



HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: Committee on Natural Resources Republican Members
From: Subcommittee on Oversight and Investigations Staff,
Michelle Lane (michelle.lane@mail.house.gov) x6-4137, and Thomas Knecht
(thomas.knecht@mail.house.gov) x6-8747
Date: Thursday, September 14, 2023
Subject: Oversight Hearing titled “*Examining Systemic Government Overreach at CEQ*”

The Subcommittee on Oversight and Investigations will hold an oversight hearing titled, “*Examining Systemic Government Overreach at CEQ*” on **Thursday, September 14, 2023, at 10:00am EDT in room 1324 Longworth House Office Building.**

Member offices are requested to notify Cross Thompson (cross.thompson@mail.house.gov) by 4:30 p.m. on September 12, 2023, if their Member intends to participate in the hearing.

I. KEY MESSAGES

- President Biden has transformed the once small Council on Environmental Quality (CEQ) staff from their core mission of ensuring compliance with the National Environmental Policy Act of 1969 (NEPA) into a legion of frontline warriors for implementing radical social change and eco-justice initiatives across the federal government.
- CEQ’s role in implementing executive orders and rulemaking vastly exceeds its statutory role and prescribed authority.
- It is imperative for CEQ to abide by the Fiscal Responsibility Act’s significant NEPA and permitting reforms—reforms that will make it faster and easier to build critical infrastructure projects and reduce the burden on taxpayers by creating efficiencies in the permitting process.
- The recent NEPA Phase Two Proposed Rulemaking issued by CEQ ignores significant NEPA reforms of the Fiscal Responsibility Act—specifically those aimed at reducing the scope of NEPA reviews—and undercuts the White House’s agreement with Congress.
- CEQ was invited to testify at this hearing but declined to appear. CEQ’s willful disregard for Congress and the rule of law impacts all Americans—from the cost of heating and cooling our homes to small and large businesses, their impact has no bounds.

II. WITNESSES

- **Ms. Brenda Mallory**, Chair, Council on Environmental Quality, Washington, DC
(Invited)
- **Mr. Mario Loyola**, Director, Environmental Finance & Risk Management Program, Research Assistant Professor, Florida International University—Institute of Environment, Miami, FL
- **Ms. Jill Witkowski Heaps**, Senior Attorney, Earthjustice, New York, NY
- **Mr. Scott Simms**, CEO & Executive Director, Public Power Council, Portland, OR
- **Mr. Marlo Lewis**, Senior Fellow, Competitive Enterprise Institute, Washington, DC

III. BACKGROUND

a. Brief Overview of NEPA and CEQ

Public concern over several environmental disasters in the mid to late 20th century prompted Congress to enact related environmental legislation in the 1970s, including NEPA.¹ CEQ was established as part of NEPA. NEPA requires federal agencies to identify and evaluate impacts of major federal actions that significantly affect the quality of the human environment.² While NEPA requires an agency to *consider* environmental concerns, an agency *does not need to elevate* environmental concerns above others. Instead, for triggering federal actions, NEPA requires agencies to take a “hard look” at environmental consequences of their proposed actions, consider alternatives, and publicly disseminate such information before taking final action.³

Because of the “hard look” requirement, courts have played a prominent role in interpreting the role and outcomes of NEPA since its earliest days.⁴ Immediately after NEPA was enacted, all government agencies were technically required to comply with the law by considering the environmental outcomes prior to taking a major action.⁵ However, not all agencies reacted in a similar manner, thus sparking litigation that resulted in Supreme Court decisions on multiple occasions.⁶ Over time, abuse of the litigation system has chilled government approval for a wide variety of projects (ranging from infrastructure to forest management and energy development), prompting a number of organizations, including those representing clean energy clients, to call for significant NEPA reform to reduce legal challenges and project delay.⁷

¹ Linda Luther, CONG. RESEARCH SERV., RL33152, *The National Environmental Policy Act (NEPA): Background and Implementation* (Jan. 10, 2011), <https://crsreports.congress.gov/product/pdf/RL/RL33152>

² 42 U.S.C. §§ 4321 *et seq.*

³ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

⁴ Luther, *supra* note 1.

⁵ *Id.*

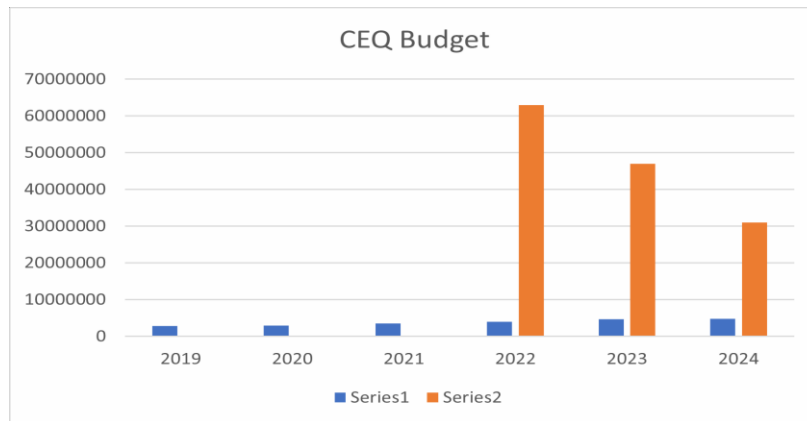
⁶ *Id.*

⁷ See *Securing Supply Chains: Access to Critical Minerals in the American Southwest before the Subcomm. on Oversight and Investigations of the H. Comm. on Natural Resources*, 118th Cong. (July 21, 2023) (statement of Jeremy Harrell, Chief Strategy Officer, ClearPath, Inc.), https://naturalresources.house.gov/uploadedfiles/testimony_harrell.pdf.

CEQ, housed within the Executive Office of the President, oversees agency compliance with NEPA.⁸ In doing so, CEQ issues regulations and guidance detailing how federal agencies must implement and comply with NEPA.⁹ Notably, while NEPA created CEQ, an Executive Order (EO), authorized in 1978 by President Nixon, provided CEQ with the authority to issue regulations applicable to all federal agencies regarding the preparation of an EIS.¹⁰ CEQ was not, however, authorized to enforce these regulations.¹¹ Over the decades, the first EO authorized by President Nixon has been updated, and expanded upon multiple times, as well as supplemented with additional guidance.¹²

b. CEQ’s Budget Explosion and Staffing Questions

The explosive growth of CEQ’s mission and bureaucratic morass is mirrored in the dramatic rise of its budget. CEQ’s budget remained relatively stable over the years, until receiving an infusion of funding through the Inflation Reduction Act.¹³ From 2019 to 2023, CEQ’s baseline budget grew from \$2.89 million to approximately \$4.67 million, an increase of approximately 63% over just four years. In addition to this growth, CEQ received \$62.5 million from the Democrat Congress’ Inflation Reduction Act to support environmental and climate data collection as well as CEQ’s baseline functions for “training personnel, developing programmatic environmental documents, and developing tools, guidance, and technologies to improve stakeholder and community engagement.”¹⁴ The President’s FY 2024 Budget reports an unexpired, unobligated balance of \$63 million for FY 2022, an estimate of \$47 million for FY 2023, and an estimate of \$31 million for FY 2024. Despite the unexpired, unobligated balance, the President’s budget requests additional funds and staff for CEQ.¹⁵



Source: The President’s Budget for FY 2024¹⁶

⁸ 40 C.F.R. Pts. 1500–1518.

⁹ Nina M. Hart, CONG. RESEARCH SERV., R47205, *Judicial Review and the National Environmental Policy Act of 1969* (Aug. 4, 2022), <https://crsreports.congress.gov/product/pdf/R/R47205>.

¹⁰ Luther, *supra* note 1.

¹¹ *Id.*

¹² *Id.*

¹³ Publ. L. 117–169 (Aug. 16, 2021), <https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf>.

¹⁴ *Id.*

¹⁵ See THE WHITE HOUSE, *Congressional Budget Submission*, CEQ-3 (Fiscal Year 2024), <https://www.whitehouse.gov/wp-content/uploads/2023/03/FY-2024-EOP-Congressional-Budget-Submission.pdf> [hereinafter *The President’s Budget for Fiscal Year 2024*].

¹⁶ *Id.*

In addition to increases in budget outlays, CEQ's staffing, which generally has ranged from 17-25 full-time equivalent (FTE) employees, has increased as well. According to the President's FY 2024 Budget request, CEQ supported 17 FTEs in 2022, and estimated this number would increase to 36 FTEs in FY 2023 and FY 2024.¹⁷ In an official document uploaded to CEQ's website in April of 2022, nearly 60 employees, including fellows, are listed.¹⁸ It is unclear how many of the staff are CEQ employees and how many are on detail from other federal agencies. Alarming, many think tanks and NGO's have weighed in about the lack of staff at CEQ, and the need to bring in more funding for the Administration to fully meet its climate and environmental justice commitments.¹⁹

The House FY 2024 Interior, Environment and Related Agencies Appropriations Bill rescinds \$55 million provided to CEQ through the Inflation Reduction Act.²⁰ The bill provides \$3.75 million for CEQ in FY 2024, which is \$926,000 below the FY 2023 enacted level and \$1.075 million below the President's FY 2024 Budget Request.²¹ However, the House proposed funding level is still \$2.75 million above CEQ's authorized funding level of \$1 million.²² For comparison, the Senate FY 2024 Interior, Environment and Related Agencies Appropriations Bill proposes \$5.176 million in funding for CEQ, a \$500,000 increase over FY 2023 funding levels and \$351,000 over the President's FY 2024 budget request, and the Senate bill does not rescind funds provided to CEQ through the IRA.²³

c. CEQ's Role has Transformed from Ensuring NEPA Compliance to Implementing President Biden's Radical Social Justice and Eco-Agenda

President Biden has transformed CEQ's role from overseeing NEPA compliance into the entity charged with implementing his radical eco-agenda, remaking federal agencies as vehicles of social change, and leading the war on domestic energy production.²⁴ As Chair of CEQ, Brenda Mallory has described her role as "focused particularly on addressing the environmental justice and climate change challenges."²⁵ CEQ's chief of staff describes the responsibilities and powers that President Biden has bestowed upon CEQ as "unprecedented."²⁶

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

President Biden's priorities are reflected in his rule-by-fiat approach to ecological and energy regulation. When President Biden issues an EO to promote his eco-agenda and war on domestic energy production, CEQ is tasked with making it a reality. Please see *Appendix I* for a full reference guide to the Executive Orders and their ongoing impacts.

¹⁷ *Id.*

¹⁸ COUNCIL ON ENV'T QUALITY, *CEQ Names Titles* (Apr. 7, 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/04/CEQ-Names-Titles-2022.04.07.pdf>.

¹⁹ Robin Bravender & Kelsey Brugger, *Inside Biden's sparsely staffed, high-pressure environmental shop*, E&E NEWS (Apr. 18, 2022), <https://www.eenews.net/articles/inside-bidens-sparsely-staffed-high-pressure-environmental-shop/>.

²⁰ H.R. REP. NO. 118-93 (2023), <https://docs.house.gov/meetings/AP/AP00/20230719/116262/HMKP-118-AP00-20230719-SD002.pdf>.

²¹ *Id.*

²² See 42 U.S.C. § 4347, (providing \$1,000,000 in annual authorization for CEQ), <https://www.law.cornell.edu/uscode/text/42/4347>.

²³ S. REP. NO. 118-83 (2023), https://www.appropriations.senate.gov/imo/media/doc/fy24_interior_bill_report.pdf.

²⁴ See THE PRESIDENT'S BUDGET FOR FISCAL YEAR 2024, *supra* note 15.

²⁵ THE WHITE HOUSE, *Council on Environmental Quality*, <https://www.whitehouse.gov/ceq/> (last visited Sep. 10, 2023).

²⁶ Bravender & Brugger, *supra* note 19.

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

CEQ has taken an active role in the Biden administration's rules that attack domestic energy development and increase the regulatory burden on American businesses.

In April 2022, CEQ instituted rules to roll back aspects of the Trump administration's 2020 NEPA regulations and bolster cumbersome aspects of NEPA that increase the regulatory burdens for building pipelines and other energy infrastructure.²⁷ CEQ referred to this rulemaking as its phase one of revisions to existing NEPA regulations. The Biden administration's weaponization of the NEPA process delays critical domestic energy projects at a time when our nation should be pursuing energy independence. This includes extensive delays of onshore lease sales on federal lands and further delays in publishing a 5-year offshore leasing plan.²⁸

In November 2022, the Biden Administration proposed a rule, *Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk* (the Proposed GHG Disclosure Rule), to mandate government contractors to disclose their greenhouse gas emissions.²⁹ If finalized, the Proposed GHG Disclosure Rule would implement the aforementioned EO 14030, *Climate-Related Financial Risk*, which requires major federal suppliers to publicly disclose greenhouse gas emissions and climate-related financial risk and to set science-based reduction targets.³⁰ The Proposed GHG Disclosure Rule would also mandate major government contractors, defined as those with contracts valued at over \$50 million, to develop "science-based reduction targets" that are validated and approved by an international non-governmental organization known as the Science Based Target Initiative (SBTi).³¹

However, the Proposed GHG Disclosure Rule far exceeds the original authority granted by President Biden. EO 14030 does not require, nor does President Biden have the authority to require, a reduction target validation by a private international non-governmental organization. In issuing the Proposed GHG Disclosure Rule, it appears that CEQ has exceeded the authority President Biden granted CEQ in EO 14030 by offloading the responsibility to set standards for greenhouse gas emissions to SBTi and requiring that all major contractors utilize SBTi validation services.³² Thus, CEQ proposes the rule, but outsources the responsibility for enforcing it to an international non-governmental organization—a dereliction of duty of the highest order.

²⁷ See COUNCIL ON ENV'T QUALITY, F.R. 23453 (Apr. 20, 2022), <https://www.federalregister.gov/documents/2022/04/20/2022-08288/national-environmental-policy-act-implementing-regulations-revisions>; Kelsey Brugger, *Biden restores climate to NEPA, undoing Trump's efforts*, E&E NEWS (Apr. 19, 2022), <https://www.eenews.net/articles/biden-restores-climate-to-nepa-undoing-trumps-efforts/>.

²⁸ See Thomas Cantenacci, *Biden Administration Delays Oil and Gas Lease Sales Again Amid Environmental Protest*, FOX BUSINESS (June 21, 2022), <https://www.foxbusiness.com/politics/joe-biden-oil-gas-lease-sales-delay-energy-environmental-protest>.

²⁹ Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk, 87 Red. Reg. 68312 (proposed on Nov. 14, 2022) (to be codified 48 C.F.R. pt. 1.4,9,23,52), <https://www.federalregister.gov/documents/2022/11/14/2022-24569/federal-acquisition-regulation-disclosure-of-greenhouse-gasemissions-and-climate-related-financial> [hereinafter Proposed GHG Disclosure Rule].

³⁰ EXEC. ORDER NO. 14030, 86 Red. Reg. 27967 (May 20, 2021),

<https://www.federalregister.gov/documents/2021/05/25/2021-11168/climate-related-financial-risk>.

³¹ Proposed GHG Disclosure Rule, *supra* note 29.

³² SCIENCE BASED TARGETS, <https://sciencebasedtargets.org/> (last visited Sep. 10, 2023).

d. NEPA & Permitting Reforms under the Fiscal Responsibility Act

On June 2, 2023, President Biden signed the bipartisan Fiscal Responsibility Act of 2023 (the Fiscal Responsibility Act),³³ which limits federal spending and saves taxpayers an estimated \$2.1 trillion over ten years.³⁴ The Fiscal Responsibility Act also provides the first significant NEPA and permitting reforms in over forty years.³⁵ The Fiscal Responsibility Act:

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

It is imperative CEQ abide by the Fiscal Responsibility Act's significant NEPA and permitting reforms—provisions that will make it easier to build in America, speed up timelines for critical infrastructure projects, and reduce the burden on taxpayers by creating efficiencies in the permitting process.

³³ 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/>.

³⁴ SPEAKER OF THE HOUSE KEVIN MCCARTHY, *House GOP Leadership Statement on the Passage of the Fiscal Responsibility Act* (May 31, 2023), <https://www.speaker.gov/house-gop-leadership-statement-on-passage-of-the-fiscal-responsibility-act/>.

³⁵ 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 (last visited Sep. 10, 2023).

e. CEQ’s Recent Proposal Repeatedly Ignores the NEPA Reforms of the Fiscal Responsibility Act and Betrays Congress

On July 28, 2023, CEQ released a proposed rule to further reform NEPA (the NEPA Phase Two Proposal).³⁶ However, the NEPA Phase Two Proposal repeatedly ignores significant aspects of the NEPA reforms found in the Fiscal Responsibility Act.³⁷ The NEPA Phase Two Proposal integrates the Fiscal Responsibility Act’s reforms to ease regulatory burdens around expanded transmission deployment for renewables like wind and solar, but does not implement other significant provisions from the Fiscal Responsibility Act, such as reducing the scope of NEPA reviews to reasonably foreseeable effects.³⁸ The proposed rulemaking also puts a heavy emphasis on environmental justice as well as climate change, two terms which are not included in the underlying NEPA statute.

The incomplete proposals from CEQ follow Chair Brenda Mallory denying significant aspects of the NEPA reforms included in the Fiscal Responsibility Act during her appearance in front of the House Committee on Natural Resources in June of 2023.³⁹

f. CEQ’s involvement in the Lower Snake River Dams

The Lower Snake River Dams⁴⁰ in the Columbia River Basin and Washington state were authorized by Congress in 1945⁴¹ and have the capacity to supply 3,000 megawatts of carbon-free energy.⁴² Particularly during periods of high demand, the Lower Snake River Dams help to keep the Pacific Northwest power system reliable, even during emergencies.⁴³ Additionally, the Lower Snake River Dams play a critical role in reducing transportation emissions. Between 50 and 60 million tons of cargo are transported through barges along the river each year⁴⁴ and forty percent of America’s wheat transits through the system.⁴⁵

Despite the immense importance of the Lower Snake River Dams, and continuous work to improve fish passage rates, radical eco-activist groups have abused the litigation system for

³⁶ Press Release, THE WHITE HOUSE, *Biden-Harris Administration Proposes Reforms to Modernize Environmental Reviews, Accelerate America’s Clean Energy Future, and Strengthen Public Input* (July 28, 2023), <https://www.whitehouse.gov/ceq/news-updates/2023/07/28/biden-harris-administration-proposes-reforms-to-modernize-environmental-reviews-accelerate-americas-clean-energy-future-and-strengthen-public-input/>

³⁷ Emma Dumain & Robin Bravender, *Republicans slam Biden NEPA revamp, threaten permitting talks*, E&E NEWS (July 31, 2023), <https://www.eenews.net/articles/republicans-slam-biden-nepa-revamp-threaten-permitting-talks/>.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Ice Harbor Lock and Dam, Lower Monumental Dam, Little Goose Dam, and Lower Granite Dam.

⁴¹ Walla Walla District, *Lower Snake River Dams*, U.S. ARMY CORPS OF ENGINEERS, <https://www.nww.usace.army.mil/Missions/Lower-Snake-River-Dams/> (last visited Sep. 6, 2023).

⁴² *A Northwest energy solution: Regional power benefits of the lower Snake River dams*, COLUMBIA RIVER BASIN FEDERAL CAUCUS, <https://www.salmonrecovery.gov/home/lower-snake-river-dams-power-benefits> (last visited Sep. 6, 2023).

⁴³ ENERGY AND ENVIRONMENTAL ECONOMICS, INC. (E3), *BPA Lower Snake River Dams Power Replacement Study*, (July 2022), <https://www.ethree.com/wp-content/uploads/2022/07/e3-bpa-lower-snake-river-dams-power-replacement-study.pdf> [hereinafter E3 Study].

⁴⁴ U.S. ARMY CORPS OF ENGINEERS, BUREAU OF RECLAMATION, AND BONNEVILLE POWER ADMINISTRATION, *Columbia River System Operations, Final Environmental Impact Statement, Executive Summary* (July 2020), <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll7/id/14957>.

⁴⁵ Walla Walla District, *supra* note 41.

decades in pursuit of dam removal.⁴⁶ Simultaneously, the Biden administration has attempted to circumvent Congress by betraying previous federal actions supporting the continued operation of the Lower Snake River Dams and is instead heeding calls for breaching the dams.

Those in favor of breaching the Lower Snake River Dams often fail to recognize, and/or ignore, the value of the Lower Snake River Dams and the cost of replacement. In 2016, the Bonneville Power Administration (BPA) estimated that replacing the dams would increase power costs by \$274 million to \$372 million per year.⁴⁷ Six years later, in 2022, BPA commissioned a study by a San Francisco environmental consulting firm, Energy + Environmental Economics (“E3”), which found that the cost of replacing the output from the Lower Snake River Dams ranges from \$415 million to \$860 million per year through 2045.⁴⁸ Moreover, under assumptions from litigants supporting breaching the Lower Snake River Dams, up to 1.2 terawatts (or 1,200,000 MWh) would depend on technologies not yet readily available, such as hydrogen-fueled combustion turbines.⁴⁹

In 2020, the federal government released a Record of Decision (ROD) on the operations for the Columbia River System, which includes the Lower Snake River Dams.⁵⁰ The ROD did not endorse dam breaching, stating that while breaching may benefit “some species of ESA-listed fish, it would achieve those benefits at the expense of not meeting the other components of the agencies’ Purpose and Need Statement for certain EIS objectives.”⁵¹ Shortly thereafter, Earthjustice, the National Wildlife Federation, and other eco-groups, sued the federal government to challenge the ROD.⁵²

Instead of aggressively defending the official position of the federal government, the Biden administration, notably CEQ, has sought to appease the calls to breach the Lower Snake River Dams and has shown favoritism to the plaintiffs in confidential negotiations. In 2021, the federal government, the State of Oregon, the Nez Perce Tribe, and plaintiffs to the litigation filed an agreement with the U.S. District Court that outlined how dam operations would be altered in the coming year while allowing for parties to reach further agreement on long-term operations.⁵³

Shortly thereafter, in March 2022, CEQ published a blog outlining a “path forward” for the Columbia River Basin following a consultation between agencies and Tribes of the Columbia

⁴⁶ Todd True, *Breakthrough in 20+ Year Legal Battle Over Fate of Snake River Salmon*, EARTHJUSTICE (Jan. 3, 2022), <https://earthjustice.org/experts/todd-true/breakthrough-in-20-year-legal-battle-over-fate-of-snake-river-salmon> (Earthjustice describes how they are part of an eco-activist network that has sued the federal government for over two decades in order to “breach the Snake River dams”).

⁴⁷ BONNEVILLE POWER ADMINISTRATION, *A Northwest energy solution: Regional power benefits of the lower Snake River dams 2* (Mar. 2016), <https://www.bpa.gov/-/media/Aep/about/publications/fact-sheets/fs-201603-A-Northwest-energy-solution-Regional-power-benefits-of-the-lower-Snake-River-dams.pdf>.

⁴⁸ E3 Study, *supra* note 43.

⁴⁹ *Id.*

⁵⁰ Dep’t of Energy, Bonneville Power Admin., *Record of Decision; Columbia River System Operations Environmental Impact Statement*, 85 Fed. Reg. 196 (Oct. 8, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-10-08/pdf/2020-22147.pdf> [hereinafter ROD].

⁵¹ *Id.*

⁵² Matthew Weaver, *Stay extension gives Snake River dam mediation another 60 days*, CAPITAL PRESS (Sep. 1, 2023), https://www.eastoregonian.com/news/northwest/stay-extension-gives-snake-river-dam-mediation-another-60-days/article_662e6214-29c7-50f2-b2cb-0465c44bc66e.html (describing how a coalition of environmental groups sued the federal government over the “U.S. Army Corps of Engineers, Bureau of Reclamation and Bonneville Power Administration dam operations plan”).

⁵³ Press Release, U.S. DEP’T OF THE INTERIOR, *Biden-Harris Administration Announces Steps to Improve Conditions for Salmon in the Columbia River Basin*, (Oct. 21, 2021), <https://www.doi.gov/pressreleases/biden-harris-administration-announces-steps-improve-conditions-salmon-columbia-river>.

River Basin.⁵⁴ The blog post specifically supported a policy of breaching the four dams on the lower Snake River, contradicting the 2020 ROD on the operations of the Columbia River Basin system.⁵⁵ At the same time, CEQ engaged the Federal Mediation and Conciliation Service (FMCS) to “mediate and facilitate between the parties in the litigation and the regional sovereigns, including Tribal Nations and states.”⁵⁶ FMCS, on behalf of CEQ, announced public listening sessions for the public.⁵⁷

While the mediation process is confidential, many of the defendants have expressed deep reservations and considerable disappointment regarding the overall mediation process. Of particular concern is the Biden administration’s apparent push to forgo trying to reach a “consensus” resolution and instead advance a predetermined outcome of dam removal. At the end of August, the U.S. District Court extended the stay in the long-running litigation to allow the mediation to continue until the end of October.⁵⁸ Stakeholders expressed dismay with the mediation process, the Biden administration’s favoritism towards the eco-activist plaintiffs, and the role of CEQ.⁵⁹

IV. CONCLUSION

President Biden has transformed CEQ’s role from overseeing NEPA compliance to the entity charged with implementing his radical eco-agenda, remaking federal agencies as vehicles of social change, and leading the war on domestic energy production. A bureaucratic morass of various agencies, offices, and councils report to and take directions from CEQ. At the same time, CEQ’s role in implementing executive orders and rulemaking vastly exceeds its statutory role and prescribed authority. It is imperative for CEQ to abide by the Fiscal Responsibility Act’s significant NEPA and permitting reforms—reforms that will make it easier to build in America, speed up timelines for critical infrastructure projects, and reduce the burden on taxpayers by creating efficiencies in the permitting process. Sadly, the recent NEPA Phase Two Proposal from CEQ ignores significant NEPA reforms of the Fiscal Responsibility Act, specifically those aimed at reducing frivolous environmental lawsuits and betrays the White House’s agreement with Congress.

⁵⁴ CEQ, *Columbia River Basin Fisheries: Working Together to Develop a Path Forward*, The White House (Mar. 28, 2022), <https://www.whitehouse.gov/ceq/news-updates/2022/03/28/columbia-river-basin-fisheries-working-together-to-develop-a-path-forward/>.

⁵⁵ *Id.*

⁵⁶ *Columbia River Salmon and Other Native Fish Request for Information*, COUNCIL ON ENVIRONMENTAL QUALITY, 88 Fed. Reg. 28532 (May 4, 2023), <https://www.federalregister.gov/documents/2023/05/04/2023-09525/columbia-river-salmon-and-other-native-fish-request-for-information>.

⁵⁷ *Id.*

⁵⁸ Weaver, *supra* note 52.

⁵⁹ *Id.*

Appendix I: Biden Administration Executive Orders & CEQ

- **EO 13990**, *Protecting the Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*.⁶⁰
 - Directed the Chair of CEQ participate as a member of the Interagency Working Group on the Social Cost of Greenhouse Gases. Directed the Secretary of the Interior to conduct a study reversing the Trump administration’s rightsizing of several monuments in Utah, and more.
 - Canceled the construction permit for the Keystone XL pipeline and revoked several executive orders published by the previous administration that prioritized permitting and infrastructure.⁶¹
 - Prompted the Department of the Interior (DOI) to reinitiate consultation on the 2019 Biological Opinions for water deliveries from the Central Valley Project and State Water Project in California, undermining the use of best available science.⁶²
- **EO 14008**, *Tackling the Climate Crisis at Home and Abroad*.⁶³
 - Mandated broad environmental justice goals for the federal government to make environmental and economic justice are key considerations in government actions.⁶⁴
 - Established the National Climate Task Force, chaired by the National Climate Advisor with the Chair of CEQ as a member.⁶⁵
 - Directed the Chair of CEQ to lead the Federal Clean Electricity and Vehicle Procurement Strategy, which would work to facilitate a carbon free electricity sector by 2035 as well as clean or zero-emission vehicle fleets for federal, state, local, and Tribal governments.⁶⁶
 - Directed CEQ to update federal procurement standards, as well as work with relevant Cabinet officials on renewable energy siting and permitting plans.⁶⁷
 - Established two new councils within the White House responsible for implementing environmental justice in government actions – the White House Environmental Justice Interagency Council (IAC) and the White House Environmental Justice Advisory Council (WHEJAC).⁶⁸ Both IAC and WHEJAC report to CEQ and work to develop and institute Biden’s radical eco-agenda and war on domestic energy production.

⁶⁰ EXEC. ORDER NO. 13990, 86 F.R. 7037 (Jan. 20, 2021), <https://www.federalregister.gov/documents/2021/01/25/2021-01765/protecting-public-health-and-the-environment-and-restoring-science-to-tackle-the-climate-crisis>.

⁶¹ *Id.*

⁶² Letter from U.S. Bureau of Reclamation to U. S. Fish and Wildlife Service and the National Marine Fisheries Service on the Reinitiation of Section 7 Consultation for the Long-Term Operation of the Central Valley Project and State Water Project (Sept. 30, 2021), <https://www.usbr.gov/mp/bdo/ito/ltr-reinitiation-2021-09-30.pdf>.

⁶³ EXEC. ORDER NO. 14008, 86 F.R. 7619 (Jan. 27, 2021), <https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad>.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

- Created the Justice40 Initiative, which is chaired by CEQ, to direct 40 percent of certain federal investments to undefined disadvantaged communities.
- Established the administration’s 30x30 agenda, which seeks to preserve 30 percent of our lands and waters by 2030.⁶⁹ Since re-branded as the “America the Beautiful Initiative,” the administration has failed for over two and a half years to provide basic definitions or baseline metrics for what counts towards this goal. A letter sent by Committee Republicans in May 2022 to Chair Mallory asking specific questions about the administration’s \$1 billion slush fund supporting the 30x30 agenda has gone unanswered.⁷⁰
- **EO 14030, *Climate-Related Financial Risk.***
 - Directed CEQ, with other agency heads, to consider amending the Federal Acquisition Regulations (FAR) and require major federal suppliers to publicly disclose greenhouse gas emissions and climate-related financial risk and to “set science-based reduction targets.”⁷¹
 - Granted CEQ the power to amend the FAR to give preference to bids and proposals from suppliers with a lower social cost of greenhouse gas emissions.⁷²
- **EO 14072, *Strengthening the Nation’s Forests, Communities, and Local Economies.***⁷³
 - Directed the U.S. Department of Agriculture (USDA) and the Department of the Interior (DOI) to identify and inventory old growth and mature forests on federal lands and develop policies to institutionalize so-called “climate-smart” management and conservation strategies to address threats to mature and old-growth forests on federal lands.⁷⁴
 - This misguided EO is unscientific because no standard definition exists for “old growth forests” and “mature forests” is not a term recognized in the scientific practice of forestry.
 - EO 14072 also diverted critical agency resources away from focusing on actual land management to prevent catastrophic wildfires.
 - After the Forest Service published a report on the fulfillment of EO 14072 in April 2023,⁷⁵ foresters expressed concern that EO 14072 will be used as a tool to further lock up lands from multiple-use and active management.⁷⁶

⁶⁹ THE WHITE HOUSE, *Year One Report America the Beautiful* (Dec. 2021), https://www.whitehouse.gov/wp-content/uploads/2021/12/AtB-Year-One-Report_.pdf.

⁷⁰ Letter from Rep. Bruce Westerman et al., H. COMM. ON NATURAL RESOURCES, to Brenda Mallory, Chair, COUNCIL ON ENV’T QUALITY; (May 12, 2022), https://naturalresources.house.gov/uploadedfiles/2022-05-12_westerman_et_al_to_mallory_re_america_the_beautiful_challenge.pdf.

⁷¹ EXEC. ORDER NO. 14030, 86 F.R. 27967 (May 20, 2021), <https://www.federalregister.gov/documents/2021/05/25/2021-11168/climate-related-financial-risk>.

⁷² *Id.*

⁷³ EXEC. ORDER NO. 14072, 87 F.R. 24851 (Apr. 27, 2022), <https://www.federalregister.gov/documents/2022/04/27/2022-09138/strengthening-the-nations-forests-communities-and-local-economies>.

⁷⁴ *Id.*

⁷⁵ U.S. DEP’T OF AGRICULTURE, FOREST SERVICE AND U.S. DEP’T OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, *Mature and Old-Growth Forests: Definition, Identification, and Initial Inventory on Lands Managed by the Forest Service and Bureau of Land Management Fulfillment of Executive Order 14072, Section 2(b)* (Apr. 2023), <https://www.fs.usda.gov/sites/default/files/mature-and-old-growth-forests-tech.pdf>.

⁷⁶ See Zander Evans & Rhiley Allbee, *The Guild’s role in old growth policy*, FOREST STEWARDS GUILD (May 18, 2023), <https://foreststewardsguild.org/enews/the-guilds-role-in-old-growth-policy/>.

- **EO 14096**,⁷⁷ *Revitalizing Our Nation’s Commitment to Environmental Justice for All*.
 - Established to further embed “environmental justice into the work of federal agencies”⁷⁸ by making environmental justice part of each government agency’s mission.⁷⁹
 - Cemented CEQ as the leading entity charged with executing Biden’s eco-agenda and war on domestic energy production:
 - Mandated each agency to submit an Environmental Justice Strategic Plan to CEQ every 4 years, based on guidance established by CEQ.
 - Mandated each agency to submit an Environmental Justice Assessment on the effectiveness of the agency’s Environmental Justice Strategic Plan.
 - Granted CEQ the power to request additional environmental justice reports, information, or evaluations from the agencies.
 - Established CEQ as the lead on addressing gaps in science, data, and research related to environmental justice.
 - Directed the Chair of CEQ to issue guidance on how agencies should implement EO 14096.
 - Created yet another bureaucratic entity—the White House Office of Environmental Justice—to coordinate the implementation of environmental justice policy across the federal government.⁸⁰ The White House Office of Environmental Justice is housed within CEQ.⁸¹

⁷⁷ EXEC. ORDER NO. 14096, 88 F.R. 25251 (Apr. 21, 2023) <https://www.federalregister.gov/documents/2023/04/26/2023-08955/revitalizing-our-nations-commitment-to-environmental-justice-for-all>.

⁷⁸ THE WHITE HOUSE, *FACT SHEET: President Biden Signs Executive Order to Revitalize Our Nation’s Commitment to Environmental Justice for All* (Apr. 21, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/04/21/fact-sheet-president-biden-signs-executive-order-to-revitalize-our-nations-commitment-to-environmental-justice-for-all/>.

⁷⁹ EXEC. ORDER NO. 14096, *supra* note 77.

⁸⁰ *Id.*

⁸¹ *Id.*