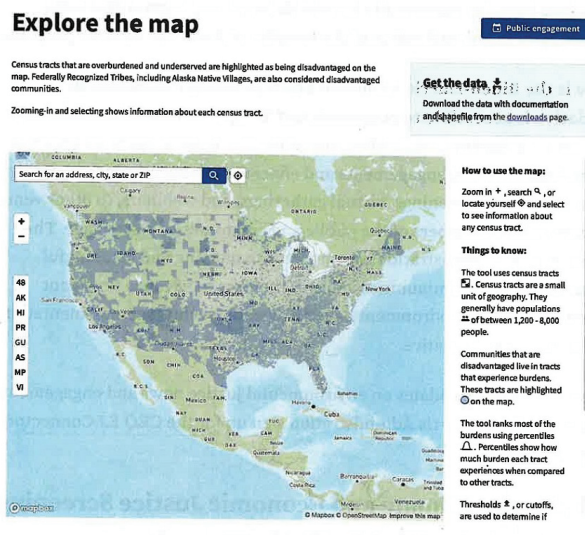
How is the Justice40 Initiative promoting meaningful engagement? Community engagement is a critical component of the Justice40 Initiative. Formal Administration guidance directed Federal agencies with Justice40 covered programs to conduct meaningful engagement to ensure community members have the opportunity to provide input on program decisions, including in the identification of the benefits of Justice40 covered programs.

How is the Biden-Harris Administration ensuring the Justice40 Initiative is accessible to communities? To help communities remain up-to-date on programs and funding opportunities, Federal agencies organize formal and informal

engagements and educational opportunities—ranging from in-person convenings, virtual gatherings and webinars, to other venues through which members of the public and communities can engage. The Biden-Harris Administration is committed to ongoing and meaningful engagement with communities and stakeholders to advance President Biden’s ambitious environmental justice agenda, including implementation of the Justice40 Initiative.

To receive regular updates on environmental justice news and engagements across the Biden-Harris Administration sign up for the CEQ EJ Connector newsletter.

What is the Climate and Economic Justice Screening Tool and how does it relate to the Justice40 Initiative?



What is the Climate and Economic Justice Screening Tool? The Climate and Economic Justice Screening Tool (CEJST) is an interactive mapping tool to identify disadvantaged communities that are marginalized by underinvestment and overburdened by pollution. The CEJST features a user-friendly, searchable map that identifies disadvantaged communities across all 50 states, the District of Columbia, and the U.S. territories, to the extent data are available for the U.S. territories. Land within the boundaries of Federally Recognized Tribes, including Alaska Native Villages, are highlighted as disadvantaged on the map. By helping Federal agencies identify disadvantaged communities, the CEJST seeks to fulfill the promise of the Justice40 Initiative. The CEJST was developed with Federal resource allocation purposes in mind.

When will the CEJST be updated? The CEJST will be continuously updated approximately on an annual basis and refined based on feedback and as new datasets and research become available. In July 2023, the Administration released the Spanish version of the CEJST.

How is the CEJST being used for the Justice40 Initiative? Federal agencies are using the CEJST as their primary tool for identifying disadvantaged communities that are geographically defined for any covered programs under the Justice40 Initiative and for programs where a statute directs resources to disadvantaged communities, to the maximum extent possible and permitted by law.

Where can I find more information? Additional information on the CEJST can be found here. CEQ and the U.S. Digital Service hosted several public training sessions on the CEJST. A recording is available here.

Mr. TIFFANY. We will now recognize Representative Boebert for 5 minutes.

Ms. BOEBERT. Thank you, Mr. Chairman, and thank you to our witnesses for joining us today. I appreciate you coming out here.

In Colorado, we are and have been facing historic drought and wildfire crises. And instead of allowing us to solve these issues through developing critical water storage, the water supply projects, or actively managing our forests, which is something I am very passionate about, especially in Colorado, where we have just so much national forest lands, Democrats want to blame climate change, and they delay these critical projects indefinitely.

The current permitting process under NEPA is unworkable, and I am proud to support Chairman Westerman's much-needed reforms to this very broken process. It is something that I encounter struggles and difficulties with on a regular basis throughout western Colorado and the western United States, even.

Mr. Pugh, you mentioned that current NEPA regulations trigger litigation that burdens smaller rural communities, many of which I represent in Colorado. And meanwhile, we have larger, more resourced communities that may be able to afford sufficient legal representation. Could you just expand upon how these frivolous lawsuits can slow down, add costs, or even block important water and infrastructure projects?

Mr. PUGH. Certainly. As I stated before, as soon as you add NEPA into the process, you are looking at at least a 25 percent gain on how much your project is going to cost. A lot of our rural and smaller communities simply don't have the resources to be able to fund that additional 25 percent on top of their projects. And in most cases, they do not have the expertise on staff. So, we wind up immediately having to go outside and hire outside help.

Ms. BOEBERT. Yes, and some seemingly simple projects may even be intimidating for small tribal and rural communities that are concerned about going through NEPA to even begin that process.

And when you state the Federal funds that are introduced and at least the 25 percent increase that you just mentioned in a project budget, would you just expand a little bit more on how that does impact those rural communities, our tribes, and just smaller areas?

Mr. PUGH. Again, the additional 25 percent is, right off the top, adding to the cost.

Ms. BOEBERT. Right.

Mr. PUGH. And also, for us, whenever we would go into the NEPA process, our contracts with our outside consultants, consulting engineers and environmental people, were open-ended because we could not adequately describe how long the project was going to take, nor could we adequately describe the entire scope of services that would be required.

Ms. BOEBERT. Yes, and we have experienced this in Colorado with Wolf Creek Reservoir up north, in the northwest. It was about a decade just going through that NEPA process before permitting was ever approved. We have funding to begin that, but there are still more processes that need to take place in that. So, I don't even think \$5 million is a drop in the bucket. But at least we are making progress. So, to eliminate some of those burdensome

regulations and the frivolous lawsuits, I think, would be extremely beneficial.

Mr. Jakins, you stated that the current NEPA landscape of years-long, unconstrained reviews followed by extended litigation makes it difficult for your co-ops to conduct the necessary basic maintenance and vegetation management operations in a timely fashion. Would you agree that the current regulatory framework increases the risk of adverse events like wildfires?

Mr. JAKINS. Yes, I would.

Ms. BOEBERT. Yes, in Colorado, we are coming off some of the worst wildfire seasons in history. And it certainly doesn't seem to help that it takes the Forest Service an average of 3.6 years to begin mechanical treatment, and nearly 5 years to begin the prescribed burn under NEPA.

And my final question here in my last few seconds, Ms. Reams, the Biden's regime, CEQ's Phase 2 regulations add burdens to an already overburdened NEPA process. Can you expand briefly, while my time is expiring, upon what reforms CEQ should implement to better align with the law and the congressional intent?

Ms. REAMS. Well, the intent was supposed to be simplifying. Then we had a 430-page document to simplify.

So, I think one of the pieces that is important on this document, this piece, is that it does not reduce community engagement. It continues community engagement, which we all agree we need. So, I think there is just some mischaracterization about what this does. That would be my quickest answer.

Ms. BOEBERT. Yes, I think only Congress and bureaucrats could simplify in 435 pages. Thank you all so much for your time.

And I apologize for going over. I yield back.

Mr. TIFFANY. Thank you very much.

Before we go on to our last speaker, I do want to enter into the record this chart here. This is the Federal approval process, and I just want to lift it up because some of you can't see. But each one of these boxes takes several weeks. This is the Federal approval process.

Without objection, I would ask unanimous consent to enter that into the record.

Mr. HUFFMAN. The Federal approval process for what, women's reproductive health care, or—

Mr. TIFFANY. No, the NEPA process.

Mr. HUFFMAN. Oh, great.

Ms. BOEBERT. Are we talking about endangered species now? We are bringing up women's reproductive health care. I think babies should be added to the endangered species list.

Mr. TIFFANY. We are going to Representative Hunt from the great state of Texas.

You are now recognized for 5 minutes.

Mr. HUNT. Thank you, Mr. Chairman, and I want to thank the witnesses for being here today, of course.

NEPA began as a meaningful environmental protection bill, but has morphed into a bureaucratic monstrosity. NEPA has been used to stymie projects that advance the productivity, economic and national security of this great nation. Extreme environmental activists have used NEPA more than any other regulation to bring

frivolous lawsuits to not just stop oil and gas production, but even wind and solar projects, projects that you would think they would like to support.

According to the Breakthrough Institute, because of excessive litigation the average environmental impact statement takes 4 years to complete and be approved. It is pretty ridiculous.

Because of the politicization of NEPA, the cost increase, and, more importantly, our adversaries that grow stronger, environmental groups have found their holy grail, and that is litigation. The only outcome is further harm to the American people and our families.

I have a newsflash for a lot of people: China, India, Saudi Arabia, Russia, Venezuela, they don't care about environmental regulations. We, as a country, try our best to improve, and we do it cleaner, better, and safer than anywhere in the entire world.

Mr. JAKINS, with abundant and affordable energy in mind, how many of your projects are currently being litigated in the courts?

Mr. JAKINS. Speaking on behalf of NRECA that represents 900 co-ops across the nation, there are a handful that come top of mind. I don't know all of them, but there are examples in Wisconsin and in Nebraska that involve transmission lines that are causing great delays. And then across the TVA service territory there are ones that involve the co-ops trying to, or in this case, TVA trying to convert coal to natural gas, which is a great move for the environment, and still facing litigation.

So, there are lots of examples. Those are a few. I could get back to you with more, but there are lots of examples.

Mr. HUNT. Yes, I would like to have the full list, actually. We can definitely use that.

So, would you agree that the improvements that are in Chairman Westerman's bill are going to be very helpful to be able to produce more and be more proactive?

Mr. JAKINS. Yes, I would.

Mr. HUNT. The United States needs more pipeline, obviously. We need more generation. We need more transmission, especially as we grow as a country. And even in my district, I have the entire energy corridor in my district, I am the energy Congressman of the world, that is what I tell myself every single day at least. And I will tell you that when we first started off, there were about almost 800,000 people in my district after redistricting, and now there are roughly a million just in my district alone.

So, the insinuation that we need less transmission, and to transfer, or the word "transition," which is the word that we don't use in my office, the word is actually "addition," kind of proves that point.

Ms. REAMS, my question for you is, would you agree that changes to Clean Water Act Section 401 to prevent activist states from using their environmental agendas to block projects would be important to include in permitting reform legislation?

Ms. REAMS. Specifically to the water bill, I can't address that. But I can tell you, certainly, that clean energy is being thwarted by an inefficient NEPA process, indeed.

Mr. HUNT. OK. Thank you so much. Thank you all for being here. I really appreciate it.

I yield back the rest of my time. Thank you, Mr. Chairman.

Mr. TIFFANY. Thank you very much.

And I want to thank all the witnesses for your valuable testimony, and all the Members for their questions. Your valuable professional testimony helps us in legislation and in our conversations. Thank you.

The members of the Committee may have some additional questions for the witnesses, and we will ask you to respond to these in writing. Under Committee Rule 3, members of the Committee must submit questions to the Committee Clerk by 5 p.m. on Monday, September 16. 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 12:54 p.m., the Committee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

Submissions for the Record by Rep. Westerman**ASSOCIATED BUILDERS AND CONTRACTORS
Washington, DC**

September 11, 2024

Hon. Bruce Westerman, Chairman
 Hon. Raúl Grijalva, Ranking Member
 House Natural Resources Committee
 1324 Longworth House Office Building
 Washington, DC 20515

Dear Chairman Westerman, Ranking Member Grijalva and Members of the U.S. House Committee on Natural Resources:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 67 chapters representing more than 23,000 members, I write to thank you for holding a legislative hearing on Rep. Westerman's discussion draft, H.J. Res. 168 and H.R. 6129. This hearing is vital to examining legislative solutions to the U.S. Council on Environmental Quality's burdensome National Environmental Policy Act rulemakings.

Since the Biden-Harris administration took office in January 2021, its CEQ has circumvented Congressional intent and issued burdensome NEPA Implementing Regulations Revisions Phase 1 and Phase 2 final rules, which reversed the much-needed 2020 Update to the Regulations Implementing the Procedural Provisions of the NEPA that streamlined the federal environmental review and permitting process.

Overview of the NEPA Phase 2 Rule

On May 1, 2024, the CEQ issued its NEPA Implementing Regulations Revisions Phase 2 final rule, adding layers of complexity to the NEPA permitting process. Specifically, the rule:

- Adds new factors for environmental reviews, such as environmental justice and climate change effects, while requiring agencies to identify "environmentally preferable alternatives;"
- Establishes new monitoring and compliance requirements for NEPA decisions involving mitigation efforts;
- Expands judicial review of NEPA reviews;
- Widens the scope of agency review regarding the "context and intensity" of proposed actions; and
- Removes language that placed reasonable limitations on the public engagement process and specified that NEPA does not mandate any particular decision by agencies (instead being focused on ensuring environmental factors are considered during the decision-making process, in alignment with congressional intent).

Additionally, instead of streamlining permitting processes for all critical infrastructure projects, the rule favors projects deemed to have environmental benefits, such as solar/wind energy, electric vehicle charging facilities and electrical transmission infrastructure, by allowing them to bypass the NEPA process;

At a time when environmental reviews already take years, the CEQ's NEPA Phase 2 rule expands and lengthens environmental reviews while failing to meaningfully improve environmental protections. It also undermines key provisions of the ABC-supported Fiscal Responsibility Act, which became law on June 3, 2023, by weakening its reforms to NEPA and the federal permitting process.

Overview of the NEPA Phase 1 Rule

On April 20, 2022, the CEQ issued its National Environmental Policy Act Implementing Regulations Revisions Phase 1 final rule, which reversed key provisions of the Trump 2020 rule that provided clarity and maintained consistency with the original 1978 NEPA rulemaking and decades of case law. Specifically, the rule:

- Establishes CEQ's NEPA regulations as a floor, rather than a ceiling, for the environmental review standards, allowing agencies to develop additional layers of review
- Requires federal agencies to evaluate impacts beyond those that are a direct effect of the decisions they make; and
- Widens the scope of a review's purpose beyond the agency's statutory duty and applicant's goals.

Disappointingly, the Phase 1 rule disregards stakeholder concerns that the rule would hinder NEPA's goal of more informed agency decisions and reduce the effectiveness of recently passed legislation providing an unprecedented investment in our nation's infrastructure, even as this legislation included language explicitly calling for streamlined environmental review. Notably, on August 4, 2022, the Senate passed S.J.Res.55, a Congressional Review Act resolution introduced by Sen. Dan Sullivan, R-Alaska, to overturn the Phase 1 rule by a 50–47 vote.

Call for Comprehensive NEPA Reform

ABC is concerned the CEQ's Phase 1 and Phase 2 rules defy Congressional directives calling for permitting certainty on critical infrastructure projects. By advancing the Phase 1 and Phase 2 rules, the CEQ is making it more difficult to build important projects, marking a major step backward for critical infrastructure, the construction industry and America's economic future. To resolve America's permitting challenges, ABC writes in support of the below legislation.

- **ABC supports the discussion draft**, to amend the National Environmental Policy Act of 1969, and for other purposes, introduced by Rep. Westerman, R-Ar., which would enshrine Congressional intent by directly amending NEPA. This draft includes vital provisions that clarifies NEPA's intent is to prescribe the necessary processes rather than mandate particular results; removes unnecessary bureaucratic delays related to unissued rulemakings or research; expedites judicial review of NEPA actions; and narrows the scope of NEPA reviews and federal agency authority and responsibilities to be specific to their expertise. The provisions included in this draft would reduce NEPA permitting delays and improve the predictability of the federal permitting process, which would allow businesses to confidently plan and invest, enhance economic productivity and boost environmental stewardship.
- **ABC supports H.R. 6129**, the Studying NEPA's Impact on Projects Act, introduced by Rep. Rudy Yakym, R-In., which would establish transparency regarding the impact of NEPA. This legislation would provide Congress with the knowledge necessary to evaluate the effectiveness and efficiency of federal agency implementation of NEPA and craft future legislation to enhance the permitting process.
- **ABC supports H.J. Res. 168**, Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Council on Environmental Quality relating to "National Environmental Policy Act Implementing Regulations Revisions Phase 2," introduced by Rep. Garret Graves, R-La.

ABC supports Rep. Westerman's discussion draft, H.J. Res. 168 and H.R. 6129's purpose of promoting a coordinated, predictable and transparent process to streamline permitting. These bills would enable the construction industry to plan and execute even the most complex projects while safeguarding our communities, maintaining a healthy environment and successfully stewarding public funds.

ABC appreciates the opportunity to comment on the committee's legislative business and urges it to report the legislation considered in today's hearing to the floor.

Sincerely,

KRISTEN SWEARINGEN,
Vice President, Legislative & Political Affairs

ASSOCIATED GENERAL CONTRACTORS
Arlington, VA

September 10, 2024

Hon. Bruce Westerman, Chairman
 Hon. Raúl Grijalva, Ranking Member
 House Natural Resources Committee
 1324 Longworth House Office Building
 Washington, DC 20515

Dear Chairman Westerman and Ranking Member Grijalva:

On behalf of the Associated General Contractors (AGC) of America the leading association in the construction industry representing more than 28,000 firms, including America's leading general contractors and specialty-contracting firms—I thank you for holding this legislative hearing on the National Environmental Policy Act (NEPA) review and approval process. AGC respectfully shares the following comments on the implications of overly broad NEPA reviews on the construction industry due to recent changes to the NEPA implementing rules.

In July of this year, the White House Council on Environmental Quality (CEQ) issued its final rule, “National Environmental Policy Act (NEPA) Implementing Regulations Revisions Phase 2.” This regulation goes beyond NEPA’s original intent and could complicate and prolong the efficiency of infrastructure projects—jeopardizing the potential benefits of recent legislative acts. The rule overlooks the aim of the Fiscal Responsibility Act (FRA) to reduce complexity and unpredictability in the federal environmental approval process, potentially causing critical construction projects, including both traditional and renewable energy projects, to be delayed. Efficiency is essential for timely community benefits, resilience, and economic strength.

CEQ’s rule creates duplicative layers of requirements for considerations like climate and environmental justice, potentially favoring certain projects and creating hurdles for others. This is contrary to NEPA, as interpreted by longstanding case law, which is designed to be a procedural statute for informed decision-making, rather than for forcing specific outcomes. It is also contrary to the intent of Congress, who made meaningful changes to the approval process in the bipartisan FRA. Members of Congress should send a clear signal of disapproval and use the Congressional Review Act (CRA) to block the NEPA Phase 2 rule and protect their previous streamlining efforts.

In addition to the CRA disapproval, Congress should consider efforts to streamline the NEPA review process. Too often, critical infrastructure projects are held up by NEPA reviews, and the agencies involved are often less than forthcoming about the major obstacles to federal environmental approvals. The Studying NEPA’s Impact on Projects Act will ensure transparency in this process by requiring CEQ to report on these environmental reviews and the lawsuits associated with them. Enhanced accountability will help inform future efforts to reform the environmental review and approval processes.

Congress must ensure that the NEPA process operates without any roadblocks or delays. AGC thanks the committee for holding this important hearing and looks forward to working with committee members on this issue.

Sincerely,

ALEX ETCHEN,
Vice President, Government Relations

