



HOUSE COMMITTEE ON  
**NATURAL RESOURCES**  
CHAIRMAN BRUCE WESTERMAN

**To:** House Committee on Natural Resources Republican Members  
**From:** House Natural Resources Committee Staff, Rob MacGregor  
([Robert.MacGregor@mail.house.gov](mailto:Robert.MacGregor@mail.house.gov))  
**Date:** Monday, July 21, 2025  
**Subject:** Oversight Hearing titled “*Permitting Purgatory: Restoring Common Sense to NEPA Reviews*”

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The House Committee on Natural Resources will hold an oversight hearing titled “*Permitting Purgatory: Restoring Common Sense to NEPA Reviews*” on **Tuesday, July 22, 2025, at 10:15 a.m. in room 1324 Longworth House Office Building.**

Member offices are requested to notify Kenna Cline ([kenna.cline@mail.house.gov](mailto:kenna.cline@mail.house.gov)) by 4:30 p.m. on Monday, July 21, 2025, if their Member intends to participate in the hearing.

## **I. KEY MESSAGES**

- While well-intentioned, the National Environmental Policy Act of 1969 (NEPA) has produced an extremely cumbersome and lengthy process that has increased costs and permitting timelines for a wide range of projects. These burdens affect everything from transportation and infrastructure to forestry and energy development.
- NEPA is the most frequently litigated environmental statute, and NEPA-related litigation on an environmental impact statement (EIS) takes an average of 4.2 years to resolve.<sup>1</sup> Between 2013 and 2022, federal circuit courts heard approximately 39 NEPA appeals cases per year, a 56 percent increase over the annual rate between 2001-2015.<sup>2</sup>
- According to a 2020 report conducted by the Council for Environmental Quality (CEQ), the average length of an EIS is over 600 pages, and the average time for federal agencies to prepare an EIS is 4.5 years.<sup>3</sup>
- While Congress was able to secure moderate NEPA reforms in the 118<sup>th</sup> Congress as part of the Fiscal Responsibility Act (FRA),<sup>4</sup> and recent actions by the Trump administration are restoring sanity to the NEPA process, Congress must act to provide project proponents and federal agencies with greater certainty. This will attract investment and allow numerous projects to move forward responsibly, thus improving America’s energy security, national security, and economic competitiveness.

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<sup>1</sup> Chiappa, N., Nordhaus, T., Trembath, A., & McCarthy, E. (2024, July 11). Understanding NEPA litigation. The Breakthrough Institute. <https://thebreakthrough.org/issues/energy/understanding-nepa-litigation>.

<sup>2</sup> *Id.*

<sup>3</sup> Executive Office of the President, Council on Environmental Policy, *Fact Sheet: Modernizing CEQ’s NEPA Regulations*, <https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/01/20200716FinalNEPA-Fact-Sheet.pdf>.

<sup>4</sup> Public Law No: 118-5, <https://www.congress.gov/bill/118th-congress/house-bill/3746/text>.

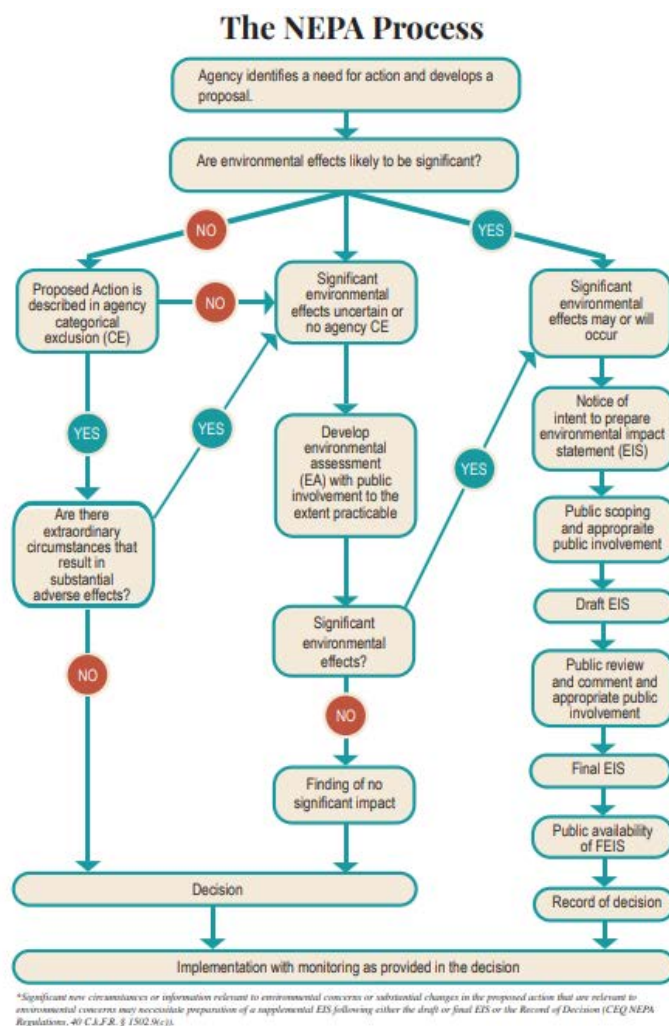
## II. WITNESSES

- **Mr. Tony Boals**, Board Member, American Road and Transportation Builders Association; and Vice President, Wright Brothers Construction Company, Inc., Charleston, TN
- **Mr. Tony Campbell**, CEO, East Kentucky Power Cooperative, Winchester, KY
- **Mr. Andrew C. Mergen**, Faculty Director, Emmett Visiting Assistant Clinical Professor of Law, Emmett Environmental Law and Policy Clinic, Harvard Law School, Cambridge, MA [Minority Witness]
- **Mr. Alex Herrgott**, President and CEO, The Permitting Institute, Washington, D.C.

## III. BACKGROUND

### NEPA Overview

NEPA is a “purely procedural” statute.<sup>5</sup> In addition to creating CEQ, NEPA establishes parameters for assessing and publicly disclosing the environmental impact of all “major federal actions.”<sup>6</sup> The procedural requirements under NEPA apply to all “major federal actions,” which encompass a broad range of governmental activities that impact the American economy. Examples include the construction and maintenance 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 strike an appropriate balance between protecting the environment and promoting economic development, the NEPA process has become increasingly complex, resulting in unwieldy NEPA documents, excessive timelines, and an increase in frivolous litigation.<sup>7</sup>



Source: U.S. Forest Service.

<sup>5</sup> *Seven County Infrastructure Coalition v. Eagle County*, 605 U. S. \_\_\_\_ (2025), [https://www.supremecourt.gov/opinions/24pdf/23-975\\_m648.pdf](https://www.supremecourt.gov/opinions/24pdf/23-975_m648.pdf).

<sup>6</sup> Pub. 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.

<sup>7</sup> 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.”<sup>8</sup> The “detailed statements,” referred to as EISs, 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.<sup>9</sup> 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 a court directs it, or if the agency makes “substantial changes” to its initial proposal, or learns of “significant new circumstances or information” related to environmental concerns.<sup>10</sup> 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.<sup>11</sup>

If the environmental impacts of a proposed agency action are unknown, agencies will prepare an Environmental Assessment (EA). 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.<sup>12</sup>

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 (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.<sup>13</sup> According to CEQ, “the use of categorical exclusions can reduce paperwork and save time and resources.”<sup>14</sup> CEs have also been created legislatively through Congressional action.

While well-intentioned, NEPA is plagued with ambiguities that have spawned an extremely cumbersome and lengthy process. This, in turn, 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.<sup>15</sup> NEPA’s labyrinth of regulations has imposed significant time and cost burdens, with

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> 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>.

<sup>11</sup> Kristen Hite & Heather McPherron, “National Environmental Policy Act: An Overview,” Congressional Research Service, June 26, 2025, <https://crsreports.congress.gov/product/pdf/IF/IF12560>.

<sup>12</sup> *Id.*

<sup>13</sup> Bureau of Ocean Energy Management, “Categorical Exclusion Reviews,” <https://www.boem.gov/environment/environmental-assessment/categorical-exclusion-reviews>.

<sup>14</sup> CEQ, “NEPA Practice,” <https://ceq.doe.gov/nepa-practice/categorical-exclusions.html>.

<sup>15</sup> 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>.

environmental analysis adding an estimated average of \$4.2 million to project costs.<sup>16</sup> CEQ recently found that Federal Highway Administration projects take more than seven years to get from an NOI to the issuance of a ROD.<sup>17</sup> This new data contrasts sharply with CEQ's 1981 prediction that agencies would be able to complete EISs in twelve months or less.<sup>18</sup> Adding to this complexity is the fact that NEPA is the "most frequently litigated environmental statute," according to the Department of Justice.<sup>19</sup> A recent study by the Breakthrough Institute reveals that NEPA-related litigation on EISs takes an average of 4.2 years to resolve.<sup>20</sup>

In 2020, the Trump administration updated CEQ's NEPA regulations for the first time since 1978 to help reduce the cost, time, and complexity of analyses. 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.<sup>21</sup> Congress codified these key changes under the Building U.S. Infrastructure through Limited Delays and Efficient Reviews (BUILDER) Act,<sup>22</sup> which was passed by the House of Representatives as part of H.R.1, the Lower Energy Costs Act,<sup>23</sup> during the 118<sup>th</sup> Congress.

### *NEPA Reforms in the Fiscal Responsibility Act of 2023*

On June 2, 2023, President Biden signed the FRA into law,<sup>24</sup> marking the first significant reforms to NEPA in over forty years. The FRA included many key provisions from the BUILDER Act.<sup>25</sup> With respect to NEPA, the FRA:<sup>26</sup>

- Clarified and narrowed agency considerations of impacts, effects, and alternatives to assess whether NEPA applies to a proposed activity.
- Codified 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, establishing procedures to elevate and streamline delays or disputes, and preparing a single document for environmental reviews involving multiple agencies.
- Allowed agencies to adopt CEs utilized by other agencies through a streamlined review process.

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<sup>16</sup> NEPA Modernization 101: An Outdated Environmental Law the is Impeding Clean Energy Developments, C3 SOLUTIONS, <https://www.c3solutions.org/policy-paper/nepa-modernization-101/>.

<sup>17</sup> 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-policy-act> footnote-2-p43305.

<sup>18</sup> 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>.

<sup>19</sup> Congressional Research Service, "National Environmental Policy Act: Judicial Review and Remedies," Nina M. Hart and Linda Tsang, September 22, 2021, IF11932.

<sup>20</sup> 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>.

<sup>21</sup> 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>.

<sup>22</sup> H.R.1577 – 118th Congress (2023-2024): BUILDER Act of 2023, <https://www.congress.gov/bill/118th-congress/house-bill/1577>

<sup>23</sup> H.R. 1 – 118<sup>th</sup> Congress (2023-2024): the "Lower Energy Costs Act", <https://www.congress.gov/bill/118th-congress/house-bill/1/text?s=4&r=1>.

<sup>24</sup> 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/>.

<sup>25</sup> H.R.1577 – 118th Congress (2023-2024): BUILDER Act of 2023, <https://www.congress.gov/bill/118th-congress/house-bill/1577>.

<sup>26</sup> 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](https://financialservices.house.gov/uploadedfiles/fra_section_by_section.pdf).



- Defined Major Federal Action in NEPA as actions subject to federal control and responsibility. It also includes examples of actions that are not major federal actions.
- Created a process allowing 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.
- Set 150-page limits for EISs (300 pages if the project is of extraordinary complexity) and 75-page limits for EAs. Set time limits of one year for EAs and two years for EISs. Provided a right of action to project applicants if the agency does not adhere to these deadlines.
- Directed CEQ to study modernizing the NEPA process by utilizing digital technologies to create an online portal to streamline data sharing between agencies and applicants.

On May 1, 2024, the CEQ, under the Biden administration, published its final rule, instituting Phase 2 of its overhaul of NEPA implementing regulations, which includes broader changes to the 2020 NEPA regulations.<sup>27</sup> 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 ignored the FRA’s prescriptions in favor of further progressing the Biden 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 weaponized the NEPA process to delay critical domestic energy projects. Shortly after their issuance, 20 states challenged CEQ’s Phase 2 rulemaking, arguing that the rule exceeded CEQ’s authority.<sup>28</sup> On February 3, 2025, the U.S. District Court for the District of North Dakota vacated the Phase 2 rule, finding not only that the Phase 2 rule exceeded CEQ’s authority under NEPA but that CEQ lacked statutory authority to promulgate any rulemaking implementing NEPA.<sup>29</sup> This ruling helped to restore CEQ’s proper role as an advisory council, ending the agency’s decades-long practice of using rulemaking to exceed its statutory authority.

Complementing this decision, on January 20, 2025, President Trump issued an Executive Order titled, “Unleashing American Energy”, which directed CEQ to “propose rescinding” existing NEPA regulations, provide new NEPA guidance, and institute a working group to expedite permitting approvals.<sup>30</sup> Following these actions, CEQ issued a memorandum on February 19, 2025, directing the heads of federal departments and agencies to revise or establish their own NEPA implementation guidance to expedite permitting approvals and ensure consistency with the FRA.<sup>31</sup> Shortly thereafter, CEQ issued an interim final rule removing all of its NEPA-implementing regulations.<sup>32</sup>

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<sup>27</sup> 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>.

<sup>28</sup> *State of Iowa v. Council on Env’t Quality*, No 1:24cv00089 (D.N.D. 2024).

<sup>29</sup> Order, *State of Iowa v. Council on Env’t Quality*, No 1:24cv00089 (D.N.D. Feb. 3, 2025), ECF No.145.

<sup>30</sup> Executive Order No. 14154, 90 FR 8353 (Jan. 29, 2025).

<sup>31</sup> Katherine Scarlett, “Memorandum For Heads of Federal Departments and Agencies: Implementation of the National Environmental Policy Act”, February 19, 2025, <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/CEQ-Memo-Implementation-of-NEPA-02.19.2025.pdf>.

<sup>32</sup> CEQ, Removal of National Environmental Policy Act Implementing Regulations, February 25, 2025, <https://www.federalregister.gov/documents/2025/02/25/2025-03014/removal-of-national-environmental-policy-act-implementing-regulations>.

## *Categorical Exclusions*

The FRA amended NEPA by enacting Section 109, which allows federal agencies to adopt another agency's CE "for a category of proposed agency actions for which the [CE] was established."<sup>33</sup> To adopt another agency's CE, the adopting agency must identify the relevant CE in another agency's procedures that covers the category of proposed actions or related actions, consult with the establishing agency to ensure that the proposed adoption of the CE for the relevant category of actions is appropriate, and notify the public of the proposed adoption.<sup>34</sup>

The Trump administration has begun to increasingly utilize Section 109. In June 2025, for example, the Bureau of Land Management (BLM) used this provision to adopt multiple CEs from the U.S. Forest Service (USFS) to further construction, reconstruction, decommissioning, or disposal of buildings, infrastructure, or improvements at an existing recreation site.<sup>35</sup> Similarly, the BLM adopted one of the U.S. Geological Survey's CEs to gain or prepare access to sites for exploratory drilling operations. This would allow routine exploratory or observation groundwater well drilling operations that don't require a special access road, and that use portable tanks to recycle and remove drilling mud and create no significant surface disturbance.<sup>36</sup>

Despite these positive developments, NEPA still creates substantial delays and litigation risks—even for activities that fall under a CE. For example, despite the increased adoption of new geothermal exploration CEs,<sup>37</sup> recent cases have shown that implementation of specific projects can still drag on for close to two years.<sup>38</sup> Further, agency practices for establishing and promulgating CEs remain subject to challenge under the Administrative Procedure Act (APA), causing further uncertainty for federal agencies and their project partners.<sup>39</sup>

## *Emergency NEPA Procedures under the Trump Administration*

Responding to President Trump's declaration of a National Energy Emergency,<sup>40</sup> the U.S. Department of the Interior (DOI) has reduced NEPA permitting timelines from years to just weeks, accelerating approvals for oil, gas, coal, critical minerals, geothermal, and other essential mineral resources. This decisive action reaffirms Secretary Burgum's commitment to cutting red tape, unleashing American energy, and ensuring that bureaucratic delays no longer hinder national security, economic growth, and energy dominance.<sup>41</sup> For example, on May 23, 2025, DOI completed its first 14-day hardrock environmental review under emergency procedures,

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<sup>33</sup> "Categorical Exclusions," U.S. Department of the Interior, <https://www.doi.gov/oepc/nepa/categorical-exclusions>.

<sup>34</sup> 42 U.S.C. § 4336c.

<sup>35</sup> Federal Register, "Notice of Adoption of Categorical Exclusions Under Section 109 of the National Environmental Policy Act", June 27, 2025, <https://www.federalregister.gov/documents/2025/06/27/2025-12441-notice-of-adoption-of-categorical-exclusions-under-section-109-of-the-national-environmental-policy-act>.

<sup>36</sup> *Id.*

<sup>37</sup> BLM, BLM takes steps to accelerate geothermal energy development, <https://www.blm.gov/announcement/blm-takes-steps-accelerate-geothermal-energy-development>.

<sup>38</sup> Thomas Hochman, "Categorical Exclusions Aren't Enough", Green Tape, April 27, 2025, <https://www.greentape.pub/p/categorical-exclusions-arent-enough>.

<sup>39</sup> See, e.g., *Sierra Club v. Bosworth*, 510 F.3d 1016 (9th Cir. 2007), <https://caselaw.findlaw.com/court/us-9th-circuit/1175742.html>.

<sup>40</sup> Executive Order No. 14156, 90 Fed. Reg. 8433 (Jan. 20, 2025).

<sup>41</sup> "Department of the Interior implements emergency permitting procedures to strengthen domestic energy supply," U.S. Department of the Interior, April 23, 2025, <https://www.doi.gov/pressreleases/departement-interior-implements-emergency-permitting-procedures-strengthen-domestic>.

greenlighting the Velvet-Wood uranium and vanadium mine in San Juan County, Utah.<sup>42</sup> This is a groundbreaking milestone in shortening U.S. mine development timelines, which currently take an average of 29 years from discovery to production.<sup>43</sup>

### *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 APA.<sup>44</sup> Passed in 1946, the APA establishes federal agencies' procedures for rulemakings, adjudications, and litigation of such actions.<sup>45</sup> 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.<sup>46</sup>

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.<sup>47</sup> Reviewing courts are supposed to simply ensure that the process requirements under NEPA were met, considering whether an agency took a "hard look" at the environmental consequences of its proposed actions, consulted with other relevant federal or state agencies, and considered alternatives.<sup>48</sup>

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.<sup>49</sup> Additionally, some claims allege that an agency failed to prepare an appropriate supplemental environmental review. These disputes tend to center on whether new information or changes to a proposed action trigger additional NEPA requirements.<sup>50</sup>

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.<sup>51</sup>

In environmental cases, plaintiffs frequently bring their NEPA challenges alongside claims arising from other statutes. In *Alliance for the Wild Rockies v. United States Forest Service*, for example, the plaintiffs cited, in addition to NEPA, the National Forest Management Act, and the

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<sup>42</sup> "Interior Department approves Utah uranium-vanadium mine to strengthen U.S. mineral security," U.S. Bureau of Land Management, U.S. Department of the Interior, (May 23, 2025), <https://www.blm.gov/press-release/interior-department-approves-utah-uranium-vanadium-mine-strengthen-us-mineral>.

<sup>43</sup> Mohsen Bonakdarpour et al., "Mine development times: The US in perspective," S&P GLOBAL (June 2024), [https://cdn.ihsmarkit.com/www/pdf/0724/SPGlobal\\_NMA\\_DevelopmentTimesUSinPerspective\\_June\\_2024.pdf](https://cdn.ihsmarkit.com/www/pdf/0724/SPGlobal_NMA_DevelopmentTimesUSinPerspective_June_2024.pdf).

<sup>44</sup> Kristen Hite, "National Environmental Policy Act: Judicial Review and Remedies," Congressional Research Service, September 22, 2021, <https://crsreports.congress.gov/product/pdf/IF/IF11932>.

<sup>45</sup> 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](https://www.everycrsreport.com/files/2020-12-08_LSB10558_babd79c50d2e4d559e06c1e0a31490db815f7558.pdf).

<sup>46</sup> Kristen Hite, "National Environmental Policy Act: Judicial Review and Remedies," Congressional Research Service, September 22, 2021, <https://crsreports.congress.gov/product/pdf/IF/IF11932>.

<sup>47</sup> 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>.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

Healthy Forest Restoration Act to stop the proposed Buckskin Saddle Integrated Resource Project.<sup>52</sup> That project authorized around 13,000 acres of commercial logging and approximately 6,500 acres of noncommercial logging and fuels reduction to “increase the resilience of the forests in the project area to insects, diseases, drought, and the undesirable effects from wildfires.”<sup>53</sup>

### *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.<sup>54</sup> The agency must then either abandon its proposed action or take steps to remedy the APA violations and demonstrate compliance with the NEPA process.<sup>55</sup>

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.<sup>56</sup> In some instances, parties request permanent injunctive relief in addition to remand or vacatur.<sup>57</sup> This involves a court staying part or all of a project while an agency completes the requisite NEPA analysis.<sup>58</sup> 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.<sup>59</sup> Injunctions may also be preliminary, barring all or part of a proposed action while litigation is ongoing.<sup>60</sup> The ability of courts to vacate or enjoin final agency actions due to NEPA deficiencies is controversial, as these remedies can significantly delay projects simply because of a procedural violation.

### *Supreme Court Decision: Seven County Infrastructure Coalition v. Eagle County*

On May 29, 2025, the Supreme Court strongly reaffirmed NEPA’s procedural nature and finite scope with its unanimous decision in *Seven County Infrastructure Coalition v. Eagle County* (*Seven County*).<sup>61</sup> The case centered on the Surface Transportation Board’s (STB) decision to exclude specific details of upstream and downstream environmental impacts from the EIS that STB had prepared before approving the construction and operation of a proposed 88-mile railroad line in Utah’s rural Unita Basin.<sup>62</sup>

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<sup>52</sup> 718 F.Supp.3d 1292 (2024).

<sup>53</sup> *Id.*

<sup>54</sup> 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>.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Kristen Hite, “National Environmental Policy Act: Judicial Review and Remedies,” Congressional Research Service, September 22, 2021, <https://crsreports.congress.gov/product/pdf/IF/IF11932>.

<sup>59</sup> 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>.

<sup>60</sup> *Id.*

<sup>61</sup> 605 U. S. \_\_\_\_ (2025), [https://www.supremecourt.gov/opinions/24pdf/23-975\\_m648.pdf](https://www.supremecourt.gov/opinions/24pdf/23-975_m648.pdf).

<sup>62</sup> *See id.*



Following STB's publication of the Final EIS and its decision to allow the railway project to proceed, multiple environmental groups and Eagle County, Colorado, petitioned for a review of the decision to the U.S. Court of Appeals for the D.C. Circuit. The D.C. Circuit vacated parts of both the EIS and STB's decision allowing railway construction to proceed on the grounds that the EIS did not sufficiently evaluate upstream and downstream impacts, such as increased oil production in the Uinta Basin and refining in Louisiana.<sup>63</sup> After the D.C. Circuit's decision, the Supreme Court granted certiorari to consider whether NEPA requires consideration of impacts beyond the "proximate effects of the action over which the agency has regulatory authority."<sup>64</sup>

Ultimately, the Supreme Court held that courts must allow agencies substantial deference in determining whether an agency reasonably exercised its discretion in determining the appropriate scope and contents of an EIS. The Court explained that a NEPA analysis for a given project need not consider the broad effects of separate projects if an agency determines that those upstream and downstream effects are remote in both time and place.<sup>65</sup> The decision also admonished lower courts not to "substitute [their] judgment for that of the agency as to the environmental consequences of its actions."<sup>66</sup> *Seven County* was a crucial court decision in returning common sense to the NEPA process and providing long-sought clarity that NEPA review should be focused on the project under consideration rather than broader, indirect impacts.

### *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.<sup>67</sup>

For example, onshore oil and gas development must go through three rounds of NEPA review before drilling can occur: 1) the Resource Management Plan phase, 2) the lease sale phase, and 3) the permitting phase.<sup>68</sup> To complicate matters further, onshore oil and gas leases are frequently involved in NEPA litigation from environmental groups, meaning operators cannot move forward until the lawsuits are resolved.<sup>69</sup>

Offshore oil and gas development must go through four rounds of NEPA review: 1) the National OCS Program phase (five-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.<sup>70</sup> Litigation at the lease sale phase has created significant uncertainty about the future of the

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<sup>63</sup> Kristen Hite, "Deference Squared": Supreme Court Limits NEPA's Scope and Court's Reach in *Seven County Infrastructure Coalition*", Congressional Research Service, July 7, 2025, <https://www.congress.gov/crs-product/LSB11333>.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Seven County Infrastructure Coalition v. Eagle County*, 605 U. S. \_\_\_\_ (2025), [https://www.supremecourt.gov/opinions/24pdf/23-975\\_m648.pdf](https://www.supremecourt.gov/opinions/24pdf/23-975_m648.pdf).

<sup>67</sup> Geothermal Rising, Letter to Secretary Debra Haaland, March 18, 2021, <https://geothermal.org/resources/geothermal-rising-letter-addressing-geothermal-permitting-public-lands>.

<sup>68</sup> 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>.

<sup>69</sup> Testimony of Kathleen Sgamma before the House Committee on Natural Resources. February 8, 2023.

<sup>70</sup> 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>.

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, in an unprecedented decision, a federal district court vacated the lease sale in January 2022, claiming that BOEM's EIS was insufficient.<sup>71</sup> The Biden administration chose not to appeal this case, declining to defend the agency's own work.<sup>72</sup>

NEPA litigation has also become a significant challenge for transmission projects and renewable energy development. For example, transmission projects undergoing NEPA had a 31 percent litigation rate and a 12 percent cancellation rate, while solar projects undergoing NEPA had a 64 percent litigation rate and a 32 percent cancellation rate.<sup>73</sup>

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.<sup>74</sup> It routinely takes over ten years and \$1 billion in start-up capital before a mine produces any product in the U.S.<sup>75</sup> 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 the Property and Environment Research Center (PERC), the USFS takes an average of 3.6 years to initiate mechanical treatment and 4.7 years to initiate a prescribed burn under NEPA.<sup>76</sup> 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.<sup>77</sup>

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<sup>71</sup> U.S. 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 v. Haaland*, Memorandum Opinion, 1:21-cv-02317-RC, filed January 27, 2022, <https://subscriber.politicopro.com/eenews/f/eenews/?id=0000017e-a065-db8b-ab7f-f2ff5ec00000>.

<sup>72</sup> 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>.

<sup>73</sup> Thomas Hochman, "Charting Out the New Grand Bargain for Permitting Reform," *Green Tape*, July 2, 2025, <https://www.greentape.pub/p/charting-out-the-new-grand-bargain>.

<sup>74</sup> Briefing from the National Mining Association. March 2019.

<sup>75</sup> *Id.*

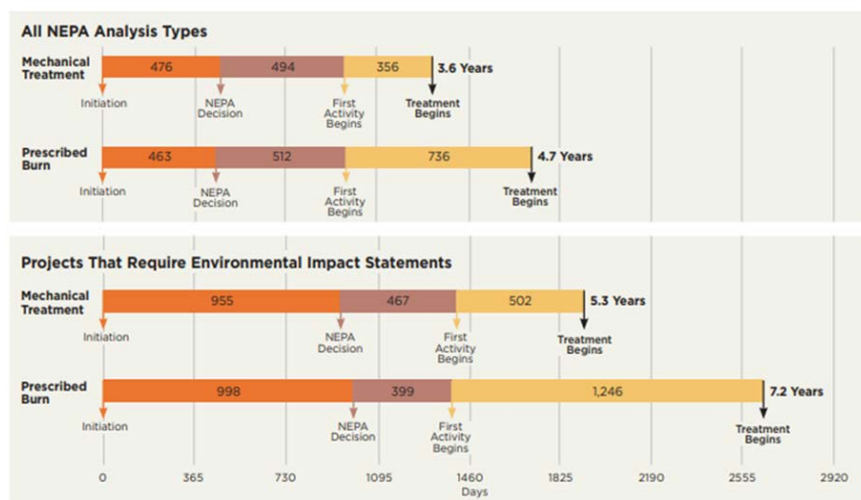
<sup>76</sup> Eric Edwards & Sara Sutherland, "Does Environmental Review Worsen the Wildfire Crisis?", PERC, June 14, 2022, <https://perc.org/2022/06/14/does-environmental-review-worsen-the-wildfire-crisis/>.

<sup>77</sup> *Id.*

Vital forest management projects are often delayed or cancelled. 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 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.<sup>78</sup> USFS is carrying out only two percent of the needed fuel reduction treatments per year.<sup>79</sup> At this lackluster pace, the agency will not be able to reverse the deteriorating health trends of our national forests for several decades.<sup>80</sup>

**Average Time to Begin U.S. Forest Service Fuel Treatments**



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.<sup>81</sup> In the last twenty years, the United States has lost an average of 7 million acres per year to catastrophic wildfires, more than double the yearly average seen during the 1990s.<sup>82</sup> 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.<sup>83</sup> Before 2015, the United States had never experienced more than 10 million acres burned in a single wildfire season. In the past decade, however, the country has hit that ominous mark three times during some of the worst wildfire seasons on record (2015, 2017, and 2020).<sup>84</sup>

<sup>78</sup> Data provided by FFRC.

<sup>79</sup> 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/](https://www.perc.org/2021/04/12/fix-americas-forests-reforms-to-restore-national-forests-and-tackle-the-wildfire-crisis/).

<sup>80</sup> Ibid.

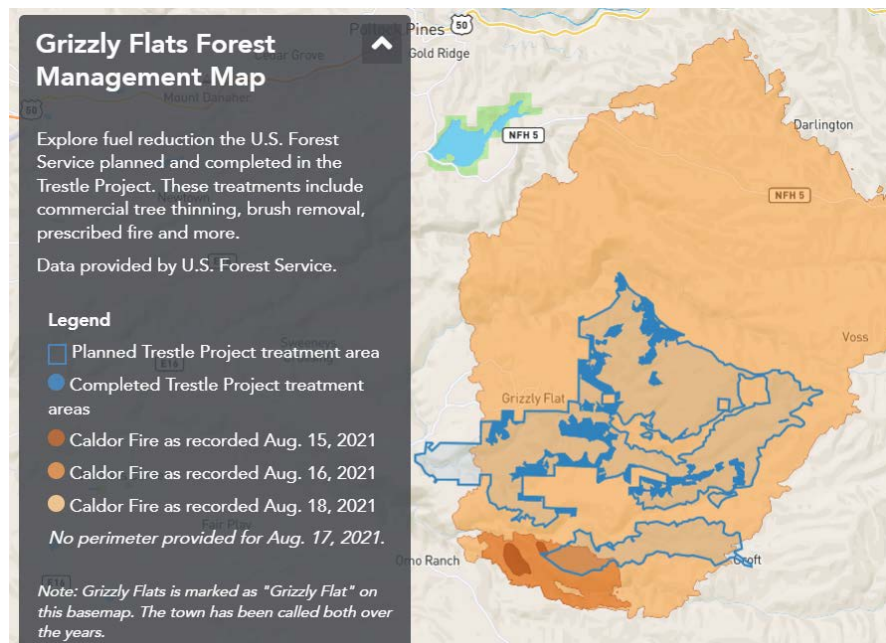
<sup>81</sup> Zoeann Murphy & Chris Mooney, “Montana's Forests Have Swung from Pulling Carbon Dioxide out of the Air to Putting It Back Again,” *The Washington Post*, January 29, 2019, [https://www.washingtonpost.com/graphics/2019/national/gone-in-a-generation/forest-climate-change.html?utm\\_term=.8d7a6e691000](https://www.washingtonpost.com/graphics/2019/national/gone-in-a-generation/forest-climate-change.html?utm_term=.8d7a6e691000).

<sup>82</sup> Congressional Research Service, “Wildfire Statistics”, Katie Hoover, June 1, 2023, <https://www.crs.gov/Reports/IF10244?source=search&guid=b82a4d954677449b918a65ece823396f&index=0>.

<sup>83</sup> NIFC, “Wildfires and Acres,” <https://www.nifc.gov/fire-information/statistics/wildfires>.

<sup>84</sup> *Id.*

While opponents of NEPA streamlining make unsubstantiated claims that changes to the law will bypass public input, NEPA-related delays and cancellations of forest management projects have disproportionately affected local communities that have long called for proactive management to prevent catastrophic wildfires. A prime example of this is the tragic case of Grizzly Flats, a California community that was utterly decimated by the Caldor Fire in 2021.



Source: CapRadio, 2022.

Despite USFS's warning in the early 2000s that a catastrophic wildfire could potentially destroy Grizzly Flats, USFS delayed work on the Trestle Forest Health Project around the town for decades. Originally scheduled to be completed the year before the Caldor Fire ignited, USFS ultimately completed only 14 percent of the planned 15,000-acre project.<sup>85</sup> According to "wildfire experts, career firefighters, former USFS officials and residents, Grizzly Flats would have stood a better chance of surviving the Caldor Fire if the Trestle Project had been completed."<sup>86</sup> A significant contributor to this delay was NEPA, as the relatively small, 15,000-acre project still required a full EIS and was opposed by environmentalists "spreading 'agenda-driven science' that promote[d] specific unsupported narratives and avoid[ed] data to back up their litigious claims."<sup>87</sup> Ultimately, these delays came at the expense of the local community, which repeatedly requested that the USFS move more expeditiously to complete the project.<sup>88</sup>

### *Western Water*

NEPA implementation has a direct impact on the development of critical water supply projects. Obtaining permits typically involves multiple agencies with specific requirements, timelines, and procedures, resulting in an expensive and inefficient process. Throughout the West, numerous water projects have taken decades to get through the convoluted and complex federal regulatory process.

<sup>85</sup> Rodd, Scott, "Stalled U.S. Forest Service project could have protected California town from Caldor Fire destruction," CapRadio, August 16, 2022, <https://www.capradio.org/articles/2022/08/16/stalled-us-forest-service-project-could-have-protected-california-town-from-caldor-fire-destruction/>.

<sup>86</sup> *Id.*

<sup>87</sup> Sacramento Bee Editorial Board, "Rogue environmentalists put Californians in harm's way by blocking forest thinning projects," Sacramento Bee, October 21, 2021.

<sup>88</sup> *Id.*

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 not anticipated to be operational until around 2030.<sup>89</sup> While this project has had several starts and stops, it has been continuously studied since the early 2000s.<sup>90</sup> The Final EIS was released in November 2023.<sup>91</sup> The NEPA requirement to analyze project alternatives has been a leading contributor to delaying this project since, under NEPA, the Bureau of Reclamation and the State of California investigated 52 different project alternatives for Sites Reservoir.<sup>92</sup> 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."<sup>93</sup>

### *Coastal and Habitat Restoration Projects*

At a field hearing held in Thibodaux, Louisiana, on August 2, 2024, one of the main themes that House Committee on Natural Resources members heard was the challenge of the environmental review and permitting processes. A specific challenge identified was that the federal government's permitting process involves "numerous federal agencies with divergent missions"<sup>94</sup> and 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."<sup>95</sup> 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.

### *Endangered Species Act and Marine Mammal Protection Act of 1972*

The Endangered Species Act (P.L. 93-205) (ESA) and the Marine Mammal Protection Act of 1972 (P.L. 92-522) (MMPA) are two additional examples of environmental statutes whose permitting processes have been weaponized against a multitude of projects. The Committee on Natural Resources held an oversight hearing on both statutes on February 26, 2025.<sup>96</sup> The hearing was followed shortly after by the introduction of Chairman Bruce Westerman's H.R. 1897, the *ESA Amendments Act of 2025*. H.R. 1897 would implement critical reforms to the ESA

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<sup>89</sup> 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](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/comments102612/desjardins/bulletin76-81.pdf).

<sup>90</sup> 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).

<sup>91</sup> Sites Reservoir Environmental Review, 2023-2024 Sites Reservoir Test Pits, Fault Studies, and Quarry Studies.

<https://sitesproject.org/environmental-review/>.

<sup>92</sup> Testimony of Thad Bettner, General Manager, Glenn-Colusa Irrigation District before the Natural Resources Committee, February 7, 2012.

<https://www.govinfo.gov/content/pkg/CHRG-112hrg72805/pdf/CHRG-112hrg72805.pdf>.

<sup>93</sup> "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," Sites Project Authority, March 16, 2023, [https://sitesproject.org/wp-content/uploads/2023/03/Sites-News-Release\\_March-Storm-Diversion-Data\\_FINAL-3.16.2023.pdf](https://sitesproject.org/wp-content/uploads/2023/03/Sites-News-Release_March-Storm-Diversion-Data_FINAL-3.16.2023.pdf).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> Hearing: Oversight Hearing titled: "Evaluating the Implementation of the Marine Mammal Protection Act and the Endangered Species Act." February 26, 2025. <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=117865>.



and ensure the successful conservation of America's wildlife, as well as its continued economic development. The bill would refocus the ESA on species recovery, empower state and privately led species conservation, require accountability from regulatory agencies, and streamline the permitting process. Additionally, on July 22, 2025, the Subcommittee on Water, Wildlife and Fisheries will hold a legislative hearing featuring a discussion draft of a bill that makes much-needed changes to the MMPA.<sup>97</sup>

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<sup>97</sup> Legislative Hearing on H.R. 180, H.R. 3706, H.R. 3831, H.R. 4033, H.R. 4293, H.R. 4294 and a Discussion Draft, July 22, 2025. <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=418269>.