

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

December 10, 2021

The Honorable Brenda Mallory
Chair
The Council on Environmental Quality
730 Jackson Place, N.W.
Washington, D.C. 20503

Dear Chair Mallory,

President Biden's decision to reverse reforms to the National Environmental Policy Act (NEPA)¹ will subject the American people to delayed projects and improvements when they need them most because of another misguided policy. Under the Trump administration, commonsense updates to NEPA helped streamline the federal government's decision-making process.² We strongly oppose the reinstatement of an overburdensome regulatory regime and question the reasoning behind the Council for Environmental Quality's (CEQ) proposed NEPA revisions.

Enacted in 1970, NEPA requires federal agencies to conduct a lengthy environmental process to evaluate potential consequences, solicit the public's input, and consider a range of alternatives related to federal decisions.³ Originally intended to ensure appropriate balance between protecting the environment and developing our natural resources, the NEPA process has instead morphed into project purgatory, extending reviews far beyond the time actually needed to construct projects. In 2018, CEQ released a report detailing the length of time required for federal agencies to complete the environmental impact statements (EISs) under NEPA.⁴ On average, federal agencies took four and a half years to complete an EIS.⁵ Additionally, CEQ found final EISs were on average more than 600 pages,⁶ vastly exceeding CEQ's recommended 150-page limit.⁷

¹ National Environmental Policy Act Implementing Regulations Revisions, 86 Fed. Reg. 55,757 (Oct. 7, 2021).

² Final Rule, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 137, 43304 (July 16, 2020).

³ *Id.*

⁴ *Environmental Impact Statement Timelines (2010-2017)*, EXECUTIVE OFFICE OF THE PRESIDENT, COUNCIL ON ENVIRONMENTAL QUALITY (Dec. 14, 2018), https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timelines_Report_2018-12-14.pdf.

⁵ *Id.* at 1.

⁶ Press Release, EXECUTIVE OFFICE OF THE PRESIDENT, COUNCIL ON ENVIRONMENTAL QUALITY, *CEQ Issues Final Rule to Modernize Its NEPA Regulations* (July 15, 2020), <https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/01/20200716Final-NEPAPress-Release.pdf>.

⁷ Jude Clemente, *Make America Build Again: Reform NEPA Now*, FORBES (July 9, 2020), <https://www.forbes.com/sites/judeclemente/2020/07/09/make-america-build-again-reform-nepa-now/?sh=4a6e8fdf3e2c>.

One factor contributing to the excessive length of EISs is the frequent legal challenges to NEPA decisions. As “the most litigated area of environmental law,”⁸ federal agencies attempt to anticipate legal arguments and overanalyze potential impacts and alternatives.⁹ NEPA compliance imposes a time and cost burden, with NEPA analysis adding an estimated average of \$4.2 million to project costs.¹⁰ Ultimately, American taxpayers shoulder the costs of legal fights and delays resulting from overburdensome, ineffective NEPA processes.

In July 2020, after CEQ’s analysis, the Trump administration comprehensively updated NEPA for the first time in 40 years.¹¹ By accelerating the environmental review process, the 2020 reforms reduced the burden of NEPA regulations. The reforms created a more efficient process to ensure projects are permitted in a manageable timeframe with the necessary environmental impacts analyses.¹² The consequences of undoing these advancements are known. CEQ clearly documented the burden of NEPA’s prior regulatory scheme. By choosing to undo the modernization of NEPA, President Biden slows the development of projects intended to benefit the American people and reinstates delays with devastating consequences.

For example, by reverting to the antiquated NEPA rules, the Biden administration is increasing wildfire threat. This year, nearly 53,000 wild fires burned more than six and a half million acres across the U.S..¹³ In 2020, more than 10 million acres burned, resulting in the destruction of more than 17,500 structures and at least \$3.5 billion in firefighting costs.¹⁴ Although the U.S. Forest Service (USFS) indicated 80 million acres needed restoration, those projects are backlogged, due in part to costs and delays associated with NEPA compliance.¹⁵ CEQ found that the USFS took an average of more than three years to complete an EIS.¹⁶ Specifically, the Hungry Ridge Restoration project in the Nez-Perce Clearwater National Forest approval took seven years, including a 340 page final EIS and almost 1,350 separate documents.¹⁷ Although the project’s purpose is to reduce fire danger and improve resilience, the USFS faced NEPA litigation.¹⁸ Undoing the 2020 reforms will endanger the environment, firefighters, and surrounding communities. While the Biden administration seems willing to

⁸ *Supra* note 6.

⁹ *Supra* note 2.

¹⁰ *NEPA Modernization 101: An Outdated Environmental Law that is Impeding Clean Energy Developments*, C3 SOLUTIONS, <https://www.c3solutions.org/policy-paper/nepa-modernization-101/>.

¹¹ *Supra* note 6.

¹² *Id.*

¹³ *National Fire News*, NATIONAL INTERAGENCY FIRE CENTER, <https://www.nifc.gov/news/national-fire-news> (last visited Nov. 28, 2021).

¹⁴ Holly Fretwell & Jonathan Wood, *Fix America’s Forests: Reforms to Restore National Forests and Tackle the Wildfire Crisis*, PERC (Apr. 12, 2021), <https://www.perc.org/2021/04/12/fix-americas-forests-reforms-to-restore-national-forests-and-tackle-the-wildfire-crisis/>.

¹⁵ *Id.*

¹⁶ *Supra* note 4 at 8.

¹⁷ *Hungry Ridge Restoration Project*, U.S. FOREST SERVICE, <https://www.fs.usda.gov/project/?project=43661>.

¹⁸ David Rauzi, *Lawsuit Challenges Hungry Ridge, ‘End of the World’ project; Friends of the Clearwater Seek Judgment to Vacate Decisions*, IDAHO COUNTY FREE PRESS (May 5, 2021), https://www.idahocountyfreepress.com/news/lawsuit-challenges-hungry-ridge-end-of-the-world-project-friends-of-the-clearwater-seek-judgment/article_628956d0-ad39-11eb-a381-839674a40530.html.

adopt practices that hamper responsible forest management, wildfires will not wait for the completion of extensive NEPA analyses.

Mismanagement of federal lands from NEPA delays is not limited to forests. NEPA constraints on federal grazing lands also negatively impact our nation's ranching industry. Returning to an overbearing regulatory regime reimposes additional costs and time constraints on ranchers, further burdening a key element of our nation's food supply chain. Americans face increasing costs at the grocery store, especially for meat, poultry, fish, and eggs. In October 2021, prices rose by 11.9 percent, which is the fastest rate increase in 31 years.¹⁹ Beef and pork prices rose by 20.1 and 14.1 percent, respectively.²⁰ Increasing ranchers' operating costs by reversing the 2020 reforms will ultimately result in further increased food prices for consumers.

NEPA compliance impacts many aspects of ranchers' operations, including renewal of grazing permits on federal lands, construction of range improvements, like new fencing, and eligibility for USDA programs.²¹ Prior to the 2020 reforms, ranchers waited on average more than four years for the Bureau of Land Management (BLM) to complete an EIS.²² This significantly hampers day to day ranching operations. Unsurprisingly, associations across the agriculture industry praised the improvements implemented by the 2020 reforms, noting previous NEPA regulations presented obstacles to the responsible management of rangelands,²³ and the overwhelming costs of NEPA compliance.²⁴ Ignoring the recognized benefits of streamlining NEPA for ranchers, the Biden administration is reversing the modernization of NEPA and re-imposing costs on Americans responsible for feeding our nation.

The negative impacts of this reversal on ranchers are not limited to delays at the BLM. Communities in the western United States are facing persistent drought, causing farming operations to suffer and states to face water cutbacks.²⁵ As of November 2021, at least 92 percent of the West experienced drought conditions, nearly 50 percent of which experienced extreme drought.²⁶ As a result of the ongoing drought, farmers in New Mexico were encouraged not to plant this year and ranchers in North Dakota trucked in water for their livestock.²⁷ Completion of water storage projects could lessen the impacts of drought in the region, however,

¹⁹ Lisa Kim, 'Meatflation' Worsens as Prices Rise at Fastest Rate in 30 Years in October, FORBES (Nov. 10, 2021), <https://www.forbes.com/sites/lisakim/2021/11/10/meatflation-gets-worse-in-latest-inflation-report-as-beef-prices-skyrocket-to-decades-highs/?sh=2ff083fb2125>.

²⁰ *Id.*

²¹ Woodall Says NEPA Has Become a Burden for Ranchers, DROVERS NEWS SOURCE (Feb. 25, 2020), <https://www.drovers.com/news-news/ag-policy/woodall-says-nepa-has-become-burden-ranchers>.

²² *Supra* note 4 at 9.

²³ *Supra* note 6 (Zippy Duvall, President, American Farm Bureau Federation).

²⁴ Todd Neeley, *Proposed NEPA Change Lauded by Ranchers*, PROGRESSIVE FARMER (Jan. 9, 2020), <https://www.dtnpf.com/agriculture/web/ag/news/world-policy/article/2020/01/09/trump-proposal-said-speed-approval>.

²⁵ Henry Fountain, *The Western Drought is Bad. Here's What You Should Know About It*, THE N.Y. TIMES (Oct. 21, 2021), <https://www.nytimes.com/article/drought-california-western-united-states.html>.

²⁶ Richard Heim & Richard Tinker, *U.S. Drought Monitor*, NAT'L DROUGHT MITIGATION CENTER (last visited Nov. 30, 2021), <https://droughtmonitor.unl.edu/CurrentMap/StateDroughtMonitor.aspx?West>.

²⁷ *Supra* note 25.

NEPA delays prevent that option for relief. On average the Bureau of Reclamation (BOR) takes more than five years to complete an EIS,²⁸ yet, alarmingly, completing EISs for water storage projects takes significantly more time. For example, the Shasta Dam and Reservoir Enlargement Project took more than 15 years for the final supplemental EIS to be released.²⁹ Additionally, the NEPA process for the Sites Reservoir remains unfinished, despite the process beginning 20 years ago.³⁰ Although these projects are intended to improve the reliability and resiliency of water supplies, to the benefit of communities, farmers, and businesses,³¹ continued delays to their completion should be anticipated. Undoing the 2020 reforms reimplements an onerous process on water storage projects, further delaying relief for the West as drought conditions continue to worsen.

The Biden administration's decision to revert to previous NEPA regulations would increase bureaucratic red tape and duplicative reviews for domestic energy production and transmission. Instead of continuing the energy independence that the Trump administration achieved,³² President Biden unilaterally cancelled the Keystone XL pipeline and halted energy development on federal lands and waters,³³ creating uncertainty for current and future operations. Rather than pursue domestic energy production, the Biden administration saddled Americans with rising gas prices³⁴ and then chose to release oil from the Strategic Petroleum Reserve.³⁵ Regressing to outdated NEPA procedures will impede energy development of all types on federal lands and waters, making the United States dependent on foreign energy and continue to increase prices at the pump for everyday Americans.

On average, the Department of the Interior (DOI) took more than three years to complete an EIS, with several bureaus exceeding that average, including more than five years for completion of an EIS at the Bureau of Indian Affairs (BIA), the Office of Surface Mining Reclamation and Enforcement (OSMRE), and the National Park Service (NPS).³⁶ Ultimately project delays not only increase our nation's reliance on foreign energy, but they also result in

²⁸ *Supra* note 4 at 9.

²⁹ *See* Shasta Lake Water Resources Investigation, Shasta and Tehama Counties, CA, 70 Fed. Reg. 194, 58744 (Oct. 7, 2005); BUREAU OF RECLAMATION, FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT, SHASTA LAKE WATER RESOURCES INVESTIGATION (Nov. 2020).

³⁰ North of the Delta Offstream Storage, California, 66 Fed. Reg. 218, 56708 (Nov. 9, 2001).

³¹ *Sites Reservoir: Water for Dry Years*, SITES (last visited Nov. 30, 2021), <https://sitesproject.org/>.

³² *U.S. Energy Facts Explained*, U.S. ENERGY INFORMATION ADMINISTRATION (last visited Nov. 28, 2021), <https://www.eia.gov/energyexplained/us-energy-facts/imports-and-exports.php>.

³³ Exec. Order No. 14008, 86 Fed. Reg. 19, 7619 (Jan. 27, 2021); Exec. Order No. 13990, 86 Fed. Reg. 14 7037 (Jan. 20, 2021).

³⁴ Michelle Shen, *Gas Prices Rise to a Seven-Year High. Here's a Look at States Where Drivers Pay the Most*, USA TODAY (Nov. 9, 2021), <https://www.usatoday.com/story/money/2021/11/09/gas-prices-rising-seven-year-highs-soaring-ohio-california/6352742001/>.

³⁵ Press Statement, THE WHITE HOUSE, *President Biden Announces Release from Strategic Petroleum Reserve as Part of Ongoing Efforts to Lower Prices and Address Lack of Supply Around the World* (Nov. 23, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/23/president-biden-announces-release-from-the-strategic-petroleum-reserve-as-part-of-ongoing-efforts-to-lower-prices-and-address-lack-of-supply-around-the-world/>.

³⁶ *Supra* note 4 at 9.

lost revenue opportunities for communities and the federal government. For example, permitting delays and uncertainty created by the BIA's NEPA process put more than \$570 million of royalties for the Ute Tribe at risk.³⁷

In addition to agency delays, litigious environmental groups weaponize NEPA to challenge energy projects on federal lands, including renewable energy projects.³⁸ The 2020 reforms received wide ranging support throughout the energy industry, including the American Gas Association and the American Wind Energy Association.³⁹ By discarding the 2020 reforms in yet another appeasement to radical conservationists, President Biden raises additional challenges for the very same green energy and environmental goals his administration purports to support.

The modernization of NEPA benefited a wide array of sectors and consumers, by creating efficiencies in environmental protection processes. CEQ's efforts to undo this advancement will reinstate a burdensome, wasteful regulatory scheme. If the Biden administration is insistent on revising NEPA, we urge you to adopt the principle encapsulated in the *Building U.S. Infrastructure through Limited Delays and Efficient Reviews (BUILDER) Act*. The *BUILDER Act* emphasizes early coordination and collaboration between federal agencies and stakeholders, establishes practical timelines for project review, clarifies roles and responsibilities for all public entities involved, and permits a project sponsor to assist in the process to expedite the time it takes for decision-makers to reach a consensus.⁴⁰ The *BUILDER Act* invalidates frivolous litigation by clarifying threshold determinations for further assessment, requiring the use of existing and reliable data, focusing on reasonably foreseeable effects with a close causal relationship to the proposed action when determining whether the factor is significant, and requiring future litigants to have actually participated in the process before filing suit in a reasonable timeframe.⁴¹

CEQ's proposed reinstatement of an ineffective NEPA regulatory scheme will damage domestic industry, confuse businesses, delay needed projects, and harm our environment. CEQ has already confused and politicized the NEPA process by issuing more than 35 sets of guidelines. This goes against congressional intent and creates lengthy reviews that prevent proper management of federal lands. The 2020 reforms represented a balanced approach to responsibly caring for the environment while growing our nation's economy. We should not be getting rid of this approach when American lands, energy, and infrastructure need it the most. We strongly oppose CEQ's proposed NEPA revisions and urge you to maintain the 2020 reforms.

³⁷ *Oversight Hearing: The GAO Report on "Indian Energy Development: Poor Management by BIA has Hindered Development on Indian Lands, S. Comm. on Indian Affairs, 114th Cong. (2015) (Statement of Cameron Cuch, Vice President of Governmental Affairs, Crescent Point Energy U.S. Corporation).*

³⁸ David Hill *Biden Should Keep Trump's Reforms to the National Environmental Policy Act*, COLUMBIA CLIMATE SCHOOL (Mar. 2, 2021), <https://news.climate.columbia.edu/2021/03/02/biden-trump-nepa-reforms/>.

³⁹ *Supra* note 7.

⁴⁰ H.R. 8333, 117th Cong. (2021).

⁴¹ *Id.*

Chair Brenda Mallory

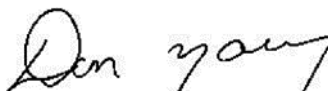
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Sincerely,



Bruce Westerman
Ranking Member
Committee on Natural Resources



Don Young
Ranking Member
Subcommittee for Indigenous People of the
United States



Russ Fulcher
Ranking Member
Subcommittee on National Parks,
Forests, and Federal Lands



Pete Stauber
Ranking Member
Subcommittee on Energy and Mineral
Resources



Cliff Bentz
Ranking Member
Subcommittee on Water, Oceans,
and Wildlife



Louie Gohmert
Member of Congress



Doug Lamborn
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Robert J. Wittman
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Tom McClintock
Member of Congress



Paul A. Gosar, D.D.S.
Member of Congress



Garret Graves
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Jody Hice
Member of Congress



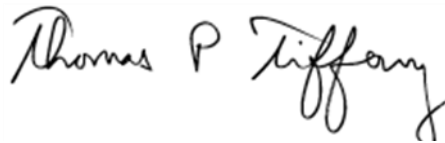
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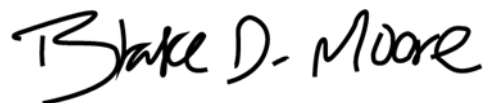
Tom Tiffany
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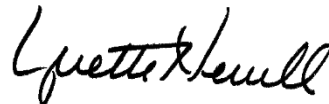
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Jay Obernolte
Member of Congress

cc: The Honorable Raúl Grijalva, Chair, House Committee on Natural Resources