



HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: Committee on Natural Resources Republican Members
From: Subcommittee on Oversight and Investigations Staff –
michelle.lane@mail.house.gov, X6-4137, thomas.knecht@mail.house.gov, X6-8747
Date: Thursday, June 22, 2023
Subject: Oversight Hearing titled “*Examining the Council on Environmental Quality Fiscal Year 2024 Budget Request and Related Policy Matters*”

The Committee on Natural Resources will hold a full committee oversight hearing titled, “*Examining the Council on Environmental Quality Fiscal Year 2024 Budget Request and Related Policy Matters*” on **Thursday, June 22, 2023, at 10:00am** in room 1324 Longworth House Office Building. Member offices are requested to notify Sophia Varnasidis (Sophia@mail.house.gov) by 4:30 p.m. on June 20, 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.
- A bureaucratic morass of various agencies, offices, and councils report to, and take orders from, CEQ.
- 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.

II. WITNESS

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

III. BACKGROUND

a. Overview of NEPA and CEQ

A number of events in the mid to late 20th century, particularly in the 1950s and 60s, led to a greater public awareness of the natural environment. Events included environmental disasters, including an oil spill off the coast of California, as well as a river in Ohio quite literally catching on fire.¹ The elevation of these events in the American public conscious led to action in Congress, which, ultimately, provided for the enactment of several major environmental laws in the 1970s, including NEPA.²

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.³ Historically, if a significant impact is identified and NEPA is triggered, then an agency must prepare a detailed statement, now often referred to as an environmental impact statement (EIS), of the proposed project.⁴ If an agency is unsure about whether an action will have significant impacts, it must prepare an Environmental Assessment (EA), which can either lead to the issuance of a Finding of No Significant Impact (FONSI) or the preparation of a subsequent EIS.⁵ In instances where the action falls into a category of actions without significant effects, the agency may issue a categorical exclusion (CE), if one is available to the agency either through statute or regulation.⁶ Issuance of any of these documents has the potential to require significant agency and project proponent resources, both financial and temporal. While an agency must *consider* environmental concerns, an agency *does not need to elevate* environmental concerns above others. Instead, 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.⁷

Because of the “hard look” requirement, courts have played a prominent role in interpreting the role and outcomes of NEPA since its earliest days.⁸ 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.⁹ However, not all agencies reacted in a similar manner, thus sparking litigation that has resulted in Supreme Court decisions on multiple occasions.¹⁰

¹ See Richard Lazarus & Sara Zdeb, *Environmental Law & Politics*, AMERICAN BAR ASSOCIATION (Jan. 5, 2021), https://www.americanbar.org/groups/public_education/publications/insights-on-law-and-society/volume-19/insights-vol--19---issue-1/environmental-law---politics/.

² 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>.

³ 42 U.S.C. §§ 4321 *et seq.*

⁴ 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>.

⁵ *Id.*

⁶ *Id.*

⁷ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

⁸ *Luther*, *supra* note 2.

⁹ *Id.*

¹⁰ *Id.*

CEQ, housed within the Executive Office of the President, oversees agency compliance with NEPA.¹¹ In doing so, CEQ issues regulations and guidance detailing how federal agencies must implement and comply with NEPA.¹² Notably, while NEPA created CEQ, an Executive Order (EO), authorized in 1978, provided CEQ with the authority to issue regulations applicable to all federal agencies regarding the preparation of an EIS.¹³ CEQ was not, however, authorized to enforce these regulations.¹⁴ Over the decades, this first EO authorized by President Nixon has been updated, and expanded upon multiple times, as well as supplemented with additional guidance.¹⁵

b. 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 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.¹⁶ As Chair of CEQ, Brenda Mallory has described her role as “focused particularly on addressing the environmental justice and climate change challenges.”¹⁷ CEQ’s chief of staff describes the responsibilities and powers that President Biden has bestowed upon CEQ as “unprecedented.”¹⁸

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.

On his first day in office, President Biden issued EO 13990, *Protecting the Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*. Among other items, this EO aimed to bolster resilience to the impacts of climate change; to restore and expand national monuments; and prioritize environmental justice and “the creation of the well-paying union jobs necessary to deliver on these goals.”¹⁹ Practically speaking, the EO required all government agencies to immediately review all existing government regulations promulgated by the previous administration that may have been inconsistent with the goals of EO 13990.²⁰ The Chair of CEQ was directed to consult on the national monument review process, participate as a member of the Interagency Working Group on the Social Cost of Greenhouse Gases, and more. In addition, EO 13990 canceled the construction permit for the Keystone XL pipeline and

¹¹ 40 C.F.R. Pts. 1500–1518.

¹² Hart, *supra* note 10.

¹³ Luther, *supra* note 2.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 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*].

¹⁷ THE WHITE HOUSE, *Council on Environmental Quality*, <https://www.whitehouse.gov/ceq/> (last visited June 19, 2023).

¹⁸ 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/>.

¹⁹ 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>.

²⁰ *Id.*

revoked a number of executive orders published by the previous administration, including those that prioritized permitting and infrastructure.²¹

The following week, Biden issued EO 14008, *Tackling the Climate Crisis at Home and Abroad*, which mandated broad environmental justice goals for the federal government to ensure that environmental and economic justice are key considerations in how we govern.²² Among other initiatives, EO 14008 established the National Climate Task Force, chaired by the National Climate Advisor with the Chair of CEQ as a member.²³ In addition, the EO directed the Chair of CEQ to lead the Federal Clean Electricity and Vehicle Procurement Strategy, which would work to facilitate a carbon free electricity sector by 2035 as well as clean or zero-emission vehicle fleets for federal, state, local, and Tribal governments.²⁴ CEQ was further directed to update federal procurement standards, as well as work with relevant Cabinet officials on renewable energy siting and permitting plans.²⁵

EO 14008 also established two new councils within the White House responsible for implementing environmental justice in government actions – the White House Environmental Justice Interagency Council (IAC) and the White House Environmental Justice Advisory Council (WHEJAC).²⁶ Both IAC and WHEJAC report to CEQ and work to develop and institute Biden’s radical eco-agenda and war on domestic energy production.

IAC, primarily composed of leading Cabinet officials and White House advisors, is charged with promoting and coordinating environmental justice initiatives across the executive branch.²⁷ It is also tasked with developing environmental justice performance metrics and issuing a scorecard on agency implementation of environmental justice goals.²⁸ For example, IAC advised CEQ’s creation of the Climate and Economic Justice Screening Tool,²⁹ a tool to identify what communities will receive federal benefits for affordable housing and environmental justice projects.³⁰ CEQ Chair Brenda Mallory chairs the White House Environmental Justice IAC.³¹

WHEJAC is charged with providing recommendations to IAC, CEQ, and the Chair of CEQ on how to address current and historic environmental injustice.³² For example, in August

²¹ *Id.*

²² 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>.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ THE WHITE HOUSE, *White House Environmental Justice Interagency Council*, <https://www.whitehouse.gov/environmentaljustice/white-house-environmental-justice-interagency-council/> (last visited June 9, 2023) [hereinafter IAC].

²⁹ *Id.*

³⁰ Press Release, THE WHITE HOUSE, *Biden-Harris Administration Launches Version 1.0 of Climate and Economic Justice Screening Tool, Key Step in Implementing President Biden’s Justice40 Initiative* (Nov. 22, 2022), <https://www.whitehouse.gov/ceq/news-updates/2022/11/22/biden-harris-administration-launches-version-1-0-of-climate-and-economic-justice-screening-tool-key-step-in-implementing-president-bidens-justice40-initiative/>.

³¹ IAC, *supra* note 27.

³² THE WHITE HOUSE, *White House Environmental Justice Advisory Council*, <https://www.whitehouse.gov/environmentaljustice/white-house-environmental-justice-advisory-council/> (last visited June 9, 2023)

2022, WHEJAC issued recommendations on how to transform the practices of all federal agencies and ensure that Justice40 Initiatives are used to address “systemic inequities.”³³ WHEJAC’s recommendations included mandating every federal agency to convene a board of environmental and climate justice advocates, requiring state and local agencies to use CEQ’s Climate and Economic Justice Screening Tool, prioritizing the recruitment and training of staff with expertise in environmental and climate justice, and prohibiting the use of Justice40 Initiative funds to support fossil fuel infrastructure or generation.³⁴

The Justice40 Initiative, also created by EO 14008, is chaired by CEQ and has a goal of directing 40 percent of certain federal investments to disadvantaged communities, which are not defined. The White House has issued formal Interim Implementation Guidance directing all federal agencies to identify which of their programs are covered under the Justice40 Initiative, and to begin implementing reforms to those programs.³⁵ Justice40 is altering hundreds of federal programs across government that touch climate change, clean energy, transit, housing, workforce development, remediation of legacy pollution, and critical infrastructure.³⁶

The January 2021, EO 14008 also established the administration’s 30x30 agenda, which seeks to preserve 30 percent of our lands and waters by 2030.³⁷ 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. Instead, the administration has often cited 30x30 when taking preservationist actions, like designating national monuments or initiating mineral withdrawals. Perhaps most concerning, the administration created a \$1 billion 30x30 slush fund, with no statutory authority or clearly defined funding sources, to fund vaguely defined projects consistent with 30x30. A letter sent by Committee Republicans in May 2022 to Chair Mallory asking specific questions about this fund has gone unanswered.³⁸

On May 20, 2021, President Biden issued EO 14030, *Climate-Related Financial Risk*, which, among other things, directs 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.”³⁹ Further, EO 14030 grants 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.⁴⁰

³³ WHITE HOUSE ENVIRONMENTAL JUSTICE ADVISORY COUNCIL, *Justice40 Initiative Implementation Phase 1 Recommendations 1* (Aug. 17, 2022), <https://www.epa.gov/system/files/documents/2022-08/WHEJAC%20J40%20Implementation%20Recommendations%20Final%20Aug2022b.pdf>.

³⁴ *Id.* at 3.

³⁵ THE WHITE HOUSE, *Justice 40*, <https://www.whitehouse.gov/environmentaljustice/justice40/> (last visited June 19, 2023).

³⁶ *Id.*

³⁷ 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.

³⁸ 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.

³⁹ 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>.

⁴⁰ *Id.*

On April 22, 2022, President Biden issued EO 14072, *Executive Order on Strengthening the Nation's Forests, Communities, and Local Economies*.⁴¹ Among other directions, EO 14072 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 then develop policies, with robust opportunity for public comment, to institutionalize climate-smart management and conservation strategies to address threats to mature and old-growth forests on federal lands.⁴² This misguided EO was not only unscientific, as no standard definition exists for “old growth forests” and “mature forests” is not a term recognized in the scientific practice of forestry, it diverted critical agency resources away from focusing on actual land management to prevent catastrophic wildfires. After the Forest Service April 2023 published a report on the fulfillment of EO 14072,⁴³ foresters expressed concern that EO 14072 will be used as a tool to further lock up lands from multiple-use and active management.⁴⁴

President Biden continues to promote his environmental justice priorities through executive action. On April 21, 2023, President Biden signed EO 14096,⁴⁵ *Revitalizing Our Nation's Commitment to Environmental Justice for All*, with the purpose of “further embedding environmental justice into the work of federal agencies”⁴⁶ by making environmental justice part of “each agency’s” mission.⁴⁷ EO 14096 cements CEQ as the leading entity charged with executing Biden’s eco-agenda and war on domestic energy production:

- andates the EPA to issue an annual report to CEQ regarding communities with environmental justice concerns and recommendations on legislative, regulatory, or policy options to advance environmental justice in federal decision-making.
- Mandates each agency to submit an Environmental Justice Strategic Plan to CEQ every 4 years, based on guidance established by CEQ.
- Mandates each agency to submit an Environmental Justice Assessment on the effectiveness of the agency’s Environmental Justice Strategic Plan.
- Grants CEQ the power to request additional environmental justice reports, information, or evaluations from the agencies.
- Establishes CEQ as the lead on addressing gaps in science, data, and research related to environmental justice.

⁴¹ 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>.

⁴² *Id.*

⁴³ 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>.

⁴⁴ 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/>.

⁴⁵ 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>.

⁴⁶ 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/>

⁴⁷ EXEC. ORDER NO. 14096, *supra* note 46

- Directs the Chair of CEQ to issue guidance on how agencies should implement E.O. 14096.

EO 14096 also created yet another bureaucratic entity – the White House Office of Environmental Justice – to coordinate the implementation of environmental justice policy across the federal government.⁴⁸ The White House Office of Environmental Justice is housed within CEQ.⁴⁹ The Biden Administration has not clarified why the creation of the White House Office of Environmental Justice is necessary since EO 14008 tasked the IAC with promoting environmental justice initiatives across federal agencies. Nonetheless, IAC, WHEJAC, and the White House Office of Environmental Justice all report to, and take orders from, the same entity – CEQ.

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 on domestic energy development and increase regulatory burdens 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.⁵⁰ CEQ referred to this rulemaking as its phase 1 of revisions to existing NEPA regulations. The administration plans on issuing its phase 2 rulemaking, with broader changes to the 2020 NEPA regulations, later this year.⁵¹ The Biden Administration's weaponization of the NEPA process delays critical domestic energy projects at a time when our nation should pursue energy independence. This includes extensive delays of onshore lease sales on federal lands.⁵²

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.⁵³ If finalized, the Proposed GHG Disclosure Rule would implement the aforementioned E.O. 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.⁵⁴ The

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ 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/>.

⁵¹ 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> (last visited June 19, 2023).

⁵² 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>.

⁵³ 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].

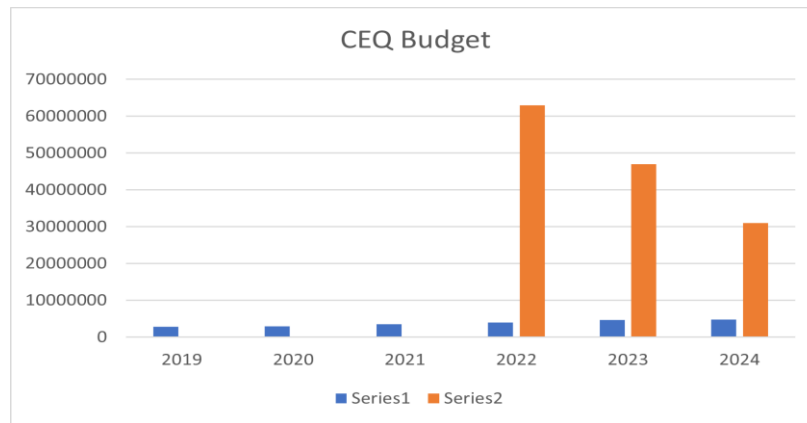
⁵⁴ EXEC. ORDER NO. 14030, 86 Red. Reg. 27967 (May 20, 2021), <https://www.federalregister.gov/documents/2021/05/25/2021-11168/climate-related-financial-risk>.

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).⁵⁵

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 its responsibility to set standards for greenhouse gas emissions to SBTi and require that all major contractors to use SBTi validation services.⁵⁶ Thus, CEQ wants to make the rule but outsource the responsibility for enforcing it to an international non-governmental organization – a dereliction of duty of the highest order.

c. CEQ’s Budget Explosion and Staffing Questions

The explosive growth of CEQ’s mission and bureaucratic morass is mirrored in the dramatic rise of their budget. CEQ’s budget remained relatively stable over the years, until receiving an infusion of funding through the Inflation Reduction Act.⁵⁷ From 2019 to 2023, CEQ’s baseline budget grew from \$2.89 million to approximately \$4.67 million, an increase of approximately 63% over base in four years. In addition to this growth, CEQ received \$62.5 million from the Inflation Reduction Act to support environmental and climate data collection as well as CEQ’s baseline functions for “training personnel, developing programmatic environmental documents, and developing tools, guidance, and technologies to improve stakeholder and community engagement.”⁵⁸ 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.⁵⁹



Source: *The President’s Budget for FY 2024* ⁶⁰

⁵⁵ Proposed GHG Disclosure Rule, *supra* note 55.

⁵⁶ SCIENCE BASED TARGETS, <https://sciencebasedtargets.org/> (last visited June 19, 2023).

⁵⁷ Publ. L. 117–169 (Aug. 16, 2021), <https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf>.

⁵⁸ *Id.*

⁵⁹ *The President’s Budget for Fiscal Year 2024*, *supra* note 16.

⁶⁰ *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 FTE's in 2022, and estimated this number would increase to 36 in FY 2023 and 2024.⁶¹ In an official document uploaded to CEQ's website in April of 2022, nearly 60 employees, including fellows, are listed.⁶² 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.⁶³

d. NEPA & Permitting Reforms under the Fiscal Responsibility Act

On June 2, 2023, President Biden signed the bipartisan Fiscal Responsibility Act of 2023 (Fiscal Responsibility Act),⁶⁴ which limits limiting federal spending and saves taxpayers an estimated \$2.1 trillion over ten years.⁶⁵ The Fiscal Responsibility Act also provides the first significant NEPA and permitting reforms in over forty years. Regarding NEPA, the Fiscal Responsibility Act.⁶⁶

- *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

⁶¹ *Id.*

⁶² 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>.

⁶³ 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/>.

⁶⁴ 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/>

⁶⁵ 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/>.

⁶⁶ 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 June 9, 2023).

process and to resolve issues without taking control or authority away from the lead agency.

- *Limits the Length of Environmental Impact Statements and Assessments.* Sets 150-page limits for environmental impact statements (300 pages if the project is of extraordinary complexity) and 75-page limits for environmental assessments. Sets time limits of one year for environmental assessments and two years for environmental impact statements. Provides a right of action to project applicants if the agency does not adhere to these deadlines.
- *Promotes the Adaptation of Modern Technology.* Directs CEQ to 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 for CEQ to 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.

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. Moving forward, 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.