



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

**To:** House Committee on Natural Resources Republican Members  
**From:** Energy and Mineral Resources Subcommittee Staff, Rob MacGregor – [Robert.MacGregor@mail.house.gov](mailto:Robert.MacGregor@mail.house.gov), Will King – [Will.King@mail.house.gov](mailto:Will.King@mail.house.gov), and Jeanne Kuehl – [Jeanne.Kuehl@mail.house.gov](mailto:Jeanne.Kuehl@mail.house.gov)  
**Date:** Wednesday, September 11, 2024  
**Subject:** Legislative hearing on H.R. 6129, H.J. Res. 168, and a Discussion Draft of H.R. \_\_\_\_ (Rep. Westerman)

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The Committee on Natural Resources will hold a full committee legislative hearing on a Discussion Draft of H.R. \_\_\_\_ (Rep. Westerman), To amend the National Environmental Policy Act of 1969, and for other purposes; H.R. 6129 (Rep. Yakym), “*Studying NEPA’s Impact on Projects Act*”; and H.J. Res. 168 (Rep. Graves), Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Council on Environmental Quality relating to “National Environmental Policy Act Implementing Regulations Revisions Phase 2” on **Wednesday, September 11, 2024, at 10:00 a.m. in room 1324 Longworth House Office Building.**

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

## **I. KEY MESSAGES**

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

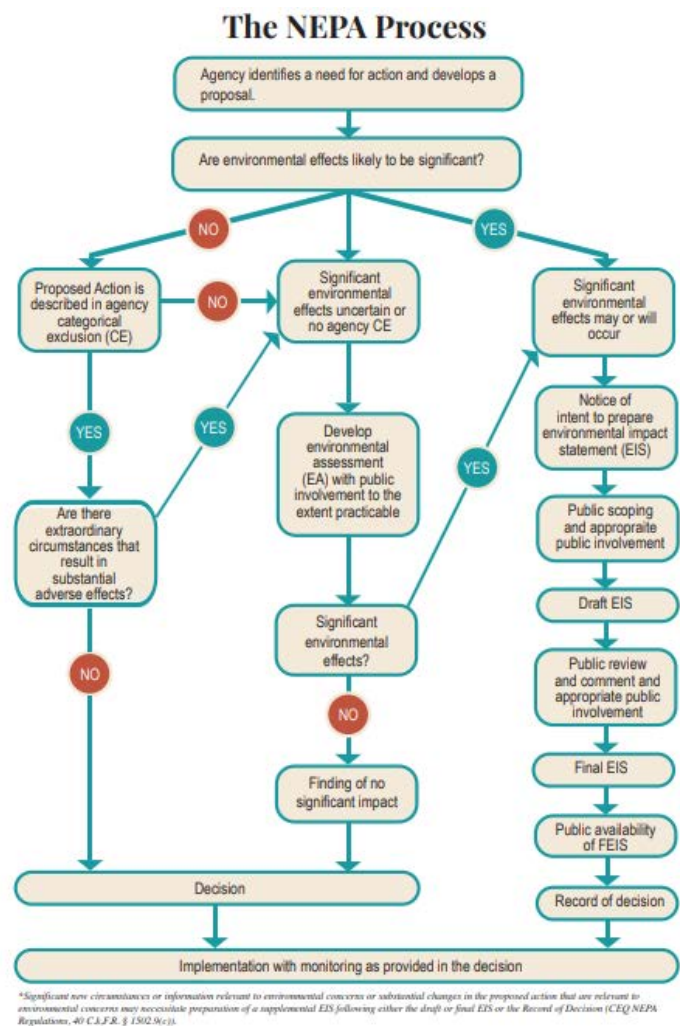
## II. WITNESSES

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

## III. BACKGROUND

### *National Environmental Policy Act Overview*

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



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

If the environmental impacts of a proposed agency action are unknown, agencies will prepare Environmental Assessments, also known as EAs. If an agency determines through an EA that a proposed action will have a significant impact on the environment, a subsequent EIS is prepared. If no significant impact is identified, a finding of no significant impact (FONSI) is issued, and a final decision is made.<sup>7</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, also referred to as a CE or CATEX. Although its name may cause confusion, a CE “is a form of NEPA compliance; it is not an exemption from NEPA, but an exemption from requirements to prepare an EIS” or an EA.<sup>8</sup> According to CEQ, “the use of categorical exclusions can reduce paperwork and save time and resources.”<sup>9</sup> CEs have also been created legislatively through Congressional action.

While well-intentioned, ambiguity in the statute has allowed NEPA to evolve into an extremely cumbersome and lengthy process that has increased costs for numerous projects ranging from transportation and infrastructure to forestry and energy development. CEQ finalized regulations in 1978 regarding the implementation of NEPA but subsequently issued more than 30 guidance documents to federal agencies pertaining to NEPA compliance.<sup>10</sup> NEPA’s labyrinth of

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</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>6</sup> <https://crsreports.congress.gov/product/pdf/IF/IF12560>

<sup>7</sup> *Id.*

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

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

<sup>10</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>.

regulations has imposed significant time and cost burdens, with environmental analysis adding an estimated average of \$4.2 million to project costs.<sup>11</sup> CEQ recently found that Federal Highway Administration projects take more than seven years to get from a NOI to the issuance of a ROD.<sup>12</sup> It should be noted that in 1981, CEQ predicted that agencies should be able to complete EISs in twelve months or less.<sup>13</sup> Adding to this complexity is the fact that NEPA is the “most frequently litigated environmental statute,” according to the Department of Justice.<sup>14</sup> According to a recent study by the Breakthrough Institute, NEPA-related litigation on EISs takes 4.2 years on average to resolve.<sup>15</sup>

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

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

On June 2, 2023, the bipartisan Fiscal Responsibility Act<sup>18</sup> (FRA) was signed into law by President Biden, marking the first significant reforms to NEPA in over forty years. The FRA included many key provisions from the Building U.S. Infrastructure through Limited Delays and Efficient Reviews (BUILDER) Act, introduced by Rep. Garret Graves (R-LA). The BUILDER Act also passed the House of Representatives as a part of H.R. 1, the Lower Energy Costs Act, introduced by Majority Leader Steve Scalise (R-LA). Regarding NEPA, the FRA:<sup>19</sup>

- *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

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<sup>11</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>12</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>13</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>14</sup> Congressional Research Service, “National Environmental Policy Act: Judicial Review and Remedies,” Nina M. Hart and Linda Tsang, September 22, 2021, IF11932.

<sup>15</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>16</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>17</sup> 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>.

<sup>18</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>19</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).

includes designating a lead agency to set a permitting schedule, procedures to elevate and streamline delays or disputes, and preparing a single document for environmental reviews involving multiple agencies.

- *Streamlines Review Process.* Allows agencies to adopt categorical exclusions utilized by other agencies through a streamlined review process.
- *Clarifies Major Federal Actions:* Major federal actions are limited to those subject to federal control and responsibility. It also includes examples of actions that are not major federal actions.
- *Involves Project Sponsors in the Preparation of Environmental Reviews.* Allows project sponsors to assist agencies in conducting environmental reviews to help speed up the process and resolve issues without taking control or authority away from the lead agency.
- *Limits the Length of Environmental Impact Statements and Assessments.* Sets 150-page limits for environmental impact statements (300 pages if the project is of extraordinary complexity) and 75-page limits for environmental assessments. Sets time limits of one year for environmental assessments and two years for environmental impact statements. Provides a right of action to project applicants if the agency does not adhere to these deadlines.
- *Promotes the Adaptation of Modern Technology.* Directs CEQ to study modernizing the NEPA process by utilizing digital technologies to create an online portal to streamline communications and data sharing between agencies and project applicants.

On May 1, 2024, CEQ published its final rule, instituting Phase 2 of its overhaul of NEPA implementing regulations, with broader changes to the 2020 NEPA regulations.<sup>20</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 ignores the FRA’s prescriptions in favor of further progressing the Biden-Harris administration’s radical environmental justice agenda. Rather than abide by the FRA’s significant NEPA and permitting reforms intended to streamline construction in America, speed up timelines for critical infrastructure projects, and reduce the burden on taxpayers by creating efficiencies in the permitting process, CEQ’s Phase 2 Rule weaponizes the NEPA process to delay critical domestic energy projects. Further, prolonged analysis and constant litigation challenging the sufficiency of environmental documents continue to pose significant barriers to transportation infrastructure, transmission buildout, forest management, drought mitigation efforts, and more.<sup>21</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 Administrative Procedure Act (APA).<sup>22</sup> Passed in 1946, the APA establishes federal agencies' procedures for rulemakings,

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<sup>20</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>21</sup> House Committee on Natural Resources “Legislative Hearing on H.R. \_\_\_\_ (Rep. Graves of Louisiana), the “Building United States Infrastructure through Limited Delays and Efficient Reviews (BUILDER) Act of 2023.” February 28, 2023, [https://naturalresources.house.gov/uploadedfiles/hearing\\_memo\\_-\\_fc\\_leg\\_hrg\\_on\\_builder\\_02.28.23\\_final.pdf](https://naturalresources.house.gov/uploadedfiles/hearing_memo_-_fc_leg_hrg_on_builder_02.28.23_final.pdf)

<sup>22</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>

adjudications, and litigation of such actions.<sup>23</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>24</sup> The FRA later added an explicit right of review provision under NEPA, allowing for court enforcement of deadlines to complete an EA or EIS. Nevertheless, litigation remains available under the APA for other NEPA concerns.<sup>25</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>26</sup> Reviewing courts generally do not dictate the substance of an agency’s decision. Instead, they enforce NEPA processes, considering whether an agency took a “hard look” at the environmental consequences of its proposed actions, consulted with other relevant federal or state agencies, considered alternatives, and publicly disclosed such information before reaching a final decision.<sup>27</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>28</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>29</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>30</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>31</sup> The agency then must either abandon its proposed action or take steps to remedy the APA violations and demonstrate that it has complied with the NEPA process.<sup>32</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>33</sup> Vacatur is considered the

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<sup>23</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>24</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>25</sup> Kristen Hite, “Environmental Reviews and the 118<sup>th</sup> Congress,” Congressional Research Service, September 19, 2023, <https://crsreports.congress.gov/product/pdf/IF/IF12417>

<sup>26</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>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

“ordinary” remedy in NEPA cases because the APA directs courts to “set aside” agency actions in the case of a violation.<sup>34</sup> However, some courts allow for an equitable exception in NEPA suits, ordering remand without vacatur.<sup>35</sup> This keeps an agency’s original action or decision in place while it corrects a deficiency in its NEPA compliance.

In some instances, parties request permanent injunctive relief in addition to remand or vacatur.<sup>36</sup> This involves a court staying part or all of a project while an agency completes the requisite NEPA analysis.<sup>37</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>38</sup> Injunctions may also be preliminary, barring all or part of a proposed action while litigation is ongoing.<sup>39</sup>

### *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>40</sup>

For example, onshore oil and gas development must go through three rounds of review under the NEPA process before drilling can occur: 1) the Resource Management Plan phase, 2) the lease sale phase, and 3) the permitting phase.<sup>41</sup> The Mineral Leasing Act requires BLM to issue permits within 30 days. Still, the agency has a backlog of over 5,000 permits pending for, in some cases, over a year due to prolonged analysis under NEPA.<sup>42</sup> Further, thousands of onshore oil and gas leases are currently involved in litigation from environmental groups, meaning operators cannot develop them until the lawsuits are resolved.<sup>43</sup>

Offshore oil and gas development must go through 4 rounds of NEPA review: 1) the National OCS Program phase (5-year-planning phase); 2) the lease sale phase; 3) the approval of the exploration plan and drilling permits; and 4) the approval of the development and production plan.<sup>44</sup> Litigation at the lease sale phase has created significant uncertainty about the future of the

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

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

<sup>37</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>38</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>39</sup> *Id.*

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

<sup>41</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>42</sup> 30 U.S. Code § 226; Bureau of Land Management. Application for Permit to Drill Status Report. January 2023. <https://www.blm.gov/sites/default/files/docs/2023-02/FY%202023%20APD%20Status%20Report%20January.pdf>

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

<sup>44</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, a district court vacated the lease sale in January 2022 in an unprecedented decision, claiming the EIS prepared by BOEM was insufficient.<sup>45</sup> The Biden-Harris administration chose not to appeal this case, declining to defend the agency’s own work.<sup>46</sup>

NEPA reform has also become a significant challenge for renewable energy development, and reform of the statute would benefit these projects. For example, according to the Department of Energy’s website, 32 percent of active projects requiring either an EIS or EA were related to clean energy or transmission, while only 14 percent were related to fossil fuels.<sup>47</sup> Similarly, 45 percent of Bureau of Land Management actions requiring an EIS were for renewable energy or transmission projects, and only 21 percent were for fossil fuel-related projects.<sup>48</sup> The Permitting Dashboard tells a similar story. Of the 21 active FAST-41 projects, 15 are renewable energy or transmission, and only one is related to fossil fuel production.<sup>49</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>50</sup> It routinely takes over ten years and \$1 billion in start-up capital before a company produces any product in the U.S.<sup>51</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 a report from the Property and Environment Research Center (PERC), the U.S. Forest Service (USFS) takes an average of 3.6 years to begin mechanical treatments and 4.7 years to begin a prescribed burn under NEPA.<sup>52</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>53</sup>

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

<sup>46</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>47</sup> Department of Energy, Office of NEPA Policy and Compliance, Active NEPA Reviews, <https://www.energy.gov/nepa/active-nepa-reviews>

<sup>48</sup> U.S. Department of the Interior Bureau of Land Management, BLM National NEPA Register, [https://eplanning.blm.gov/eplanning-ui/search?filterSearch=%7B%22states%22:null,%22projectTypes%22:%5B8%5D,%22programs%22:%5B%22FLUID\\_MINERALS%22,%22MINING%22,%22RENEWABLE\\_ENERGY%22%5D,%22years%22:null,%22open%22:false,%22active%22:true%7D](https://eplanning.blm.gov/eplanning-ui/search?filterSearch=%7B%22states%22:null,%22projectTypes%22:%5B8%5D,%22programs%22:%5B%22FLUID_MINERALS%22,%22MINING%22,%22RENEWABLE_ENERGY%22%5D,%22years%22:null,%22open%22:false,%22active%22:true%7D).

<sup>49</sup> Permitting Dashboard, FAST-41 Covered Projects, [https://www.permits.performance.gov/projects/fast-41-covered?title&term\\_node\\_tid\\_depth=All&term\\_node\\_tid\\_depth\\_1=All&field\\_permitting\\_project\\_adpoint\\_administrative\\_area=All&field\\_project\\_status\\_target\\_id=3036&page=0](https://www.permits.performance.gov/projects/fast-41-covered?title&term_node_tid_depth=All&term_node_tid_depth_1=All&field_permitting_project_adpoint_administrative_area=All&field_project_status_target_id=3036&page=0).

<sup>50</sup> Briefing from the National Mining Association. March 2019.

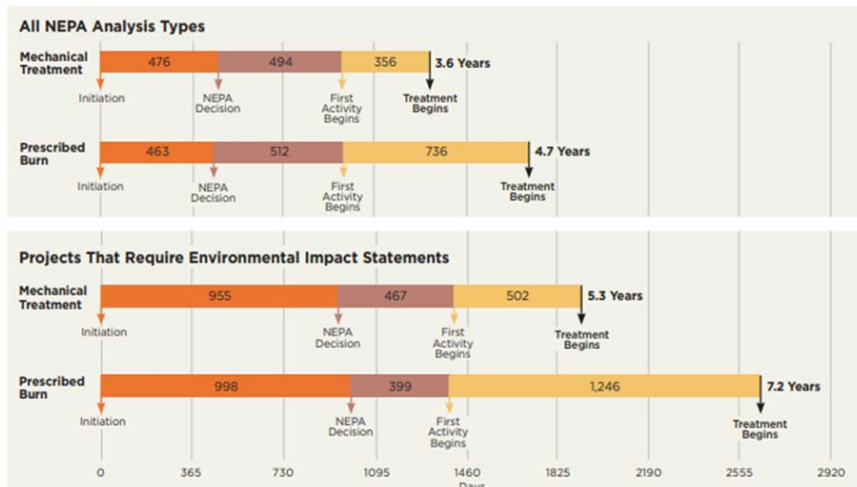
<sup>51</sup> *Id.*

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

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



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



Source: PERC, 2022.

Vital forest management projects are often delayed or canceled. Land managers divert finite agency time and resources from essential management activities to instead support endless analysis to “bulletproof” NEPA documents, circular consultations with other agencies, and fighting against obstructionist litigation. For example, USFS has spent seven years and an estimated 15,000

pages of documentation analyzing a roughly 7,000-acre treatment project in the Nez-Perce Clearwater National Forest in Idaho, or approximately 0.008 percent of the National Forest acreage estimated to be at moderate to high risk of catastrophic wildfire.<sup>54</sup> The Forest Service is carrying out only two percent of needed fuel reduction treatments per year.<sup>55</sup> At this paltry scale, the agency will not be able to reverse the deteriorating health trends of our national forests for several decades.<sup>56</sup>

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>57</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 average seen during the 1990s.<sup>58</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>59</sup> Prior to 2015, the United States had never burned more than 10 million acres in a single wildfire season. In the past decade, the country has hit that ominous mark three times during some of the worst wildfire seasons on record (2015, 2017, and 2020).<sup>60</sup>

<sup>54</sup> Data provided by FFRC.

<sup>55</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/](http://www.perc.org/2021/04/12/fix-americas-forests-reforms-to-restore-national-forests-and-tackle-the-wildfire-crisis/).

<sup>56</sup> *Ibid.*

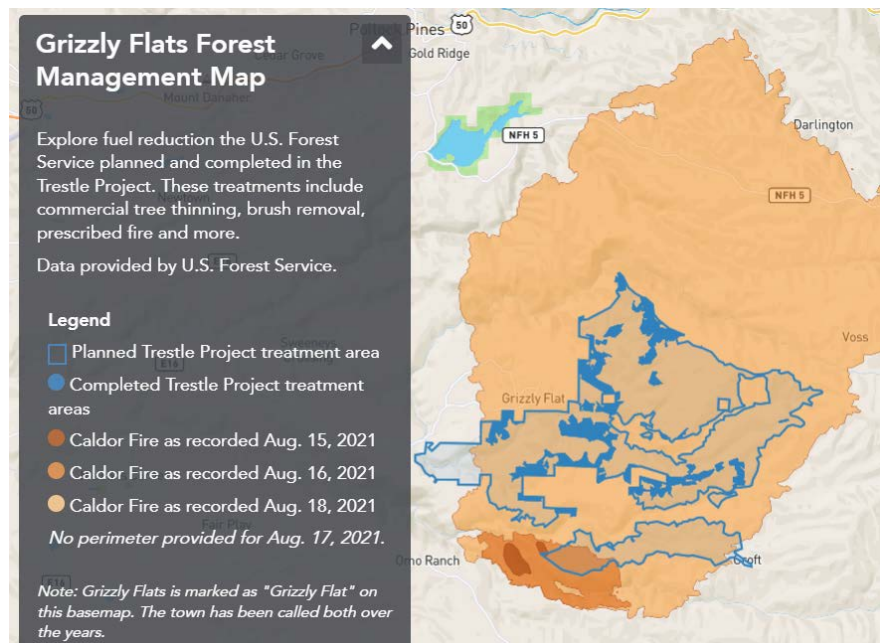
<sup>57</sup> Murphy, Zoeann, and Chris Mooney. “Montana’s Forests Have Swung from Pulling Carbon Dioxide out of the Air to Putting It Back Again.” *The Washington Post*. January 29, 2019. Accessed January 31, 2019. [https://www.washingtonpost.com/graphics/2019/national/gone-in-a-generation/forest-climate-change.html?utm\\_term=.8d7a6e691000](https://www.washing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

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

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

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

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



Source: CapRadio, 2022.

Fire in 2021. Despite USFS warning the community in the early 2000s that a catastrophic wildfire could potentially destroy Grizzly Flats, the Forest Service delayed work on the Trestle Forest Health Project around the town for decades. Originally scheduled to be completed the year before the Caldor Fire ignited, USFS ultimately only completed 14 percent of the planned 15,000-acre project.<sup>61</sup> According to “wildfire experts, career firefighters, former Forest Service officials and residents ... Grizzly Flats would have stood a better chance of surviving the Caldor Fire if the Trestle Project had been completed.”<sup>62</sup> A significant contributor to this delay was NEPA, as the only 15,000-acre project required a full EIS and was objected to by environmentalists “spreading ‘agenda-driven science’ that promotes specific unsupported narratives and avoids data to back up their litigious claims.”<sup>63</sup> These delays came at the expense of the local community, which repeatedly asked the Forest Service to move more expeditiously to complete the project.<sup>64</sup>

### *Western Water*

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

<sup>61</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>62</sup> *Id.*

<sup>63</sup> Sacramento Bee Editorial Board, “Rogue environmentalists put Californians in harm’s way by blocking forest thinning projects,” Sacramento Bee, October 21, 2021.

<sup>64</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 anticipated to be operational around 2030.<sup>65</sup> While this project has had several starts and stops, it has been continuously studied since the early 2000s.<sup>66</sup> The Final Environmental Impact Report/Environmental Impact Statement was released in November 2023.<sup>67</sup> The NEPA requirement to analyze project alternatives has been a leading factor delaying this project and under NEPA, the Bureau of Reclamation and the State of California investigated 52 different project alternatives for Sites Reservoir.<sup>68</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>69</sup>

### *Coastal and Habitat Restoration Projects*

In a field hearing that the Committee held in Thibodaux, Louisiana, last month, one of the main themes Members heard was the challenge of the environmental review and permitting processes. One specific challenge identified is that the federal government's permitting process, which involves "numerous federal agencies with divergent missions,"<sup>70</sup> 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>71</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.

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

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

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<sup>65</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>66</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>67</sup> Sites Reservoir Environmental Review, 2023-2024 Sites Reservoir Test Pits, Fault Studies, and Quarry Studies.

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

<sup>68</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-112hhrg72805/pdf/CHRG-112hhrg72805.pdf>

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

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

### *Scope of Review*

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

### *Threshold for When NEPA is Triggered*

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

### *Judicial Review*

There are currently no judicial review limitations in NEPA. The bill would create limitations for standing, limit vacatur and injunction – instead forcing agencies to fix errors and deficiencies in EAs and EISs, establish new review standards, and place timelines on the judicial process. Plaintiffs would be required to file NEPA claims within 120 days after the final agency action and would have to have participated in the public comment period for the action. The claim would also have to be concerning the organization's comments. This provision would ensure that agencies are adequately notified during the process before being sued on a given issue. Claims would also be limited to alternatives or effects considered in the EA or EIS. For supplemental EAs and EISs, claims would be limited to the new information in such supplemental environmental documents, preventing plaintiffs from reaching back to attack aspects of initial documents. For a major federal action to be vacated, enjoined, or delayed, a court would have to conclude that the action itself would pose a risk of proximate and substantial environmental

harm, and there is no other remedy available to the agency. When a court identifies deficiencies in the EA or EIS, but this standard isn't met, the court would remand the document to the agency to address the errors.

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

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

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

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

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

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

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

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

<sup>74</sup> Rossetti, Philip, “ADDRESSING NEPA-RELATED INFRASTRUCTURE DELAYS,” R Street Institute, July 2021, [https://www.rstreet.org/wp-content/uploads/2021/07/FINAL\\_RSTREET234.pdf](https://www.rstreet.org/wp-content/uploads/2021/07/FINAL_RSTREET234.pdf).

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

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

<sup>77</sup> CEQ, “ENVIRONMENTAL IMPACT STATEMENT TIMELINES (2010-2018),” June 12, 2020, [https://ceq.doe.gov/docs/nepa-practice/CEQ\\_EIS\\_Timeline\\_Report\\_2020-6-12.pdf](https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Report_2020-6-12.pdf).

<sup>78</sup> *Id.*

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

The Studying NEPA’s Impact on Projects Act would coalesce prior efforts into a single report published annually by CEQ. Like CEQ’s annual litigation surveys conducted between 2001 and 2013, the report would study the cause of action, lead federal agency, lead plaintiff, and project outcome between June 2023 and June 2024.<sup>80</sup> The bill would also build off of the Trump administration’s NEPA studies, mandating CEQ to review the length of EISs over the last five years and timelines to complete environmental reviews over the last ten years, with updates published annually.<sup>81</sup> This transparency will help ensure that the reforms made in the FRA are having their intended impact.

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

Under the Biden-Harris administration, the Council on Environmental Quality (CEQ) has transformed from a small staff tasked with ensuring compliance with the National Environmental Policy Act of 1969 (NEPA) into President Biden’s legion of frontline warriors determined to implement radical social change and eco-justice initiatives across the federal government.

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

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

Rather than streamline the permitting process fairly for all projects under NEPA, Phase 2 subjectively accelerates procedures for CEQ’s favored energy sources like wind and solar while effectively mummifying domestic oil and gas production with red tape.<sup>83</sup> As the White House itself made clear, the NEPA Phase 2 regulations aim to “address climate change” and “advance environmental justice” instead of implementing positive bipartisan permitting reform that would benefit Americans, as Congress directed in the Fiscal Responsibility Act.<sup>84</sup>

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

<sup>81</sup> *Id.*

<sup>82</sup> Public Law No. 118-5.

<sup>83</sup> See National Environmental Policy Act Implementing Regulations Revisions Phase 2, 89 Fed. Reg. 35442 (May 1, 2024) (to be codified at 40 C.F.R. §§ 1500-08), <https://www.federalregister.gov/documents/2024/05/01/2024-08792/national-environmental-policy-act-implementing-regulations-revisions-phase-2>.

<sup>84</sup> THE WHITE HOUSE, *Biden-Harris Administration Finalizes Reforms to Modernize Environmental Reviews, Accelerate America’s Clean Energy Future, Simplify the Process to Rebuild our Nation’s Infrastructure, and Strengthen Public Engagement* (Apr. 30, 2024),

### III. MAJOR PROVISIONS & ANALYSIS

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

##### SEC. 1.

- Purpose of NEPA Clarification (Section 1(a)):
  - Amends 42 U.S.C. § 4321 to explicitly state that NEPA is a procedural statute meant to ensure that federal agencies consider the environmental impacts of their actions without mandating specific outcomes. This change underscores that NEPA is about the decision-making process, not dictating results.
- Scope of Environmental Review Limited to Agency Jurisdiction (Section 1(c)):
  - Modifies 42 U.S.C. § 4336 to specify that environmental reviews must focus only on effects within the jurisdiction and control of the federal agency. This amendment aims to streamline the scope of reviews to relevant impacts, minimizing extraneous considerations that can delay project approvals and increase risks of litigation.
- Timely and Unified Federal Reviews (Section 1(d)):
  - Amends 42 U.S.C. § 4336a to improve coordination among agencies. It limits comments from cooperating agencies to their specific areas of jurisdiction (Section 107(a)(3)) and sets clear timelines for considering scientific research (Section 107(b)). This ensures that only pertinent information is considered, reducing unnecessary delays and making the process more predictable.
- Restriction on New Scientific Research Requirements (Section 1(c)(3)):
  - Changes to 42 U.S.C. § 4336 clarify that agencies are not required to conduct new scientific or technical research unless it is essential to making a reasoned choice among alternatives (Section 106(b)(3)). This is designed to prevent agencies from using research requirements to stall decision-making.
- Limiting Scope and Timing of Research Consideration (Section 1(d)(2)):
  - Adds provisions to 42 U.S.C. § 4336a that establish deadlines after which new scientific information is generally not considered in decision-making unless it meets specific criteria (e.g., peer-reviewed and essential for determining reasonably foreseeable effects). This provision is intended to reduce continuous delays due to late-arising information.

##### SEC. 2. JUDICIAL REVIEW

- Judicial Review Limitations (Section 2 - New Section 112 of NEPA):
  - Adds 42 U.S.C. § 4336f to limit who can file lawsuits challenging NEPA decisions to those who have participated in the public comment process and submitted specific

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<https://www.whitehouse.gov/ceq/news-updates/2024/04/30/biden-harris-administration-finalizes-reforms-to-modernize-environmental-reviews-accelerate-americas-clean-energy-future-simplify-the-process-to-rebuild-our-nations-infrastructure/>.

comments (Section 112(a)). It also bars lawsuits challenging the establishment of categorical exclusions. This provision is meant to reduce frivolous litigation that can delay projects.

- Restrictions on Court Actions Against Projects (Section 2 - New Section 112(c)):
  - Further amends 42 U.S.C. § 4336f to limit a court’s ability to vacate or enjoin NEPA-related agency actions unless there is a clear finding of substantial environmental harm (Section 112(c)). This is aimed at ensuring that frivolous legal challenges do not unnecessarily halt projects unless significant harm is demonstrated.
- Expedited Resolution for Legal Challenges (Section 2 - New Section 112(f)-(g)):
  - Establishes timelines for courts to resolve NEPA-related cases (within 180 days) and appeals (also within 180 days) as per 42 U.S.C. § 4336f (Sections 112(f) and 112(g)). This provision reduces lengthy litigation that can cause delays and cost overruns.

### SEC. 3. RULEMAKING

- The Council on Environmental Quality shall issue a rule to implement Section 1 of this Act and its amendments not later than 6 months after its enactment.
  - Prevents prolonged uncertainty or delays in applying this revised NEPA processes. This requirement aims to expedite the regulatory changes necessary for more efficient and predictable environmental reviews, aligning with the broader goals of reducing bureaucratic obstacles and enhancing the speed of project approvals.

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

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

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

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

### IV. COST

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



## **V. ADMINISTRATION POSITION**

The Administration's position on these bills is unknown.

## **VI. EFFECT ON CURRENT LAW (RAMSEYER)**

[H.R. 6129](#)

[Westerman Discussion Draft](#)