



HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: Subcommittee on Oversight and Investigations Republican Members
From: Subcommittee on Oversight and Investigations Staff – michelle.lane@mail.house.gov, X6-4137, Thomas.knecht@mail.house.gov, X6-8747
Date: May 11, 2023
Subject: Oversight Hearing titled “*The Biden Administration’s Executive Overreach and Impact on American Energy Independence*”

The Subcommittee on Oversight and Investigations will hold an oversight hearing titled, “*Executive Overreach and Impact on American Energy Independence*” on **Thursday, May 11, 2023, at 2:15 p.m.** in Room 1334 Longworth House Office Building.

Member offices are requested to notify Michelle Lane (michelle.lane@mail.house.gov) and Madeline Bryant (Madeline.Bryant@mail.house.gov) by 4:30 p.m. on May 8, 2023, if their Member intends to participate in the hearing.

I. KEY MESSAGES

- The Biden Administration has abused executive authority to limit America’s energy independence in support of meeting radical environmental justice goals.
- Limiting America’s energy independence harms America’s economy, our national security, and the daily lives of Americans.
- President Biden’s weaponization of the National Environmental Policy Act (“NEPA”) and the Council on Environmental Quality (“CEQ”) as vehicles to force social change in furtherance of the administration’s radical agenda is an unprecedented assault on America’s energy independence and separation of powers, a bedrock of the American democratic system.

II. WITNESSES

- Ms. Diana Furchtgott-Roth, Director, Center for Energy, Climate, and The Herbert & Joyce Morgan Fellow in Energy & Environmental Policy, The Heritage Foundation, Chevy Chase, Maryland
- Mr. Jeremy Harrell, Chief Strategy Officer, ClearPath, Washington, D.C.
- Mr. Kenny Stein, Director of Policy, Institute for Energy Research, Washington, D.C.
- Ms. Jamie Pleune, Associate Professor (Research), S.J. Quinney College of Law, University of Utah, Salt Lake City, UT

III. BACKGROUND

“The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.” Federalist No. 47

America’s founders were gravely aware of the dangers of concentrated power and intentionally designed a system of separating government powers into the legislative, executive, and judicial branches.¹ Members of the First Congress decided that executive departments and agencies were necessary to “aid” the President in the execution of law.² Hence, the First Congress enacted measures creating the Departments of Foreign Affairs, War, and the Treasury.³

The executive branch was limited in the first century of our republic, when government executive posts were staffed largely by patronage, and Congressional policymaking and oversight concentrated on appropriations, private relief bills, infrastructure, and lands-related issues.⁴ The federal government grew slowly and, by 1900, there were only eight executive departments, with 230,000 civilian employees, 135,000 of whom worked for the Post Office.⁵

The size, scope, and intrusion of government activity, notably by the executive branch, increased exponentially in the 20th Century and early decades of the 21st century. Today, the executive branch has fifteen executive departments⁶ with over 2.7 million civilian employees.⁷

While the size and scope of the executive branch has grown, the power of the executive branch is still limited and Congress has various powers to control executive agencies.⁸ Despite these limits, President Biden has abused the executive power. Under President Biden’s direction, executive agencies have abused their authority by limiting America’s energy independence in support of the Administration’s climate and environmental justice goals. Notably, the Biden Administration has limited domestic energy production and reduced American energy

¹ See U.S. CONST. art. I, § 1 (“All legislative Powers herein granted shall be vested in a Congress of the United States”); id. art. II, § 1, cl.1 (“The executive Power shall be vested in a President of the United States of America.”); id. art. III, § 1 (“The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.”).

² 1 ANNALS OF CONG. 383 (1789) (statement of Rep. Elias Boudinot).

³ Act of July 27, 1789, ch. 4, 1 Stat. 28, 28–29 (establishing the Department of Foreign Affairs); Act of Aug. 5, 1789, ch. 7, 1 Stat. 49, 49–50 (establishing the Department of War); Act of Sept. 2, 1789, ch. 12, 1 Stat. 65, 65 (establishing the Treasury Department).

⁴ Kevin R. Kosar, *How to Strengthen Congress*, NATIONAL AFFAIRS (Fall 2015), <https://www.nationalaffairs.com/publications/detail/how-to-strengthen-congress>.

⁵ *Id.*

⁶ THE WHITE HOUSE, *The Executive Branch*, <https://www.whitehouse.gov/about-the-white-house/our-government/the-executive-branch/#:~:text=Fifteen%20executive%20departments%20E2%80%94%20each%20led,administration%20of%20the%20federal%20government> (last visited May 5, 2023).

⁷ Jared C. Nagel & Carol Wilson, CONG. RESEARCH SERV., R43590, *Federal Workforce Statistics Sources: OPM and OMB*, (June 28, 2022), <https://sgp.fas.org/crs/misc/R43590.pdf>.

⁸ See Todd Garvey & Sean M. Stiff, CONG. RESEARCH SERV., R45442, *Congress’s Authority to Influence and Control Executive Branch Agencies*, (Mar. 30, 2023), <https://sgp.fas.org/crs/misc/R45442.pdf>.

independence through the use of executive orders by weaponizing the National Environmental Policy Act of 1969 (“NEPA”) and the Council on Environmental Quality (“CEQ”).

a. Overview of NEPA and CEQ

NEPA requires federal agencies to identify and evaluate impacts of “major Federal actions” that “significantly” affect “the quality of the human environment.”⁹ 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,” of the proposed project.¹⁰ 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.¹¹ 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.¹² 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.¹³

NEPA also established the CEQ – an entity within the Executive Office of the President that oversees agency compliance with NEPA.¹⁴ CEQ also issues regulations and guidance detailing how federal agencies must implement and comply with NEPA.¹⁵ Under President Biden, CEQ has moved beyond overseeing NEPA compliance to actively promoting and instituting President Biden’s climate and environmental justice agenda, particularly through executive orders.¹⁶

b. The Origins and Early Executive Action on Environmental Justice

According to the U.S. Environmental Protection Agency (“EPA”), environmental justice is “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”¹⁷

⁹ 42 U.S.C. §§ 4321 *et seq.*

¹⁰ 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>.

¹¹ *Id.*

¹² *Id.*

¹³ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

¹⁴ 40 C.F.R. pts. 1500–1518.

¹⁵ Hart, *supra* note 10.

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 U.S. ENV’T PROT. AGENCY, *Environmental Justice*, <https://www.epa.gov/environmentaljustice> (last visited May 5, 2023).

The focus on environmental justice largely developed from the environmental movement in the 1970s and, ultimately, led to President Bill Clinton’s Executive Order (“E.O.”) 12898 in 1994.¹⁸ E.O. 12898 directed each Federal agency to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States.”¹⁹ E.O. 12898 also created an interagency working group, led by the EPA, to help federal agencies develop environmental justice strategies that ensure enforcement of all health and environmental statutes in areas with high minority populations and low-income populations.²⁰

Further, although there is no law directly mandating the consideration of environmental justice across federal programs and activities, E.O.12898 directed executive departments and agencies to integrate environmental justice into their respective missions to “the greatest extent practicable and permitted by law.”²¹ The Presidential Memorandum accompanying E.O. 12898 called on federal agencies to analyze the environmental impacts of federal actions on minority and low-income communities when conducting analysis under NEPA.²²

In response to E.O. 12898, in 1997, CEQ issued guidance for considering environmental justice under NEPA.²³ During the Clinton Administration, CEQ created basic guidance to determine if a federal action has a disproportionate and adverse human health or environmental effect on low-income, minority, and tribal populations.²⁴

While the Clinton Administration laid the foundation for environmental justice considerations in the executive branch, President Biden has weaponized NEPA and CEQ to remake federal agencies in support of his radical eco-agenda.

c. Biden’s Executive Overreach to Limit Domestic Energy Production

In 2019, then-candidate Joe Biden previewed his policies to limit America’s energy independence by promising to “end fossil fuel.”²⁵ Upon taking office, President Biden aggressively used his power to fulfill his campaign promise. In his first two days in office, President Biden’s use of executive power far outpaced his predecessors when he issued 17

¹⁸ EXEC. ORDER NO. 12898, 59 F.R. 7629 (Feb. 16, 1994), <https://www.federalregister.gov/documents/1994/02/16/94-3685/federal-actions-to-address-environmental-justice-in-minority-populations-and-low-income-populations>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² THE WHITE HOUSE, *Memorandum for the Heads of all Departments and Agencies: Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (Feb. 11, 1994), https://www.epa.gov/sites/default/files/2015-02/documents/clinton_memo_12898.pdf.

²³ COUNCIL ON ENVIRONMENTAL QUALITY, *Environmental Justice: Guidance Under the National Environmental Policy Act* (Dec. 10, 1997), <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf>.

²⁴ *Id.*

²⁵ Steve Peoples, *In intimate moment, Biden vows to ‘end fossil fuel’*, ASSOCIATED PRESS (Sep. 6, 2019), <https://apnews.com/article/9dfb1e4c381043bab6fd0fa6dece3974>.

executive orders.²⁶ By comparison, over the same length of time, President Trump issued one executive order and President Obama issued only two executive orders. Biden also issued three proclamations, more than Trump and Obama combined in their first two days.²⁷

Biden's rule-by-fiat has taken direct aim at America's energy industry and has driven up energy prices for American families. Notably, on his first day in office, President Biden issued E.O. 13990 that canceled the construction of an energy pipeline and halted leasing an area of federal land for oil and gas production.²⁸ E.O. 13990 also called on agencies to review actions of the previous administration to identify if they are inconsistent with Biden's environmental justice policies.²⁹

The following week, Biden issued E.O. 14008, which established broad environmental justice goals for the federal government to "ensure that environmental and economic justice are key considerations in how we govern."³⁰ E.O. 14008 also amended E.O. 12898 by establishing two new councils within the White House responsible for addressing environmental justice – the White House Environmental Justice Interagency Council and the White House Environmental Justice Advisory Council.³¹ The Environmental Justice Interagency Council was tasked with promoting environmental justice initiatives across the executive branch and developing environmental justice performance metrics.³² In addition, E.O. 14008 updated the EPA's environmental justice screening tool, which assesses socioeconomic, environmental, and health factors to identify communities that may be particularly exposed to pollution.³³

E.O. 14008 also imposed an indefinite pause on leasing new oil and natural gas projects on U.S. federal lands and waters.³⁴ On June 15, 2021, U.S. District Judge Terry A. Doughty placed an injunction on Biden's unlawful moratorium and ordered the agencies to restart the leasing process.³⁵ Despite the ruling, Biden was not deterred – the administration appealed the decision and continued to delay scheduling lease sales.³⁶ Then, in April 2022, CEQ continued the Biden Administration's attack on domestic energy development with rules to bolster cumbersome aspects

²⁶ Miriam Valverde, *How Joe Biden's first executive orders compare with past presidents*, POLITIFACT (Jan. 27, 2021), <https://www.politifact.com/factchecks/2021/jan/27/marco-rubio/how-joe-bidens-first-executive-orders-compare-past/>.

²⁷ *Id.*

²⁸ 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>.

²⁹ *Id.*

³⁰ 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>.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ EXEC. ORDER NO. 14008, *supra* note 30.

³⁵ Joshua Partlow and Juliet Eilperin, *Louisiana judge blocks Biden Administration's oil and gas leasing pause*, WASHINGTON POST (June 15, 2021), <https://www.washingtonpost.com/climate-environment/2021/06/15/louisiana-judge-blocks-biden-administrations-oil-gas-leasing-pause/>.

³⁶ Valerie Volcovici, *Biden administration appeals federal court decision to block oil, gas leasing pause*, REUTERS (Aug. 16, 2021), <https://www.reuters.com/world/us/biden-administration-appeals-federal-court-decision-block-oil-gas-leasing-pause-2021-08-16/>.

of NEPA that increased the regulatory burdens for building pipelines and other energy infrastructure.³⁷ Ultimately, Biden was at least partially rebuked when his own party mandated lease sales in the so-called Inflation Reduction Act, signed into law in August 2022.³⁸

The Biden Administration is also trying to require states to use funding from the enacted Infrastructure Investment and Jobs Act (“IIJA”)³⁹ on environmental justice. The same day President Biden signed IIJA into law, November 15, 2021, he issued E.O. 14052⁴⁰ to purportedly prioritize environmental justice with equity investments in disadvantaged communities with the implementation of IIJA.⁴¹ In January 2022, Mitch Landrieu, the Biden Administration’s Infrastructure Implementation Coordinator, sent a letter to American governors proposing IIJA goals, including “supporting disadvantaged and underserved communities, advancing climate resilience and sustainability.”⁴² Two weeks later, sixteen Republican governors responded with a letter to President Biden demanding flexibility for states not only on formula funding but also on competitive grant programs, specifically stating that “[e]xcessive consideration of equity, union memberships, or climate as lenses to view suitable projects would be counterproductive” and that the Biden Administration “should not attempt to push a social agenda through hard infrastructure investments and instead should consider economically sound principles that align with state priorities.”⁴³

d. Biden’s Recent Actions to Limit Domestic Energy Production through CEQ

President Biden continues to promote his environmental justice priorities through executive action. On April 21, 2023, President Biden signed E.O. 14096,⁴⁴ *Revitalizing Our Nation’s Commitment to Environmental Justice for All*, with the purpose of “further embedding

³⁷ 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/>.

³⁸ See KIRKLAND & ELLIS, *The Inflation Reduction Act is Signed into Law by President Biden: Key Energy and Infrastructure Provisions* (Aug. 16, 2022), <https://www.kirkland.com/publications/kirkland-alert/2022/08/the-inflation-reduction-act-is-signed-into-law-by-president-biden>.

³⁹ Publ. L. 117–58 (Nov. 15, 2021), <https://www.govinfo.gov/content/pkg/PLAW-117publ58/pdf/PLAW-117publ58.pdf>.

⁴⁰ THE WHITE HOUSE, *Executive Order on Implementation of the Infrastructure Investment and Jobs Act* (Nov. 15, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/11/15/executive-order-on-implementation-of-the-infrastructure-investment-and-jobs-act/>.

⁴¹ *Id.*

⁴² Mitch Landrieu, *Letter to Governors*, THE WHITE HOUSE (Jan. 4, 2022), <https://www.ibtta.org/sites/default/files/documents/Advocacy/GA053-Mitch%20Landrieu%20Letter%20to%20Governors%202022-0104.pdf>.

⁴³ *Joint Letter to President Biden Requesting IIJA State Flexibility* (Jan. 19, 2022), <https://www.rga.org/wp-content/uploads/2022/01/Joint-Letter-to-President-Biden-Requesting-IIJA-State-Flexibility-1-19-22.pdf>.

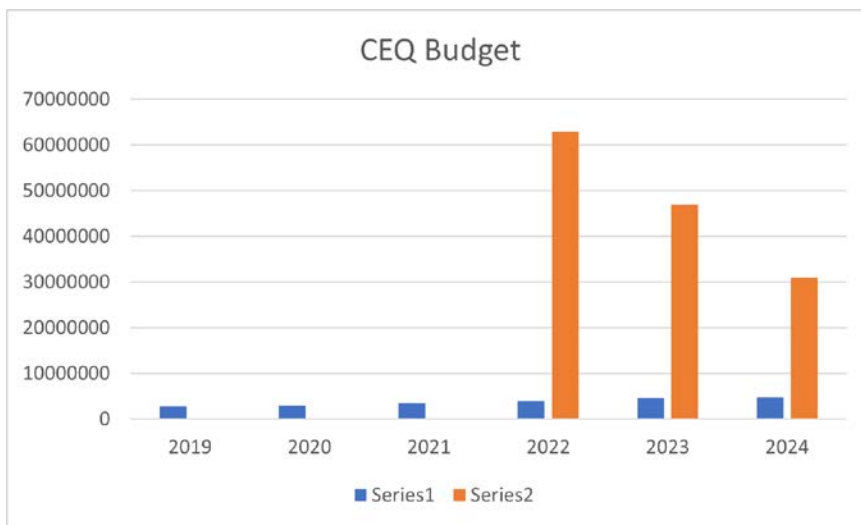
⁴⁴ EXEC. ORDER NO. 14096, 88 F.R. 25251 (Apr. 21, 2023) <https://www.federalregister.gov/documents/2023/04/26/2023-08955/revitalizing-our-nations-commitment-to-environmental-justice-for-all>.

environmental justice into the work of federal agencies”⁴⁵ by making environmental justice part of “each agency’s” mission.⁴⁶

To help advance Biden’s goals, E.O. 14096 created yet another bureaucratic body—the White House Office of Environmental Justice—to coordinate the implementation of environmental justice policy across the federal government.⁴⁷ The Biden Administration has not clarified why the creation of the White House Office of Environmental Justice is necessary since E.O. 14008 tasked the Environmental Justice Interagency Council with promoting environmental justice initiatives across the executive agencies.

IV. CEQ BUDGET & STAFFING

CEQ’s budget remained relatively stable over the years, until receiving an infusion of funding through the Inflation Reduction Act.⁴⁸ 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.”⁴⁹ The President’s Fiscal Year 2024 Budget reports an unexpired, unobligated balance of \$63 million for fiscal year 2022, an estimate of \$47 million for fiscal year 2023, and an estimate of \$31 million for fiscal year 2024. Despite the unexpired, unobligated balance, the President’s budget requests additional funds and staff for CEQ.⁵⁰



⁴⁵ 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/>

⁴⁶ EXEC. ORDER NO. 14096, *supra* note 44

⁴⁷ *Id.*

⁴⁸ Publ. L. 117–169 (Aug. 16, 2021), <https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf>.

⁴⁹ *Id.*

⁵⁰ *The President’s Budget for Fiscal Year 2024*, *supra* note 16

Source: *The President's Budget for Fiscal Year 2024*

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 Fiscal Year 2024 Budget request, CEQ supported 17 FTE's in 2022, and estimated this number would increase to 36 in fiscal years 2023 and 2024.⁵¹ In an official document uploaded to CEQ's website in April of 2022, nearly 60 employees, including fellows, are listed.⁵² 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 in order for the Administration to fully meet its climate and environmental justice commitments.⁵³

V. CONCLUSION

President Biden has abused executive authority to limit America's energy independence in support of meeting a radical climate agenda and environmental justice goals. Moreover, President Biden's weaponization of NEPA and CEQ as vehicles for social change is an unprecedented assault on America's energy independence and separation of powers, a bedrock of the American democratic system.

⁵¹ *Id.*

⁵² 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>.

⁵³ 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/>.