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MODERNIZING NEPA FOR THE 21ST CENTURY

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

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OVERSIGHT HEARING ON MODERNIZING NEPA FOR THE 21ST CENTURY

Wednesday, November 29, 2017
U.S. House of Representatives
Committee on Natural Resources
Washington, DC

The Committee met, pursuant to notice, at 10:01 a.m., in room 1324, Longworth House Office Building, Hon. Rob Bishop [Chairman of the Committee] presiding.

Present: Representatives Bishop, Young, Gohmert, Lamborn, McClintock, Pearce, Gosar, Tipton, LaMalfa, Denham, Cook, Westerman, Graves, Hice, Radewagen, Johnson; Grijalva, Bordallo, Costa, Tsongas, Huffman, Lowenthal, Beyer, Torres, Barragán, Soto, and Gomez.

The CHAIRMAN. The Committee on Natural Resources will come to order. The Committee today is having an oversight hearing entitled, "Modernizing NEPA for the 21st Century."

Under Committee Rule 4(f), any oral opening statements at the hearing are limited to the Chair, the Ranking Minority Member, and the Vice Chair. This will allow us to hear from the witnesses sooner. I am going to ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted to the Clerk by 5:00 p.m. today.

Without objection, so ordered.

Let me start off with my opening statement, and then we will turn to Mr. Grijalva for his.

STATEMENT OF THE HON. ROB BISHOP, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

The CHAIRMAN. Today, we are going to examine how to modernize the National Environmental Policy Act. In 1969, NEPA was originally intended to be a tool to assess the impacts of government actions on the environment. Unfortunately, today it has become a sweeping regulatory framework that does the exact opposite. Like some of our other bedrock environmental statutes, they had a noble intent. But when you write something in an open-ended and vague manner of statutory language, it simply means that administrations and litigation can make it a far cry from what Richard Nixon signed back in 1969.

The provisions of NEPA also created, for example, the CEQ, which came up with a sweeping climate change for regulatory guidance, voluntary guidance, which, fortunately, this Administration has been kind enough to rescind from the silly guidance that was originally established.

The issue, though, for NEPA is that court orders and executive branch actions are not going to improve how the bill functions if Congress needs to act to enable some common-sense changes to correct the deficiencies that are in the way the law is being

administered. The common refrain that we are hearing from Federal agencies, as well as state and local governments and small businesses, is NEPA is used as a tool to slow or block needed infrastructure projects and rural development.

Delays and duplications of environmental reviews added cost to the program, which drives up the cost of everything from milk to lumber to energy. Somebody has to pay for this gridlock, and it is the taxpayer. Environmental improvements take a backseat to paperwork and court settlements, and that is not what was intended decades ago, when this bill was first passed.

There are some who are thinking this bill is perfect as it is; that attitude is simply short-sighted. The environment can have a review, and in a timely manner, and it does not have to be mutually exclusive. But it simply won't happen unless Congress actually acts to clarify NEPA's intent, its scope, and its limitations.

There are multiple Executive Orders and agency attempts in the past few years to try to streamline NEPA. Congress is more than happy to have some oversight necessary in that process. But it is clear that Congress has to do the clarifications. There is a lesson for Congress with NEPA that when you pass vague, open-ended language, you open the door to controversy, legal challenges, and a legacy of unintended consequences.

So, the purpose of our hearing today is examining ways of how we can fix a system that is not functioning the way it was intended. As noble as those intentions were, it just is broken. And we need to find a way of fixing it. Anything needs to be modernized as time goes on; this cries for that modernization.

[The prepared statement of Mr. Bishop follows:]

PREPARED STATEMENT OF THE HON. ROB BISHOP, CHAIRMAN, COMMITTEE ON NATURAL RESOURCES

Today, the Committee meets to examine ways to modernize and improve the National Environmental Policy Act. Passed in 1969, NEPA was originally intended to be a limited tool to assess impacts of government actions on the environment. Today, NEPA is a sweeping regulatory framework that effects almost every aspect of the American economy.

The law, like so many other environmental statutes, was created with noble intent. However, due to open-ended statutory language, differing interpretations of congressional intent, and the exploitation of these vagaries by the activist litigants, the law's implementation is a far cry from what President Nixon signed decades ago.

A provision of NEPA also created the White House Council on Environmental Quality. Ironically, the previous administration's CEQ attempted to force sweeping climate change regulatory guidance for all NEPA actions. I applaud the Trump administration's CEQ for rescinding this potentially damaging Executive Order earlier this year. Executive branch or court orders have not and will not improve how NEPA functions over the long-term.

Rather, to proactively maintain our critical infrastructure, manage our public lands and provide critical public services, Congress needs to enact common-sense, substantive changes to bring the law to correct its deficiencies. This can be accomplished, while at the same time, respecting existing environmental protections. The common refrain from a myriad of Federal agencies, state and local governments and small businesses is that NEPA is used as a tool to slow or block needed infrastructure projects and rural development.

Delays and duplication of environmental reviews have driven up the cost of a host of critical infrastructure and job-producing projects, which in turn, drives up the cost of everything from milk to lumber to energy production. Ultimately, taxpayers are paying more for Federal bureaucracy, gridlock and lawyers as limited resources for productive environmental improvements take a back seat to paperwork and

court settlements. This is not what was envisioned by Congress when it passed NEPA decades ago.

Some consider NEPA to be perfect "as is" and oppose any changes to it. Yet, we can both better protect the environment *and* allow for thorough review and processing of critical economic, energy and infrastructure activities in a timely manner. These concepts are not mutually exclusive. But it simply won't happen unless Congress acts to clarify NEPA's intent, scope and limitations.

Recently, this Committee has made efforts to address some of the most glaring problems we have observed in the application of the law. In 2015, the Congress passed a narrow modification to NEPA to establish best practices among Federal agencies, require coordination of Federal agency review of projects, and shorten time periods for legal challenges. But just as we observed with original passage of NEPA, it's one thing to pass a law with good intentions, it's quite another to ensure its application is carried out correctly by agency officials.

Similarly, this year has already seen multiple Executive Orders and agency attempts at streamlining the NEPA environmental review process. I'm eager to provide the congressional oversight necessary to examine how these new efforts may positively impact the environmental review process in the weeks and months ahead. I am encouraged that the Administration agrees that NEPA processes can and must be addressed.

There is a lesson for Congress with NEPA. When you pass vague, open-ended language, you open the door to controversy, legal challenges and a legacy of unintended consequences. It is the purpose of today's hearing to examine ways to reestablish NEPA as a tool to balance environmental needs with economic progress. I look forward to the testimony of the witnesses and I yield back.

The CHAIRMAN. With that, I will yield to the Ranking Member.

STATEMENT OF THE HON. RAÚL M. GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. GRIJALVA. Thank you very much, Mr. Chairman. Today, the Majority will once again try to make its case for weakening the National Environmental Policy Act. It is a case we have heard before, and one that has repeatedly failed to ring true.

In 2005 and 2006, Committee Republicans under former Chairman Richard Pombo tried and failed to make this case by convening a NEPA task force. This group held a series of hearings, issued a Committee Report that featured the opinions of those who were interested only in getting out of NEPA requirements, and not in using NEPA to strengthen our environment and communities. The report was met with harsh criticism, particularly because it played fast and loose with the facts, and failed to provide evidence for its claims and conclusions. Fortunately, none of its harmful recommendations to amend NEPA were adopted.

Since the Republicans took the House Majority in 2011, however, they have renewed their assault on NEPA. They have pushed for drilling, logging, dam building, and other environmentally destructive activities to be conducted without Federal agency oversight or public review. Time and again, we have debunked Republican myths about NEPA causing excessive delays, frivolous lawsuits, and damage to our economy.

Based on the testimony provided by Majority witnesses in advance of today's hearing, we will need to continue refuting those false claims. So, here are a few real facts to consider before this hearing devolves into yet another forum for making NEPA a scapegoat.

First, NEPA simply requires Federal agencies to take a hard look at potential environmental impacts of projects they undertake or

permit. If an agency modifies or abandons a proposal after NEPA review, it is because of real environmental harm revealed during the review, not because of the NEPA process. Blaming NEPA for uncovering bad projects is like blaming a tumor on the x-ray that discovered it.

Second, 95 percent of NEPA reviews are completed in a matter of days using categorical exclusions that exist to streamline review of simple, environmentally benign projects. Only 1 percent of NEPA reviews require an environmental impact statement. These are the most complex projects with the greatest potential for environmental harm, and are rightly subject to careful review.

Third, the size of the American economy has more than tripled since NEPA was passed in 1970, from less than $5 trillion to nearly $17 trillion in GDP. NEPA has helped make that economic development more sustainable, more just, and less wasteful.

Calls to modernize NEPA miss the point entirely: the beauty of NEPA is that it is already modern and it is already flexible. To quote the Democratic response to the Pombo task force report, "NEPA was a fundamental shift in our Nation's public policy and carries no expiration date. The law's call to foster and maintain conditions under which man and nature can exist in productive harmony is timeless and its insistence on meaningful local involvement, sustainable development, and deliberate Federal decision making was, and remains, visionary. It cannot credibly be argued that we have fully realized this vision, nor should we ever stop trying."

Democratic members of this Committee are dedicated to ensuring that the NEPA vision remains a central part of all discussions regarding the use of resources owned by the American people. Today, our members will highlight NEPA's successes, and the fact that a lack of resources and trained professionals at CEQ and in the agencies is the main driver of any inefficiencies and inconsistencies in the implementation. I look forward to the hearing, and welcome our witnesses.

[The prepared statement of Mr. Grijalva follows:]

PREPARED STATEMENT OF THE HON. RAÚL M. GRIJALVA, RANKING MEMBER, COMMITTEE ON NATURAL RESOURCES

Today, the Majority will once again try to make its case for weakening the National Environmental Policy Act. It is a case we have heard before, and one that has repeatedly failed to ring true.

In 2005 and 2006, Committee Republicans under former Chairman Richard Pombo tried and failed to make this case by convening a NEPA "task force." This group held a series of hearings and issued a Committee report that featured the opinions of those who were interested only in getting out of NEPA requirements, and not in using NEPA to strengthen our environment and communities. That report was met with harsh criticism, particularly because it played fast and loose with the facts and failed to provide evidence for its claims and conclusions. Fortunately, none of its harmful recommendations to amend NEPA were adopted.

Since the Republicans took the House Majority in 2011, however, they have renewed their assault on NEPA. They have pushed for drilling, logging, dam building and other environmentally destructive activities to be conducted without Federal agency oversight or public review. Time and again we have debunked Republican myths about NEPA causing excessive delays, frivolous lawsuits, and damage to our economy. Based on the testimony provided by Majority witnesses in advance of today's hearing, we will need to continue refuting false claims.

So here are a few real facts to consider before this hearing devolves into yet another forum for Committee Republicans to use NEPA as a scapegoat:

- First, NEPA simply requires Federal agencies to take a "hard look" at the potential environmental impacts of projects they undertake or permit. If an agency modifies or abandons a proposal after NEPA review, it is because of real environmental harm revealed during that review, not because of the NEPA process. Blaming NEPA for uncovering bad projects is like blaming a tumor on the x-ray that discovered it.
- Second, 95 percent of NEPA reviews are completed in a matter of days using categorical exclusions that exist to streamline review of simple, environmentally benign projects. Only 1 percent of NEPA reviews require an environmental impact statement. These are the most complex projects with the greatest potential for environmental harm, and are rightly subject to careful review.
- Third, the size of the American economy has more than tripled since NEPA was passed in 1970: from less than $5 trillion to nearly $17 trillion. NEPA has helped make this economic development more sustainable, more just, and less wasteful.

Calls to 'modernize' NEPA miss the point: the beauty of NEPA is that it is already modern and it is already flexible. To quote from the Democratic response to the Pombo task force report: "NEPA was a fundamental shift in our Nation's public policy and carries no expiration date. The law's call to 'foster and maintain conditions under which man and nature can exist in productive harmony' is timeless and its insistence on meaningful local involvement, sustainable development, and deliberate Federal decision making was, and remains, visionary. It cannot credibly be argued that we have fully realized this vision, nor should we ever stop trying."

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I look forward to hearing from our witnesses, and I yield back.

Mr. GRIJALVA. Mr. Chairman, I yield back.

The CHAIRMAN. Thank you. I appreciate that Minority viewpoint.

Now we are going to introduce the witnesses we have here. And once again, any other opening statements will be part of the record.

First, we have Commissioner Willox from Converse County in Douglas, Wyoming, who is here from the Wyoming County Commissioners Association; Mr. Mike Bridges, President of Longview/Kelso Building and Construction Trades Council, and a business representative of IBEW 48, from Portland, Oregon; Ms. Dinah Bear, who is the former General Counsel from the Council on Environmental Quality from Tucson, Arizona—you had nothing to do with that?

Mr. GRIJALVA. No.

The CHAIRMAN. OK.

Mr. GRIJALVA. Just it always rises to the top.

[Laughter.]

The CHAIRMAN. OK. And then Mr. Philip Howard, who is the Chairman of Common Good from New York.

We appreciate all four of you being here.

Let me remind you, if you haven't been here before, that you have a 5-minute time limit. Your written statement is part of the record. I am going to try to be a stickler on keeping within those 5 minutes.

The microphones don't come on automatically, you have to make sure they are turned on, get them close to your face, then watch

the timer over there. When you have 1 minute left, it will turn yellow. When it turns red, please finish the sentence without making it a compound or a complex sentence.

With that, let's turn to our first witness, Commissioner Willox from Wyoming.

STATEMENT OF THE HON. JIM WILLOX, CONVERSE COUNTY COMMISSIONER, WYOMING COUNTY COMMISSIONERS ASSOCIATION, DOUGLAS, WYOMING

Mr. WILLOX. Thank you, Chairman Bishop, Ranking Member Grijalva, and members of the Committee. My name is Jim Willox, and I have been a Converse County Commissioner for 11 years, and also serve on the board of the Wyoming County Commissioners Association, who I represent today.

County commissioners across Wyoming are actively engaged in NEPA analysis of all types. I am personally the main point of contact for two EISs underway in our county for proposed oil and gas projects.

Commissioners are elected administrators with broad mandates to advance the well-being of our entire county, not just one slice of it. With that in mind, I would like to offer these suggestions.

It is important to remember Congress' original intent in drafting NEPA. In part, it was to encourage productive and enjoyable harmony between man and his environment. Unfortunately, in recent years, NEPA has mushroomed into an exhaustive, analytical effort on every possible negative outcome, including on a global scale. Agency officials are forced into years of analysis and reams of paper designed to fend off litigation, instead of making sound, informed policy decisions.

This has real consequences. The normally pressured Lance, an oil and gas project in western Wyoming, is approaching 8 years of study and drafting. The Converse County EIS in my home county is now well into its 4th year. A proposed pipeline to carry carbon from western Wyoming is languishing in its 5th year.

There are also countless examples of smaller projects that are made costlier and result in greater negative impacts.

For example, a small power provider in my county faces lengthy NEPA delays to install additional electricity to a local wastewater plant, despite the fact that it is parallel and adjacent to an existing power line across Federal land.

A Wyoming-based wireless provider is forced to undergo NEPA-related analysis to replace their copper lines with fiber, upgrading their network.

These types of problems incentivize industry to figure out how to route their projects around Federal lands, which result in greater impact on the land and the wildlife.

NEPA delays can also be downright dangerous. Wyoming has 4.6 million acres of forest that has been decimated by insects and disease. Yet, accessing these lands to remove fuel loads and improve the health of the forest is hindered by NEPA.

There are two actions that Congress and the agencies could take that would dramatically improve NEPA before it even begins. Congress should write new rules on what constitutes a Federal nexus.

For example, in Converse County's EIS, only 10 percent of the surface is federally owned. Yet, a well pad that sits on private land that drills into private minerals and then accesses Federal minerals laterally, up to 2 miles away, is considered a Federal nexus, even though no Federal land is disturbed. The same is true for telecommunication providers attempting to improve their networks over and through Federal lands, triggering NEPA review, even when it is a minority of the distance.

Second, counties, as units of local government, should be afforded great deference by land managers in the Federal Government. We agree with the Western Governors' Association that states and local governments are not merely stakeholders, but rather co-regulators established by Congress. This requires a willing partner on the Federal side, and we hope this Committee will continue to demand that agencies fulfill their coordination responsibilities.

Now, once NEPA has been triggered, we believe this Committee should consider creating a category of actions or locations that would automatically provide for more categorical exclusions. Paralleling or replacing existing infrastructure should not trigger full NEPA review. Congress should explicitly require the agencies to grant categorical exclusions in areas like this.

The size and scope of Federal EISs are a significant administrative burden to county personnel and budgets. The Department of the Interior's recent order to reduce the amount of pages in EISs is certainly helpful, but only if accompanied by the trimming of the exhaustive analysis forced on the agency by litigation.

And finally, the agency should make better use of the tools already at their disposal. They should use tiering to reduce redundancies, and grant local governments administrative review authority at the end of the process to correct errors before going public.

In conclusion, counties in Wyoming and across the West are ready, willing, and able to assist in the goal of modernizing NEPA to ensure that it continues to work for the benefit of decision makers.

Mr. Chairman, I thank you for this opportunity to testify today, and I look forward to questions.

[The prepared statement of Mr. Willox follows:]

PREPARED STATEMENT OF THE HONORABLE JAMES H. WILLOX, CONVERSE COUNTY BOARD OF COUNTY COMMISSIONERS ON BEHALF OF THE WYOMING COUNTY COMMISSIONERS ASSOCIATION

Chairman Bishop, Ranking Member Grijalva, Representative Cheney, and members of the House Natural Resources Committee, thank you for the opportunity to testify today on modernizing NEPA for the 21st century.

My name is Jim Willox. I have served on the Board of County Commissioners in Converse County, Wyoming since 2007. I also serve on the Board for the Wyoming County Commissioners Association (WCCA). The WCCA is a voluntary association of all 23 Wyoming counties that strives to advance county level needs through unified action. I am representing the WCCA today.

County Commissioners across Wyoming are actively engaged in Federal resource management plan revisions or amendments in various stages, and NEPA analysis of all types. I personally am the main point of contact for Converse County in the current EIS underway in my county for a proposed oil and gas project. Collectively, Wyoming's Commissioners have extensive on-the-ground experience with the nitty gritty implementation of NEPA, as opposed to the high-level, philosophical

arguments in Congress, which I hope helps us identify changes to NEPA that will help make a difference on the ground.

The fact is, County Commissioners are often the only people in the room with broad policy objectives when it comes to Federal planning and environmental analysis. Federal agencies, even state agencies apart from the governor, have specific, narrow objectives to advance. While that isn't necessarily wrong, Commissioners are elected Administrators with a broad mandate to advance the well-being of our entire county, not just one slice of it. With that in mind, I would like to offer the Committee some suggestions on modernizing NEPA in a way that maintains the original objective of the law, but provides the necessary flexibility to undertake projects in a timely manner.

NEPA DELAYS ARE COSTLY AND SOMETIMES DANGEROUS

It is important to remember Congress' original intent in drafting NEPA:

> *Sec. 2 [42 U.S.C. § 4321]. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.*

The Act was designed to be a planning tool that helped to inform decision makers about the costs and benefits of proposed actions—for both the environment and to "stimulate the health and welfare of man." For many years this analysis was effective, timely, and not cost prohibitive. Unfortunately, in recent years NEPA has mushroomed into an exhaustive analytical effort on every possible negative outcome, including on a global scale. What was once a helpful look at proposed actions has metastasized into a grotesque perversion of congressional intent whereby agency officials are forced into years of analysis and reams of paper designed to fend off litigation instead of making sound, informed policy decisions.

This has real consequences for my county, for Wyoming, and for all of the West. The length of time it takes for the Federal Government to issue Records of Decision on major oil and gas projects is well-plowed ground in this Committee. The Normally Pressured Lance oil and gas project in western Wyoming is approaching 8 years of study and drafting. The Converse County EIS in my home county is now well into its 4th year after the initial Plan of Development was outlined. A proposed pipeline to carry carbon from western Wyoming for beneficial utilization elsewhere is languishing in its 5th year. These are just a few. The delays are costly to the project proponent, but also are a burden on local economies and government services.

In addition to these large projects, there are countless examples of smaller projects that are made costlier and result in greater negative impacts to the land and wildlife as a result of NEPAs mushrooming, for example:

- A small power provider in my county faced lengthy NEPA delays to install additional electricity to a local wastewater treatment plant because the line crossed Forest Service managed grasslands. The proposed route was directly adjacent to a transmission line already present, and the area has railways, a state highway, and other infrastructure nearby.
- A Wyoming-based wireless provider is forced to undergo, and pay for, NEPA related analysis when they seek to replace copper lines with fiber to upgrade their network, even though analysis may have already occurred, or previous analysis doesn't meet the ever moving goalposts of what is required. This is a delay that seems in direct contradiction to national goals of improving broadband and wireless coverage in rural areas.

These types of problems incent industry to figure out how to route their projects around Federal lands even if the route is significantly longer. The result is greater impact on the land and wildlife, increased burden on county infrastructure, and less efficient projects. Not at all what NEPA was intended to do.

Beyond economic development projects, NEPA delays can be downright dangerous. Wyoming is home to over 7 million acres of forested land owned by the Federal Government. Over 4.6 million acres of that forest has been decimated by insect and disease over the last 20 years. These areas are prone to wildfires, and the Forest Service estimates that over 100,000 dead and dying trees fall every single day in the forests of the West, impacting recreational opportunities and the health and welfare of our wildlife and residents. Yet accessing these lands to remove fuel

loads and improve the health and resiliency of the forest is hindered by NEPA, a complete contradiction to NEPA's intent.

Even though Congress has given the Forest Service some tools—like the use of NEPA's categorical exclusions for management in designated insect and disease areas—the Forest Service is reluctant to use the designation. For example, Wyoming's Governor, Matt Mead, has requested over 1.5 million acres be declared Insect and Disease Areas, but to date this tool has not been utilized in Wyoming.

MODERNIZING NEPA BEFORE IT EVEN BEGINS

All of the challenges mentioned above are preventable with a few relatively minor changes either in statute or in sustained agency action. I will mention those below, but first there are two actions that Congress and the agencies can take that would dramatically improve NEPA for all involved before the NEPA process even begins.

First, we believe that this Committee and Congress should take a hard look at narrowing when a Federal nexus triggering NEPA reviews is warranted. When NEPA was passed in 1969 there was no way to anticipate changes in technology like horizontal drilling, or the necessity of deploying fiber in rural areas as our country shifted almost overnight from voice telephone service to a broadband economy. As a procedural law only, NEPA should be flexible enough to account for these changes while adhering to its original goals.

For example, the Converse County EIS I've already alluded to is in an area of Wyoming that does not have significant Federal land ownership. In fact, only 10 percent of the surface in the project area is federally owned, 83 percent is privately owned. Yet, here we are 4 years into an extensive NEPA review with even more years to go. A well pad that sits on private land, and drills vertically into privately owned subsurface before turning horizontally, and then either crosses federally owned subsurface or accesses federally owned minerals up to 2 miles away from the well pad is considered a Federal nexus. In other words, no Federal land is disturbed in any way, yet NEPA reviews for the entire project, even on private lands, are triggered.

The same is true for the wireless company mentioned before and other telecommunications providers attempting to improve their networks over and through Federal lands. In Wyoming's checkerboard, it is possible to replace miles of fiber line predominately on private land, but still cross some small segment of Federal land, triggering a NEPA review for the entire project.

Congress should write new rules on what constitutes a Federal nexus in the first place so that agency personnel and county governments can focus their time, resources, and attention on projects that actually do have an impact on Federal lands themselves.

Second, counties, as units of local government, are—or should be—afforded great deference by Federal land management agencies as outlined in the Federal Land Management and Policy Act (FLPMA) and the National Forest Management Act (NFMA). Both of these organic Acts establish the principle of coordination with local government. In separate, but similar ways, Congress made clear—and the courts have affirmed—that Federal agencies have an obligation to engage local governments in a meaningful way that goes beyond just notice and comment.

In Wyoming we have learned that the most lasting and successful Federal projects are ones that begin with significant and meaningful engagement with local government. We agree with the Western Governors' Association that states and local governments are not "stakeholders," but rather co-regulators as established by Congress. This elevated status requires that local governments come to the table prepared and able to meaningfully contribute to planning and project decisions, but it also requires a willing partner on the Federal side that is genuinely interested in the expertise local governments have to offer. This is an ongoing project for both local government and the Federal agencies, but one that too often Federal agencies ignore.

The WCCA, the WGA, the National Association of Counties, the Council of State Governments and several others have argued that agencies should spend more time and resources in the early stages of environmental reviews understanding the needs of state and local governments. That effort will pay off with more robust and defensible actions. We agree wholeheartedly with that call. But before NEPA analysis begins Congress has already directed agencies to engage in ongoing, meaningful dialogue with local governments even in the absence of a particular project.

We have been heartened by the recent change in attitude at the Department of the Interior to engage with local governments, but the mandate of coordination is one that requires constant intentionality on our part, and continued oversight on

yours, no matter the presidential administration. We hope that this Committee will continue to demand that agencies fulfill their coordination responsibilities.

NEPA IMPROVEMENTS ONCE TRIGGERED

We have been pleased with the attention Secretary Zinke has paid to improving the NEPA process. For the first time in a long time it appears that the Department of the Interior is genuinely interested in modernizing NEPA in a way that recognizes the expertise that exists at the state and local level. In response to the Secretary's memos on this topic, the WCCA wrote a series of letters with suggestions on how the agency could improve the process administratively, but would like to outline a couple of them here.

First, with respect to actions Congress can take, we believe the Committee should consider creating a category of actions or locations that would automatically trigger a categorical exclusion where significant impact has already taken place. For example, President Obama instituted a "dig once" rule as it relates to installation of public utilities along roadways in an effort to minimize disturbance when roads are built and then overbuilt with utilities, including broadband infrastructure. While this is laudable, many major roadways like Interstate Highways predate these rules and have caused significant impact to the landscape from which there is no turning back. Rather than cause delays and added costs in analyzing new projects in heavily impacted areas, Congress should explicitly require the agency to grant categorical exclusions in areas like this.

Second, the size and scope of Federal EISs are a significant administrative burden on county personnel and budgets. The Department of the Interior's recent order to reduce the amount of pages in EISs is certainly helpful, but only if accompanied by a trimming of the exhaustive analysis forced upon the agency by litigation and a greater reliance on states and counties to complete analysis. Counties can assist in setting appropriate timelines and scoping by early involvement—both in coordination as mentioned before—but also as cooperating agencies. Counties should be involved in internal "ID teams" that can set parameters at the front end to limit expansive and wasteful analysis.

Further, even though it is costly, we in Wyoming have taken the lead at providing to Federal agencies robust and defensible socio-economic data that should play a greater role in Federal decision making. While Interior is required to analyze the economy, culture, and custom of the counties, we discovered years ago that the agency was woefully unprepared to produce and analyze this data. We have worked to establish fact-based, scalable socio-economic profiles the agencies can use to bolster decisions.

Finally, the agencies should make better use of tools already at their disposal. The agencies underutilize the tiering of NEPA documents to reduce redundancies. Also, agencies should grant local governments administrative review authority at the end of the process but prior to the release of the Final EIS in order to correct any remaining issues, streamline the Governor's consistency review, and reduce adverse comments during the protest period.

CONCLUSION

Counties in Wyoming and across the West are ready and willing to assist in the goal of modernizing NEPA to ensure that it continues to work for the benefit of decision makers. We believe that the changes suggested above, either legislatively or administratively, would go a long way toward shortening the timelines, administrative burden, and financial obligations of everyone involved in advancing these projects.

Thank you again for the opportunity to testify today.

The CHAIRMAN. Thank you, I appreciate that.

Next, Mr. Bridges, you are recognized for 5 minutes.

STATEMENT OF MIKE BRIDGES, PRESIDENT, LONGVIEW/KELSO BUILDING AND CONSTRUCTION TRADES COUNCIL, BUSINESS REP. IBEW 48, PORTLAND, OREGON

Mr. BRIDGES. First, I would like to say thank you to the Chair and the Committee members for the opportunity to share my experiences with the NEPA process and its effects on projects in my

community. My name is Mike Bridges, and I am the President of the Longview/Kelso Building and Construction Trades Council. I also serve on the Executive Board for our state organization.

The state organization represents 70,000 skilled men and women in the trades whose livelihoods depend on the construction of new projects, many of which must be permitted through a NEPA process. A number of these new projects are in southwest Washington, and I represent a total of $5 billion of private capital investment, millions in tax revenue, and thousands of jobs.

One such project is the Millennium Bulk Terminals project in Longview, which is where I have built my home and I am raising my family. Millennium is cleaning up a 1940s-era aluminum smelter and redeveloping it to export U.S. coal to our allies in Japan and South Korea. It is a prime example of how a project reliant on natural resources can be encumbered with delay.

Millennium submitted permits in February of 2012, the draft EIS published 3½ years later. As we approach the 6-year mark, the final EIS has still not been published. Washington State published its 13,000-page state final EIS back in April 2017. Even though its environmental analysis was far larger in scope than the Federal, I attribute the delay in the NEPA final EIS in part to the way in which the process has been hijacked by activists seeking to deny projects that do not align with their political agendas.

NEPA was not enacted to function as a political process to allow members of the public to voice their approval or disapproval of a controversial project, yet multiple NEPA hearings I attended on the Millennium project function as a public voting booth of sorts. I witnessed singing grandmothers, people dressed as their favorite endangered species, and other theatrical antics designed not to inform agency officials, but to publicly protest the project.

Hundreds of people wearing red shirts were bussed in from other cities and states to protest against the project. Local supporters showed up and outnumbered the out-of-town protesters. This was great to see, but we should not have to pretend that these hearings are useful in the way that Congress intended.

The Building Trades support responsible and consistent environmental regulations, and has been involved in environmental improvements at industrial facilities for decades, and has also been leading the way to build and invest in renewable energy technology.

I am not here today to encourage deregulation. The Building Trades support a thorough permitting process, but that process needs to adhere to the actual regulatory requirements and allow for a reasonable timeline.

The Building Trades believe that projects like Millennium are essential to the journey toward cleaner sources of energy, and we know that this terminal can be built and operated safely within the environmental requirements of the law, and can provide family wage jobs that my members and others in the community so desperately need in Cowlitz County.

Currently, many of our skilled trade workers are forced to make long daily commutes, or even travel to other states to find steady work. The Millennium project presents an opportunity for my members to return to the days when they could go to work in the

morning and come home at the end of the day in time to have dinner with their families.

Projects like Millennium also provide the Building Trades with the opportunity to replace our aging skilled workforce through our on-the-job apprenticeship training programs. We can only admit new apprentices into our programs when there are opportunities in the marketplace. The Millennium project is essential because its size and duration make it possible for us to responsibly gauge how many people to start in a career path in the trades.

One group we strive to bring into our apprenticeship programs are the military veterans through our Homeless to Hard Hats program. With a suicide rate of about 20 veterans per day nationally, we want the apprenticeship to serve our veterans as they have served our country, by providing them with dignity, self worth, and family wages that their sacrifice deserves.

And I am not here today just in support of my members. As part of the labor movement, Building Trades cares not just about our craft workers, but all workers. In addition to the tradesmen and women that will be employed during construction of the facility, the Millennium project is projected to produce 300 direct and indirect full-time, family wage jobs.

And our concerns are not just limited to the jobs my community needs now. We also have real concerns about our state's reputation and economic future. The seemingly endless arbitrary regulatory process in Washington State will discourage future projects that would employ members of the building trades in my community.

In the long term, we in the Building Trades encourage the Committee to put some controls around the process to prevent this type of abuse. There should be a limit to the amount of time an agency can spend on the NEPA process, the type of public process it provides, and the number of pages in a final EIS. But in the short term, we ask the Committee to insist the Seattle Corps District publish the final EIS for Millennium.

As someone who drives every day through Longview and sees the devastation caused by the lack of good jobs, I am asking you to help my community. The regulatory process in Washington State is broken. The result has been years and millions of dollars of lost wages and millions of dollars of added costs to projects like Millennium during the review process. Please don't let this continue with the Federal process. Thank you.

[The prepared statement of Mr. Bridges follows:]

PREPARED STATEMENT OF MIKE BRIDGES, PRESIDENT, LONGVIEW/KELSO BUILDING AND CONSTRUCTION TRADES COUNCIL, REPRESENTING THE WASHINGTON STATE BUILDING AND CONSTRUCTION TRADES COUNCIL

INTRODUCTION

I would first like to say thank you to the Chair and the Committee members for the opportunity to share my experience with the NEPA process and its effects on the projects in my community. My name is Mike Bridges and I am the President of the Longview/Kelso Building and Construction Trades Council and I serve on the Executive Board of the Washington State Building and Construction Trades Council.

The State Council represents 70,000 skilled men and women in the trades whose livelihoods depend on the construction of new projects. I have worked alongside these men and women as a Union electrician, and now work to serve them by

securing opportunities to build world-class projects, many of which must be permitted through the NEPA process.

A number of these new projects are in southwest Washington and represent a total of $5 billion of private capital investment, millions in tax revenue, and thousands of jobs. The majority of my comments will discuss the Millennium Bulk Terminals Coal Export Project, which will export 44 million tonnes of low-sulfur American coal to our democratic allies in Japan and South Korea. This project has been under review for over 5 years. Millennium will provide millions in taxes for the region, support thousands of family wage jobs during construction and operations, all while cleaning up and redeveloping a 1940s era aluminum smelter.

Another significant project is the proposed Vancouver Energy terminal in Vancouver. This critical infrastructure would enable the safe transfer of North American crude oil from rail to ship, and ultimately the manufacturing of transportation fuels that we use every day at West Coast refineries. This project has been under review for over 4 years. The Vancouver Energy project will provide $2 billion in economic benefit for the region, support thousands of family wage jobs during construction and operations, and strengthen U.S. energy independence with the potential to displace up to 30 percent of the foreign oil imported to the West Coast with lower-carbon North American crude.

Both these projects have suffered significant permitting delays. But for our purposes today, I will use as an example the Millennium Bulk Terminals coal export project in Longview, which is where I have built my home and am raising my family.

BACKGROUND ON MILLENNIUM BULK TERMINALS

Longview is an industrial town built on natural resources, manufacturing, and trade—all of which are dependent on our deep-water ports on the Columbia River. Yet we are a rural community of less than 50,000 residents.

The town has weathered multiple economic downturns because we have a well-established industrial area that is still home to major global manufacturers who rely on ports to export everything from forest products to grain to commodities that are mined.

But we have lost a significant number of family wage jobs through those economic downturns because of plant closures and staff reductions in manufacturing and industrial facilities. We need to create new jobs and opportunities for our children by diversifying, and the Millennium Bulk Terminals project is an opportunity to provide just what my community needs.

As a prerequisite for permits, two environmental impact statements (EIS) are needed, although both documents study much of the same topics. One is prepared under state law by the State of Washington Department of Ecology and Cowlitz County (the SEPA EIS). The second is prepared under NEPA by the Seattle District Corps of Engineers.

Millennium submitted permits in February of 2012. The NEPA Draft EIS published 3½ years later. As we approach the 6-year mark, the Final EIS has still not published.

Washington State published its 13,000-page State Final EIS back in April 2017, even though its environmental analysis was far larger in scope than the Federal.

The first permit required for the coal export terminal, the Critical Areas Permit, was issued in July and in the absence of any challenges, both the SEPA EIS and the permit are considered final and no longer subject to challenge.

The NEPA EIS requires a 401 Water Quality Certification by the State of Washington Department of Ecology. The Department of Ecology denied the 401 Water Quality Certificate "with prejudice" so Millennium is both appealing that denial to the State of Washington Pollution Control Board and has filed a lawsuit against the Department of Ecology in Cowlitz County Superior Court.

Despite clear limitations expressed by Congress under the Clean Water Act, Section 401, which states base their certification decisions on specifically enumerated water quality grounds, Ecology's purported bases for denial with prejudice were, in fact, entirely unrelated to water quality.

This is the first time in Ecology's history that it decided to deny a 401 certification with prejudice based on SEPA findings it made concerning interstate rail capacity, train traffic (and its attendant effect on vehicular traffic), train emissions, vibrations and noise, and train safety.

While the 401 Water Certificate is under legal challenge, the NEPA EIS is stalled, although there are only a few weeks of work left to complete it.

The second set of permits for Shoreline Development was subject to a public hearing conducted by a Hearing Examiner appointed by Cowlitz County. The Hearing

Examiner denied the shorelines permits also on the SEPA findings concerning interstate rail capacity, train traffic (and its attendant effect on vehicular traffic), train emissions, vibrations and noise, and train safety. Millennium is now appealing that decision to the State of Washington Shorelines Hearing Board.

Another legal challenge is underway as a result of the Department of Natural Resources (DNR) withholding consent to a sublease between the property owner, Northwest Alloys (a subsidiary of Alcoa), and Millennium. Millennium prevailed in that lawsuit when the judge ruled that DNR action in withholding the sublease was "arbitrary and capricious."

ABUSE OF NEPA PROCESS

I took time away from my job, as did a number of my members, to participate in the NEPA process provided by the Corps of Engineers. Rather than functioning as a useful tool to educate agency decision makers of the environmental pros and cons of a proposed project and to solicit input from the public as Congress intended, NEPA has been used to protract and impede agency officials from making a sensible permit decision in a reasonable amount of time. I have testified at multiple public hearings across Washington State over a period of 5 years and yet, the Corps of Engineers has still not completed its environmental review.

I attribute the delay in the NEPA Final EIS in part to the way in which the process has been hijacked by activists seeking to deny projects that don't align with their political agendas.

NEPA was not enacted to function as a political process to allow members of the public to voice their approval or disapproval of a controversial project. Yet the multiple NEPA hearings I attended on the Millennium project functioned as a public voting booth of sorts; members of the public were both allowed and encouraged to use the public forum to voice their personal sentiment on whether the project should be permitted. At these public hearings, I witnessed singing grandmothers, people dressed as their favorite endangered species, and other theatrical antics, designed not to inform agency officials but to publicly protest the project.

Hundreds of people wearing red t-shirts were literally bussed in from other cities and states to protest against the project. Hundreds of thousands of people were provided form letters by local and national environmental organizations to send to the Corps to clog the Corps' record with anti-project comments so that project opponents could tally the "vote."

Hundreds of local supporters showed up and outnumbered the out-of-town protestors—which was great to see, but we should not have to take time out of our work day to support jobs and private investment in our community—and pretend that this is useful to the regulatory process.

This is not the informed and reasonable process that Congress intended.

Millennium continues to move forward. The project was issued one permit, but had other permits rejected which are now under appeal.

These permits were denied because of impacts which are the jurisdiction of the Federal Government, those being interstate rail capacity and effects of train traffic, as well as tribal concerns and endangered species. Had the NEPA EIS been published, this might not have happened.

Ironically, we fear the Corps will not finalize their work because of these politically motivated state decisions.

The Building Trades supports responsible and consistent environmental regulations and has been involved in environmental improvements at industrial facilities for decades and has also been leading the way to building and investing in renewable energy technology.

I am not here today to encourage deregulation. The Building Trades support a thorough permitting process, but that process needs to adhere to the actual regulatory requirements and follow a reasonable timeline.

The Building Trades believe that projects like Millennium are essential in the journey toward cleaner sources of energy, and we know that this terminal can be built and operated safely and within the environmental requirements of the law. And it can provide the family wage jobs that my members and others in the community so desperately need in Cowlitz County.

COST OF REGULATORY DELAYS TO PEOPLE'S LIVES

We know what it means to live in an industrial town. And we support Millennium Bulk Terminals and its project in Longview because we know what it will do for us locally.

Our unemployment rates speak volumes, as do the large number of our families who have to rely on free-and-reduced lunches in our schools each day.

Finding family wage construction trade jobs in Cowlitz County is tough. Many of our skilled trades workers are forced to make long daily commutes or even travel to other states to find steady work.

The Millennium project and others like it present an opportunity for my members to return to the days when they could go to work in the morning and come home at the end of the day in time for dinner with their family.

Projects like Millennium also provide the Building Trades with the opportunity to replace our aging skilled workforce through our on-the-job training programs, which we refer to as apprenticeship. We can only admit new apprentices into our programs when there are apprenticeship job opportunities in the marketplace.

The Millennium project is essential because its size and duration makes it possible for us to responsibly gauge how many new people to start on a career path so we can keep them busy learning and working throughout their entire training.

Only 16 percent of residents of Cowlitz County have a college degree. I am a firm believer that our children can have a future in Longview with a good family wage job and do not necessarily need to have a college degree.

It has dominated the news lately that the majority of high school graduates do NOT get a college education. And many of those that do and want to return to the town where they grew up find that the job opportunities are few and far between, and end being forced to make a home in a different community. This has prompted much discussion at all levels of government about how to expand CTE—Career Technical Education.

Career Technical Education is precisely what the Building Trades do. Each trade covers the cost of training of the next generation of skilled workers, including tuition, books, and tools, all while providing benefits like health care and pension contributions. We do this without any government funding because these workers are too important to us to let budget shortages and partisan politics get in the way of their careers.

This commitment to steady employment throughout the apprenticeship program is especially important for some of the more vulnerable groups we strive to bring into the Building Trades, such as our military veterans. Our Helmets to Hardhats program helps service men and women transfer their skills to careers within the construction industry. With a suicide rate of about 20 veterans per day nationally, we want the apprenticeship to serve veterans as they have served our country by providing them with the dignity, self-worth, and family wages their sacrifice deserves.

Millennium signed a Project Labor Agreement with the Building Trades way back in 2013. This was unusual because it was so early in the process, but Millennium truly wanted to show its commitment to providing family wage jobs for members of the community.

As part of the Project Labor Agreement, the company pledged to invest in our future by creating opportunities for new workers to learn the trades through apprenticeship programs. It also contains a commitment to the Helmets to Hardhats program, which is required in all Building Trades Project Labor Agreements.

Millennium agreed to use skilled Union Building Trades workers on the project, but also agreed to search for these workers locally first.

Without the tech boom that the Puget Sound area has enjoyed, our community has had to look for other economic opportunities that play to our strengths as an industrial community with access to major trade routes.

The terminal would be an asset to the state's trade network, providing private investment in rail and other infrastructure to help ensure rapid delivery of other commodities.

This creates jobs in areas well beyond the boundaries of Millennium's project.

It also supports infrastructure for future shorelines development plans—and the jobs they bring—in places close to home, like Barlow Point, a property just downriver from Millennium that the Port of Longview recently acquired for growth.

Millennium's project would add millions in annual tax revenue for schools and public services. At a time when state revenue is needed most, we've suddenly become very picky about where that tax money should come from—which works if you live in Seattle.

Millennium is not asking for special tax breaks, like Boeing did, or challenging communities to bid against each other, like Amazon is doing. Millennium has just asked our community, and our state, to treat this project's applications like other port projects have been treated.

This project has endured the most rigorous scrutiny ever by state regulators under the most stringent environmental standards in the country. Opposing industrial activity, imposing endless regulations and cherry-picking export commodities leaves no future for Cowlitz County. My Building Trades members just want the

same chance that their parents and grandparents had here in Longview, which is to have a local job with wages that can support a family and actually get to spend time with that family after a full day of work.

Millennium's project will provide the jobs and opportunities our community needs. That is why the Building Trades support the project.

And I am not here today just in support of my members. As part of the Labor Movement, Building Trades cares not just about our craft workers, but all workers. In addition to the tradesmen and women that will be employed during construction of the facility, the Millennium project is projected to produce 300 direct and indirect full-time, family wage jobs.

And our concerns are not just limited to the jobs my community needs now. We also have real concerns about our state's reputation and economic future. The seemingly endless and arbitrary regulatory process in Washington State will discourage future projects that would employ members of the Building Trades and my community.

RECOMMENDATIONS

In the long term, we in the Building Trades encourage the Committee to put some controls around the process to prevent this type of abuse. There should be a limit to the amount of time an agency can spend on a NEPA process, the type of public process it provides, and the number of pages the Final EIS consumes.

The state EIS was published in April of this year and was more than 13,000 pages. The Final Corps EIS should not follow suit. The Committee should amend the statute to prevent this type of abuse of process, to eliminate the political gamesmanship that ensues, and to return the statute to its original intent.

But in the short term, we ask the Committee to insist the Seattle Corps District publish the Final EIS for Millennium. As someone who drives every day through Longview and sees the devastation caused by the lack of good jobs, I am asking you to help my community. The regulatory process in Washington State is broken. The result has been years and millions of dollars of lost wages, and millions of dollars of added cost to projects like Millennium during the review process. Please don't let this continue with the Federal process.

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ATTACHMENT

Arbitrary and capricious: Rule of law binds agencies

By ROB McKENNA, Former Washington State Attorney General

Olympian Newspaper 11/17/2017

http://www.theolympian.com/opinion/op-ed/article185225268.html

After five years and thousands of hours of public testimony, it took a Cowlitz County judge just five seconds to say what many of us have long suspected: some state regulators are out of control, and important parts of the state regulatory process are now tools of activist groups.

Cowlitz County Superior Court Judge Stephen Warning made his comments in response to a dispute over access to the Columbia River for the Millennium Bulk Terminals project. They suggest a level of frustration not often seen from the bench. The Millennium case is a striking example of how agency regulatory processes can be appropriated by activists seeking to deny or block projects that don't align with their political agendas.

Judge Warning, though, saw through that strategy. His October ruling is based on the principle that the rule of law must be applied evenly, regardless of politics. Regulatory agencies must not exceed the authority granted to them by our elected representatives in the Legislature.

The dispute before Judge Warning involves a lease from our state Department of Natural Resources currently held by Northwest Alloys, and its sublease with Millennium Bulk Terminals. Millennium's proposed coal export terminal in Longview, Washington, has been under local and state regulatory review for a record five years, and counting. At issue is whether Northwest Alloys and Millennium can build a dock under the lease.

Just prior to leaving office this year, former DNR Lands Commissioner Peter Goldmark denied the requested sublease, citing fiscal issues—not environmental issues—for the denial. Three activist groups, including Columbia Riverkeeper,

Washington Environmental Council, and Sierra Club asked the court to consider environmental issues in reviewing Goldmark's decision. In July, Warning denied them their request, noting that the lease denial must rest on the words in Goldmark's denial letter.

Warning again took up the lease issue and whether DNR acted legally in denying the sublease. He did not mince words, calling DNR's decision "arbitrary and capricious," highlighting how out of line the DNR decision really was.

We've seen this sort of agency activism before on this particular project. In September, the State Ecology Director denied Millennium a water permit based on nine factors, none of which had anything to do with water. The director has taken to Twitter on multiple occasions to issue comments about the project, the tenor of which seems more befitting an activist than regulator.

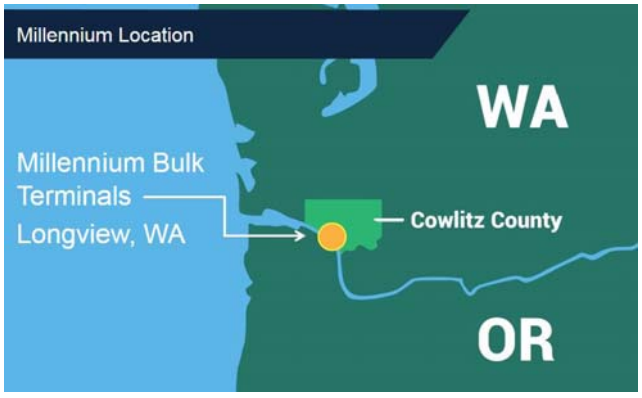
All of this casts doubt on our state regulatory process. Businesses and individuals hoping for a fair and timely review of their projects in our state are now likely to think twice before starting a project here. In the case of Millennium, they're five years and $15 million into this process. Other investors are unlikely to have this kind of time or money for such a protracted process.

Homeowners have also been affected by serious regulatory delays. Just ask rural landowners who have been dramatically affected by the Hirst water rights decision. They can share similar stories of wasted time and endless fees for wells they cannot dig, on land they cannot sell—dream homes that have become regulatory nightmares.

Abuse of the regulatory process further political aims is an affront to our democracy and must not go unchecked. Judge Warning said as much in as little as three words. Let's hope they speak loud enough for all to hear them and end such abuse.

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Rob McKenna served two terms as Washington's attorney general. He is currently in private practice with Orrick, Herrington & Sutcliffe LLP, where he serves as a partner and co-chair of the firm's public policy group.

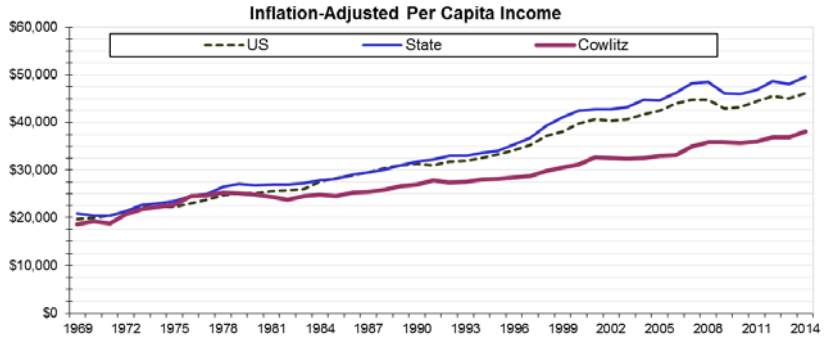


Location of Millennium Bulk Terminals—Longview, LLC. Proposed coal export terminal in Washington State.



Aerial view of Longview, Washington. The area along the waterfront of the Columbia River was zoned industrial when the city was created in the 1920s. The Millennium coal export project is located on a shuttered 1940s era aluminum smelter site. Millennium has spent over $25 million cleaning up the site. This commitment is in addition to the $15 million spent to date for permitting the coal terminal over the last 6 years.

Income Information on Cowlitz County Washington



Prior to 1981 Cowlitz County's Per Capita Income was in the top ten of all Washington Counties. With added federal and state environmental regulations such as the spotted owl, our manufacturing sector took a large hit and we have seen a steady decrease in out Per Capita Income when compared to the nation and state of Washington. The gap is increasing and we are lagging behind.

Cowlitz County is a gateway for trade for our state. Limits on the use of our interstate and international transportation systems (rail and the navigation channel) will cause Cowlitz County residents to not fully benefit from the unique location of our county and ultimately cause or residents to fall further behind.

The CHAIRMAN. Thank you. You timed that perfectly.
Ms. Bear, you have 5 minutes.

STATEMENT OF DINAH BEAR, FORMER GENERAL COUNSEL, WHITE HOUSE COUNCIL ON ENVIRONMENTAL QUALITY, TUCSON, ARIZONA

Ms. BEAR. Chairman Bishop, Ranking Member Grijalva, and distinguished members of the Committee, thank you for the opportunity to testify this morning about the National Environmental Policy Act.

At its heart, NEPA is grounded in certain basic beliefs about the relationship between citizens and their government. Those core beliefs include an assumption that information matters, that citizens should actively participate in their government, and that the NEPA process should be implemented with both common sense and imagination.

NEPA also rests on a belief that the social and economic well-being of human beings is intimately interconnected with their environment.

At the Federal level, NEPA is the law that provides the broadest, most systematic way for citizens to know what their government is going to do before they do it, and to have some input in the analysis leading up to that decision.

When proposed actions trigger the need to prepare an EIS, the potential consequences are extremely significant, and the impacts may last for decades, if not centuries. Time taken for the purpose of doing excellent analysis and public involvement is time well spent. We also need to remember that citizens who are not professional members of trade associations, public interest groups, law firms, or otherwise professionally employed in the environmental field need real time to review documents and write comments.

It is true, though, that the NEPA process is delayed at times—too many times—for reasons that have nothing to do with the environment. In my experience, the major causes are lack of staff capacity in the Federal agencies and lack of adequate training. My experience is that agency capacity is dramatically insufficient.

When I entered public service in 1981, agencies typically had or were building a multi-disciplinary staff to implement NEPA. Over time, agency capacity has been severely diminished. In some cases, offices have been disbanded and other additional responsibilities have been assigned to the point that the NEPA capacity has been severely diminished. And one of the worst situations I saw, an agency decided not to appoint anybody to implement NEPA on the theory that everyone would do NEPA.

Recently a professor at the University of Arizona stated that most of the time costs for conducting NEPA right now are due to limited staff. NEPA projects wait in line until staff are available to do the work. The capacity for training has also been decimated. I sympathize with some of the problems that both Mr. Bridges and Commissioner Willox pointed out in their testimony, which are issues that should never have arisen under the current regulations, and I am afraid lack of training had something to do with the problems that emerged.

Congress has passed a number of "streamlining provisions" and transportation authorization bills, as well as the FAST Act. A number of those provisions make sense. Some, in my view, go too far. Executive Order 13807 seeks to expedite the review process

with a goal of completing environmental review processes within 2 years. CEQ has also taken a number of steps. None of these measures will succeed if Federal agencies lack skilled, trained staff to implement them.

So, my first recommendation, not surprisingly, is to direct agencies through both oversight and through the appropriations process to prioritize adequate trained staff to implement NEPA and ensure that the executive branch does implement the provisions in FAST-41, allowing the collection of fees from infrastructure sponsors with some safeguards to ensure independence of the agencies.

If there is any doubt at this point of time that there is a problem with staff capacity, additional study of staff capacity, or a study, actually, would be very useful. I would also recommend the study comparing staff with consultants. Special attention should be given to social, economic, and health impacts. The quality of that analysis, I agree with Mr. Willox, is lacking. And NEPA is all about, as one of the sponsors said, a policy for people and the human environment, which is the key phrase in NEPA.

I think I will end there. I have other recommendations. I ask that my full testimony be included in the hearing record.

Thank you very much and I look forward to questions.

[The prepared statement of Ms. Bear follows:]

PREPARED STATEMENT OF DINAH BEAR, FORMER GENERAL COUNSEL, WHITE HOUSE COUNCIL ON ENVIRONMENTAL QUALITY, TUCSON, ARIZONA

INTRODUCTORY REMARKS

Thank you for the invitation to appear before the House Natural Resources Committee to testify on the issue of how to modernize the National Environmental Policy Act (NEPA) for the 21st century. I appreciate the opportunity to testify, and hope that my remarks will assist the Committee.

By way of background, I was asked to serve as Deputy General Counsel for CEQ with President Reagan's administration in 1981. The Council on Environmental Quality (CEQ) is the agency established by Congress with responsibility for overseeing the National Environmental Policy Act. In 1983, I was appointed as General Counsel, which was then and remains a non-career position. In that role, I had responsibility for oversight of implementation of NEPA. I served in that position through both terms of President Reagan's administration and that of President George H.W. Bush. I resigned from CEQ in October, 1993, and resumed responsibilities as General Counsel in January, 1995. I was General Counsel at CEQ during the Clinton and the George W. Bush administrations until the end of calendar year 2007, when I retired from Federal service. My husband and I moved to Tucson, Arizona last year and I continue to be active in the field of environmental law generally and NEPA specifically.

THE NATIONAL ENVIRONMENTAL POLICY ACT

As the title suggests, the National Environmental Policy Act, this country's environmental magna carta, sets forth this country's policies regarding the environment. In discussing NEPA, it is good to begin with a reminder of those policies:

"CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101 [42 USC § 4331].

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and

measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consist with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may——

1. *fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;*
2. *assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;*
3. *attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;*
4. *preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;*
5. *achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and*
6. *enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources." 42 U.S.C. §4331.*

Congress sought to ensure that Federal agencies implemented these policies by mandating a process by which executive branch agencies would analyze the environmental and related social and economic impacts of a proposed action and reasonable alternatives to the proposed action to meet a particular purpose and need identified by an agency. It also established CEQ to oversee implementation of the Act.

What is often referred to as "the NEPA process," or more globally, the environmental assessment impact process, reflects a common-sense approach to decision making. Basically, Federal agencies identify a need to take action, develop a proposed action and identify reasonable alternatives and analyze the effects of the various alternatives. As stated in CEQ's regulation at 40 CFR §1502.14, the "heart" of an EIS is the alternatives section; without alternatives, the analysis simply documents a decision already made instead of actually informing it. As then Governor Fruedenthal of Wyoming put it once, "The National Environmental Policy Act is not about what we do or do not like. Rather, it is about displaying a true range of alternatives to address the issues raised during the planning process." Letter from Governor David Freudenthal to Rawlins Field Office, Bureau of Land Management, March 15, 2005.

In my view, the most exciting development in NEPA has been the formulation of truly reasonable alternatives developed by citizens, often coalitions composed of people representing diverse constituencies, who present an alternative to an agency and see it analyzed in an EIS and on occasion, ultimately chosen in whole or part as the agency's decision. That's seems to me to be a true living example of democracy in action. In the context of Federal agency decision making, NEPA is the law that provides the broadest, most systematic way for citizens to know what their government is going to do before it happens and to be involved in the analysis leading up to the government's decision. It has had an enormous impact in this country and around the world.

Under CEQ's regulations implementing the procedural provisions of NEPA, each department and agency identifies the anticipated level of environmental impact, based on its experience, that typically result from undertaking the type of actions it normally undertakes to fulfill its mission. Actions that have significant impact on the environment require preparation of an environmental impact statement (EIS). In 2012, the last year for which CEQ has posted the number of EISs prepared, there were 397 draft and final EISs prepared—spread out over the 85 some Federal agencies. By far, the preponderance of Federal actions come under either categorical exclusions (CEs), which require no written documentation under CEQ's regulations. The next most common type of proposed Federal action triggers the need to prepare an environmental assessment (EA), which may conclude in either a Finding of No Significant Impact or a decision to prepare an EIS. Public and intergovernmental participation requirements are commensurate with the level of impacts. There is a considerable amount of flexibility under the CEQ regulations as to how agencies can implement the NEPA process. There are also time tested provisions for emergency

situations related to actions that would normally require an EIS and provisions for dispute resolution.

At its heart, the NEPA process is grounded in certain basic beliefs about the relationship between citizens and their government. Those core beliefs include an assumption that information matters, that citizens should actively participate in their government, that the NEPA process should be implemented with both common sense and imagination, and that there is much about the world that we do not yet understand. NEPA also rests on a belief that the social and economic welfare of human beings is intimately interconnected with their environment.

STATE AND LOCAL GOVERNMENTS' ROLE IN THE NEPA PROCESS

In NEPA and the CEQ regulations implementing it, states and local governments are afforded special roles in the NEPA process. Under Section 102(2)(D) of NEPA, an EIS for a Federal action funded through a grant program to states may be prepared by a state agency if (i) the agency has statewide jurisdiction and has the responsibility for such action; (ii) the responsible Federal official furnishes guidance and participates in such preparation; (iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption; and (iv) the responsible Federal official provides early notification to, and solicits the views of, any other state or any Federal land management entity of any action or any alternative thereto which may have a significant impact related to the action and prepares a written assessment of any disagreements among such agencies for inclusion into the EIS. Additionally, there are several grant programs which delegate responsibility for NEPA to the grant recipient; for example, the Department of Housing and Urban Development's Community Development Block Grant Program and the Urban Development Action Grant program.

Under CEQ's regulations, a state or local government agency can be either a joint lead agencies, typically used when the state has a so-called "little NEPA" law to avoid doing the process twice, or assert jurisdiction by law or special expertise to become a cooperating agency. If there is state law or local ordinance in addition but not in conflict with NEPA, Federal agencies are instructed to cooperate in fulfilling those requirements so that one document will comply with applicable laws at all levels of government. 40 CFR § 1506.2.

During the 1990s, CEQ received many complaints from county commissioners in the West, especially from Wyoming and New Mexico, about being denied cooperating agency status. In looking into those complaints, we determined that these grievances had legitimacy. CEQ then guidance documents on cooperating agencies, including quite specific guidance regarding county and state governments, and instituted an annual reporting requirement for Federal agencies regarding cooperating agencies. At present, CEQ is working on a series of memoranda that compare and contrast state and local environmental review requirements with Federal requirements, as well as providing contacts for each jurisdiction.

Finally, in the past few years, there have been congressional moves to delegate NEPA compliance in whole or part to states. This has been particularly been true for Federal highway activity, which long operated under Section 102(2)(D) of NEPA explained above for preparation of EISs. Legislation now allows states to assume responsibility for determining which activities are categorically excluded; for example, earlier this year, the Federal Highway Administration published the 3rd renewal of a Memorandum of Understanding with the state of Utah in which the state assumes responsibility for determining whether certain highway projects can be categorically excluded from written NEPA compliance as well as assuming responsibility for 30 environmental laws for those actions (while excluding government to government consultation with tribes).

Additionally, the recently passed so-called "FAST Act" allows up to five states to substitute state requirements for environmental review for Federal review requirements where state requirements are "at least as stringent" as the Federal requirements proposed to be replaced. 30 U.S.C. § 330(d)(1)(A). CEQ recently published, for public review and comment, proposed criteria for determining which states have requirements that qualify under this Act.

CAUSES OF DELAY

There is a perception that compliance with NEPA causes significant delays in approval of large numbers of proposed actions. Sometimes that is true and sometimes it is not.

When NEPA Is the Reason

It is important to acknowledge that in the relatively few instances when proposed actions trigger the need to prepare an EIS, the potential consequences are extremely significant and ones that the affected community likely may live with for decades if not centuries, depending on the nature of the action. Time taken for the purpose of doing an excellent job of analysis and public involvement is time well spent. It is also important to understand that citizens need some real time to review document and write comments—more time than "streamlined" provisions provide. For example, during my tenure at CEQ, the New Mexico Cattle Growers Association and New Mexico Wool Growers Association both advocated for mandatory 90-day comment periods on all environmental assessments. That's not the current rule, but they emphatically reminded us that for many in rural America, 30 days is simply not a sufficient comment period.

It is true, though, that the NEPA process is delayed at times, whether for preparation of EISs, EAs or even processing categorical exclusions—for reasons that have nothing to do with the protection of the environment, our communities or public lands. In my experience, there are two related reasons for that, both dealing with issues of capacity within agencies: lack of staff with responsibility for NEPA implementation and lack of training.

I am not aware of any systematic accounting of staff capacity for NEPA implementation within Federal agencies that charts the personnel trend over the past few decades. But my experience is that the trend has been very much in the wrong direction—that is, dramatically down. When I first entered public service in 1981, major departments and agencies typically had or were building a multi-disciplinary staff to implement NEPA and a network of field offices. For example, the Office of Environmental Coordination for the Forest Service "had national responsibility for leadership, NEPA policy and procedures, training and oversight. It also had agency responsibility for coordination and liaison with other agencies. In 1989 we decided to greatly expand our national training effort to ensure that all of our people at the field level and all of the knowledge they needed to make environmentally sound and defensible decisions . . . [the staff] did an outstanding job of developing a national program that involved training a cadre of trainers from all the Regions. These people then went back to their Regions and developed their Regional Cadre and passed the training to all of the National Forests in their Regions." Personal communication from David Ketcham, first Director of the Office of Environmental Coordination, to Dinah Bear, July 14, 2017.

Since that time, agency capacity in all of these aspects has been severely diminished. In some cases, offices have been disbanded; in others, additional responsibilities have been assigned to the point that the capacity for NEPA work is severely diluted. In one of the worst situations I've seen, an agency decided not to fill NEPA positions on the theory that "everyone" would do NEPA. The Task Force on Improving NEPA established by this Committee in 2005 identified this as an issue and the situation seems to have gotten worse since then. Recently, at the University of Arizona, Dr. Kirk Emerson, in the School of Government and Public Policy has been working with public land agencies and "we have learned through some of our public land agency interviews, most of the time costs for conducting NEPA right now are due to limited staff. NEPA projects wait in line, until staff are available to do the work." Personal communication from Dr. Kirk Emerson to Dinah Bear, November 19, 2017.

Further, and importantly, the capacity for NEPA training within the agencies has been decimated. Far too many employees learn "on the job" in ways that do not provide a solid foundation for understanding *how* to do the job. Staff who are not fully trained in implementing NEPA often end up doing a lot of extra work in an attempt to make sure they are doing the right thing. I recall one gentleman who came to a long overdue NEPA training course after being assigned NEPA responsibilities for an entire region 6 months prior to the workshop. He had no background whatsoever in NEPA when he was assigned the job of advising staff throughout the region on difficult NEPA issues. He had faithfully written down every question that came to him that he couldn't answer and brought them to the workshop for answers. These kinds of situations are big problems in the real world—not a NEPA problem, but a training and management issue.

In the past few years, Congress has passed a number of "streamlining" provisions in transportation authorization bills as well as the FAST Act to expedite the NEPA process for infrastructure projects. A number of those provisions make sense; some, in my view, go too far. Executive Order 13807 also seeks to expedite the review process with a goal of completing environmental review processes within 2 years and issuing a single Record of Decision for infrastructure projects. Independently over the past decade, CEQ has taken a number of steps to both increase

transparency regarding the progress of the environmental review for infrastructure projects and to reduce delays. However, *these measures will not succeed if the Federal agencies lack skilled staff to implement them*.

Delegating NEPA responsibilities to the states or local governments does not automatically solves the capacity problem. Indeed, depending on the state or local government, there may be even less capacity to undertake the process. A 2003 GAO report found that 69 percent of transportation stakeholders reported that both state departments of transportations and Federal environmental agencies lacked sufficient staff to handle their workloads. *Highway Infrastructure: Stakeholders' Views on Time to Conduct Environmental Reviews of Highway Projects, GAO–03–545, p. 5.* It would be good to have this analysis updated.

When NEPA Is Not the Reason

Little systematic research has been done by neutral organizations on the causes of delay in terms of Federal decision making. GAO underscored the paucity of information about NEPA implementation in a 2014 report, *Little Information Exists on NEPA Analysis* (GAO–14–369). Such research that does exist relates almost exclusively to Federal highway actions. Since at least the mid-1990s, the General Accounting Office/General Accountability Office (GAO), and the Congressional Research Service (CRS), have prepared a series of reports, remarkably consistent in their findings, regarding the construction of highway projects and the relationship of environmental laws generally and NEPA specifically to decision-making timelines. This type of analysis is needed more broadly if agencies and/or legislators are going to be able to formulate successful approaches to reducing delays. In short, the GAO and CRS reports find that a number of Federal projects have indeed been delayed or stopped but for reasons that have nothing to do with NEPA, although NEPA usually gets the blame. Reasons include lack of funding, changes in the proposal by applicants, assessment by applicants that the project is no longer desirable for a variety of reasons, opposition from citizens and state and local governments. *See, for example, The Role of the Environmental Review Process in federally Funded Highway Projects: Background and Issues for Congress*, CRS 7–5700, R42479, April 11, 2012.

RECOMMENDATIONS FOR MODERNIZING NEPA IN THE 21ST CENTURY

Increase Capacity and Cut Contracting

As discussed above, in my view, the lack of trained staff within government agencies is a major cause of delay in the NEPA process. Changes in the law or regulations won't make a difference if there is no who knows about those changes and is equipped to implement them. For example, many people concerned about delay in NEPA advocate for expanded use of categorical exclusions. I think we've reached if not surpassed the limit of acceptable CEs and instead the effort should be directed to ensuring that agencies understand how to use them. CEQ requires no paperwork to utilize a categorical exclusion once it is established, although many agencies do require at least some documentation. However, there have been found instances of agencies preparing literally hundreds of pages of documents to justify the use of a categorical exclusion. The point is that just mandating the use of a categorical exclusion doesn't work if there is no staff to implement it or the staff that is there doesn't know how to handle a categorical exclusion. Why does such a thing happen? Lack of training is the primary answer. Further, agencies who don't have the capacity to implement seldom have competent oversight either. And CEQ, which is ideally situated to do both generic, across-the-board and more focused oversight, itself suffers from serious staff shortages. For too many years during its 47-year tenure, CEQ has only had one or possibly two people charged with overseeing about 85 agencies in the executive branch. At other times, it has had a staff of five to seven professionals. At that staff level, CEQ can do some serious oversight work. With only one or two people, only the firestorm of the day can be addressed.

As the result of these capacity problems, when possible, agencies now generally hire consultants to prepare NEPA documentation and often to run the public involvement process. There are many consulting firms that include personnel who are knowledgeable about the NEPA process and do a good job from a technical perspective (there are also some, of course, who are not up to the task). However, whatever a consultant's expertise, using outside personnel *inevitably* delays the process, whether by virtue of the procurement process or the need for oversight and review from agency staff that may be unavailable or under qualified. In fact, the EIS processes I've seen done in, for example, 2 years, have been conducted solely by qualified agency staff with support of agency leadership. Further, routinely contracting out NEPA work dilutes much of the point of the process by often removing

agency staff from direct contact with the people most interested, concerned and affected by the proposed action.

Recommendations: Congress should direct agencies, through the appropriations process, to prioritize ensuring that agencies have adequate trained, competent staff to implement the NEPA process. Congress should also continue to authorize shared resources between state and Federal agencies, as they have done to expedite both highway funding and certain projects designed to mitigate risk of fire near communities. The executive branch should implement the provisions in FAST-41 authorizing a system to collect fees from infrastructure project sponsors to fund environmental review personnel in agencies with adequate safeguards to ensure the independence of agency staff.

If doubt still exists as to the validity of these concerns, Congress should direct CEQ or the National Academy of Sciences to engage in a comprehensive study of current Federal agency NEPA staffing issues, including capacity, training and retention and recruitment of experienced staff. Further, CEQ should ensure that agency decision makers understand the basic purposes and requirements of NEPA and encourage them to work with their staff to implement NEPA in a flexible and creative manner. Additionally, I would urge a study be undertaken by CEQ and the Office of Management Budget jointly to compare the costs of undertaking NEPA review through the use of consultants with the cost of maintaining a small core of competent agency staff. The latter would be, as the GAO has reported, challenging but not impossible if it is a multi-year study and agencies are given direction on budgeting and accounting for future fiscal years.

Finally, Congress should pause and evaluate before passing further streamlining provisions. Before the measures mandated passed by Congress in the 2012 MAP–21 transportation authorization bill had been implemented, Congress passed further streamlining requirements in the FAST Act that caused confusion and delay in implementing these measures. *Vulnerabilities Exist in Implementing Initiatives Under MAP-21 Subtitle C to Accelerate Project Delivery*, Office of the Inspector General, March 6, 20107. The combination of FAST-41, Executive Order 13807 and other measures taken by the Administration is a lot for understaffed agencies to implement and should be evaluated prior to further measures.

Increase Efficiency by Using 21st Century Technology

One obvious suite of measures that the Federal Government should take to bring NEPA into the 21st century is to be utilize 21st century technology in a manner that both reduces the amount of time needed for preparation of NEPA analyses and utilizes the vast amount of information stored in NEPA documents to evaluate and improve analyses.

Almost 50 years of data and analyses contained in NEPA documents and paid for by taxpayers' money should be a treasure trove of information for both the public and private sectors. NEPA analyses cover all parts of the country, contain ecological, social and economic data and after five decades, should be readily available for trends analysis. Technical tools such as natural language processing, text mining and spatially explicit information retrieval as well as modern machine reading systems such as PaleoDeepDive could be utilized to facilitate access to this information. Imagine the boon to analyses and the understanding on the part of all interested parties if 50 years of information about, for example, the ecology, economy and communities of the Central Valley of California—or national forests in Idaho—or the colonias along the U.S. Mexico border—were available within a day. Yet today, no such system exists. Indeed, even obtaining EISs, let alone environmental assessments, which have no central filing system, can be very challenging and if a person does dig such documents out of the National Archives, there is no shortcut to going through each document individually in hard copy.

CEQ has identified the need to use information technology tools to improve the efficiency and management of NEPA reviews and has promoted the use of various IT tools such as NEPAassist geospatial systems for preparation of NEPA documents. However, the agency's limited resources do not currently allow it to tackle the larger issues of making available EISs and other valuable NEPA documents, both past and present, easily accessible on a government-wide basis.

While advocating for better use of 21st century technology, I also want to stress that it must be remembered that almost one-quarter of Americans still do not have access to speedy internet service, especially in rural areas. Agencies must not entirely abandon production of hard copy documents.

Recommendation: CEQ should be funded and directed to establish (either managed by CEQ directly or by an appropriate institution) a publicly available database with sophisticated search capability for NEPA documents for the entire

executive branch. This effort should include the promulgation of technical guidelines for electronic submission of NEPA documents going forward into the 21st century.

Improve the Quality and Integration of Economic, Health and Social Impact Analysis in the NEPA Process

Senator Henry Jackson stated during the Senate debate on NEPA's passage, "An environmental policy is a policy for people. Its primary concern is with man and his future. The basic principle of the policy is that we must strive, in all that we do, to achieve a standard of excellence in man's relationship to his physical surroundings. If there are to be departures from this standard they will be exceptions to the rule and the policy. And as exceptions they will have to be justified in the light of public scrutiny." Congressional Record-Senate, October 8, 1969, p. 29056. The core term in NEPA's requirement to analyze the effects of proposals for Federal action is the impact on "the human environment" and the policies set forth in the Act, cited at the beginning of this testimony, talk about fulfilling the, "social, economic and other requirements of present and future generations of Americans." The effects to be analyzed in either an EA or an EIS include cultural, economic, social, aesthetic, historic and health impacts. 40 CFR § 1508.8.

However, the quality of social and economic analysis is, as a general rule, far below that analysis of what are thought of as traditional fields of environmental study (i.e., air, water, wildlife). Often, social impacts and economic impacts are blurred together and merged into something labeled "socioeconomic effects" that essentially is a data dump of information that may or may not be relevant. Further, with some exceptions, human health impacts are frequently overlooked or shortchanged in NEPA analyses. *See*, National Research Council, *Improving Health in the United States: Health Impact Assessment* (advocating for improved integration of health impacts into the NEPA process as relevant) (2011), available at https://www.nap.edu/catalog/13229/improving-health-in-the-united-states-the-role-of-health.

Some of the shortchanging of analysis regarding impacts on human beings is due to a misunderstanding of both the CEQ regulations and applicable case law. Those misunderstandings, in turn, have left already understaffed agencies bereft, for the most part, of any expertise related to human health, community welfare, and economics and a proposed action's impacts on all of the above. Some citizens, whether western ranchers, residents of inner cities or Native Alaskans, have concluded that the law has no room for consideration of impacts on human beings. This feeling undercuts citizens' sense of mattering to Federal agencies, weakens agencies' understanding of the communities they serve and it is wrong as a matter of law.

Recommendation: CEQ should be directed to work with Federal agencies to identify obstacles to accomplishing professionally competent economic, social and health analyses and to promote recruitment of personnel with these types of credentials to joint agency staff or partnerships with appropriate entities, such as public health organizations. As needs are identified and as appropriate, CEQ should also publish guidance or handbooks on particular issues of common concern regarding analyses of these types of impacts.

Make the Process Count by Making Mitigation Binding

For understandable reasons, the post-decisional aspects of NEPA gets short shrift from everyone. The NEPA process is primarily a predecisional process and the work and energy focuses on informing that decision. NEPA does not require agencies to mitigate adverse impacts and nothing in NEPA makes mitigation measures that are included in decisions automatically binding. Yet it is rare, if not impossible, to find a decision document following the NEPA process that does not include mitigation measures. And in some cases, considerable resources have been invested in the process of designing mitigation. But are those mitigation measures implemented? And if so, do they have the desired effect? The answers to these questions are largely unknown. As a general rule, little to no monitoring takes place. So the taxpayers don't know if commitments made by an applicant or agency are carried out and none of us know the effectiveness of those measures if they have been implemented. This is not a good situation, either from the perspective of the resources being impacted or citizens' trust in their government to carry out commitments. Both Congress and citizens should expect better from Federal agencies.

In 2011, CEQ issued guidance to Federal agencies regarding mitigation and monitoring. *Memorandum for Heads of Federal Departments and Agencies on Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact*. In part, the guidance is based on the excellent, common-sense Department of the Army regulation at 32 CFR part 651, Appendix C, which requires proposed mitigation measures to be a line item in the proponent's budget or equivalent funding document and/or include the mitigation commitment

in a legally binding document (for example, permits or grants). It mandates a monitoring and enforcement program for adopted mitigation and provides for situations in which mitigation measures are not implemented.

The CEQ guidance also discussed how the integration of Environmental Management Systems (EMS), used extensively in the private sector, or other data or management systems can be integrated into the monitoring mitigation commitments. These are especially useful systems for monitoring compliance in the context of infrastructure developments.

Recommendation: Either the National Academy of Sciences or CEQ should be tasked to initiate a review of both the implementation and effectiveness of mitigation measures for both agency-initiated and applicant sponsored actions in selected agencies and report back to committees of jurisdiction within 1 year. The report may suggest concrete steps to be taken by either Congress or CEQ depending on the findings.

Elevate the Role of Tribal Governments in NEPA

I want to end with perhaps the most egregious oversight in NEPA—the role of tribal governments. While perhaps understandable (although not acceptable) in 1969 when NEPA was passed; and less so in 1978 when the CEQ regulations were issued, it is completely unacceptable now. The CEQ regulations on their face confine cooperating agency status for tribes to situations where the effects of a proposed action are felt on reservations. 40 CFR § 1508.5 Most Native Americans live off reservation in the continental United States and with one small exception, Alaska Natives do not live on reservations at all. Tribal governments must be recognized as being on a level playing field with local and state governments and afforded all due respect as potential joint lead and cooperating agencies and should be able to execute all other responsibilities afforded state and local agencies. Short changing the role of tribal governments in NEPA implementation perpetuates a second class status for tribes that never was appropriate but is even less so in the 21st century.

QUESTIONS SUBMITTED FOR THE RECORD TO MS. DINAH BEAR, FORMER GENERAL COUNSEL WHITE HOUSE COUNCIL ON ENVIRONMENTAL QUALITY

Questions Submitted by Rep. Denham

Question 1. Ms. Bear, how does the Council on Environmental Quality view this concept of NEPA reciprocity and what are your thoughts on utilizing this tool with state water agencies for Bureau of Reclamation water storage projects?

Answer. To be clear, I am no longer with the Council on Environmental Quality (CEQ), but I can speak to how Congress and CEQ have viewed the state's role in NEPA in the past, including the 25 years in which I served at CEQ as well as offering my own thoughts on the matter.

Both Congress and CEQ have been very cognizant of the important role of states and have provided mechanisms to involve states in the NEPA process for Federal agency decision making in a very robust manner. For example, NEPA *already provides* that a state agency or official with statewide jurisdiction and the responsibility of carrying out a program funded by Federal grants to the states may prepare an environmental impact statement (EIS). 42 U.S.C. § 4332(D). If the state chooses to do so, the Federal agency involved must provide guidance, participate in the process and independently evaluate the EIS to ensure that it meets Federal standards. The Federal agency also retains the responsibility to defend the EIS in Federal court if there is a legal challenge. In my experience, the principal user of this provision has been state highway departments, although the provision is not limited to them.

Under CEQ's regulations, a state or local government agency can be either a joint lead agency, typically used when the state has a so-called "little NEPA" law to avoid doing the process twice, or assert jurisdiction by law or special expertise to become a cooperating agency. If there is state law or local ordinance in addition but not in conflict with NEPA, Federal agencies are instructed to cooperate in fulfilling those requirements *so that one document will comply with applicable laws at all levels of government*. 40 CFR § 1506.2. Similarly, *joint planning processes, joint environmental research and studies, joint public hearings and joint environmental assessments are already authorized under the same regulation*.

Additionally, there are several grant programs which delegate almost complete responsibility for NEPA to the grant recipient; for example, the Department of

Housing and Urban Development's Community Development Block Grant Program and the Urban Development Action Grant program. Importantly, these are situations in which the *recipient of the grant makes the decision* about what to do with the funding, with applicable statutory parameters, as opposed to a Federal agency.

Additionally, the recently passed so-called "FAST Act" allows up to five states to substitute state requirements for environmental review for Federal review requirements where state requirements are "at least as stringent" as the Federal requirements proposed to be replaced. 30 U.S.C. § 330(d)(1)(A). CEQ recently published, for public review and comment, proposed criteria for determining which states have requirements that qualify under this Act.

Here are some additional thoughts:

1. The opportunities presented for more robust state involvement, either for assuming responsibility for an entire EIS or sharing the responsibility with a Federal agency, were not very robustly utilized during my tenure at CEQ (roughly 1981 through 2007). My sense of the reason for that is that many states, especially states without a "little NEPA law" at the state level, lacked capacity and were simply not interested in assuming that responsibility. With some notable exceptions (California), most states and local governments were more interested in being cooperating agencies than taking the lead role.
2. About half of the states do have "little NEPA laws," but the requirements under those individual state laws vary widely. California's law, the California Environmental Quality Act, is generally regarded as being stricter than NEPA, for example, in the area of mitigation. Other state laws are quite narrow and only apply to certain types of projects. Wholesale delegation of NEPA responsibilities to states under 50 separate state laws could, I would think, complicate, not simplify, compliance with NEPA, especially for large interstate projects like gas pipelines.
3. California already provides that if a project requires compliance with both NEPA and CEQA, state or local agencies should use the Federal document rather than preparing a separate state document and then add to that document the additional CEQA requirements if they are not included in the state document. Cal. Code Regs. Title 14, § 15221. So, especially in California, with both the CEQ regulations mandating joint EISs and CEQA's provision to use NEPA documents, there rarely, if ever, should be two separate documents (i.e., an EIS and an EIR). In my experience, many of the failures that lead to separate documents are management issues, not NEPA issues.
4. The purpose of the environmental impact assessment process is to inform decision making. The responsibility for the process needs to be vested in the institutional decision maker. Thus, if a Federal agency is going to make a decision on the proposed action, that agency should bear responsibility for compliance with NEPA. If there is a state involved that also needs to make a decision, the responsibility for the environmental review process should be shared jointly, as in the statutory and regulatory examples above. If final decision making for the proposed action has been transferred entirely to states, then it follows that it would be appropriate for states to assume the responsibility for the environmental review process.
5. I would warn against wholesale transfer of NEPA responsibilities to states for a number of reasons. I have watched several instances in which Congress has made available to the states the opportunity to take over the environmental review process—from the amendment to NEPA itself to pilot projects in transportation and infrastructure bills. It is honestly not clear to me that most states (again, with some exceptions) are eager to do this. Assuming such responsibility puts a greater burden on states with no discernable advantage to them since without assuming the entire responsibility, state agencies can still be at the table and share in many (drafting documents, holding public hearings, etc.) under current law if they so desire. Implementing a mandate to assume such responsibility also puts a burden on the states, unless Congress appropriates funding to the states for the purpose of environmental review. Also, some state laws, as noted above, are stricter than NEPA; others are weaker. Creating 50 different standards creates an uneven playing field and a bit of a nightmare for interstate projects. Finally, to the extent the proposed action involves a Federal interest and a Federal decision, the far better and fairer allocation of responsibilities and the construct that makes sense in terms of fulfilling the purpose of the NEPA process is for the Federal agency to retain the overall responsibility for the process and partner with affected states to *jointly* implement the environmental review process.

Questions Submitted by Rep. Grijalva

Question 1. Congressman Graves observed that your statement that people would be much less likely to know what their government was doing before they did it if NEPA were no longer the law made little sense because states, local governments and businesses do tell people what's going to happen ahead of time on a routine basis. There was no time left for you to respond to that point, but would you do so now?

Answer. Congressman Graves is, of course, correct that many states, local governments and sometimes businesses tell people what's going to happen ahead of time. In some instances, there is a legal requirement for states and local governments to do so. However, that is not universally true, especially in the majority of states that do not have a broad environmental impact assessment statute of their own. More to the point regarding NEPA, there are many Federal actions taken which do *not* come under the jurisdiction of another entity and are not associated with a private business. As was brought up by another Member during the hearing, this is especially true in the case of military installations, where NEPA is typically the sole mechanism for advance public notice of activities affecting the public. It is also true of public land management, affecting much of the western United States.

Question 2. Commissioner Willox observed that counties need to be part of the identification team working on an EIS and otherwise involved early in the process. What is your perspective on this?

Answer. I agree with Commissioner Willox. CEQ has vigorously encouraged Federal agencies to include counties (at their request) as cooperating agencies, and as such, they should be included on ID teams working on an EIS. A concern that Federal agencies had a few years ago that inclusion of counties on such teams would be a violation of the Federal Committee Advisory Act was addressed by Congress in 1995 that provides for the inclusion of state, local, and tribal agency officials when working to implement a program that anticipates intergovernmental cooperation. It is not clear to me that the existence of this provision is known and understood by all relevant agency staff. The National Environmental Policy Act and the CEQ implementing regulations specifically contemplate cooperative work with such intergovernmental representatives.

Question 3. Mr. Howard's proposed amendment to the FAST Act purports to bestow upon CEQ dispute resolution authorities. Does CEQ currently play a role in dispute resolution in the context of NEPA?

Answer. CEQ has multiple dispute resolution roles. The most formal role is the dispute resolution process established in the CEQ regulations to resolve disputes between agencies over a proposed action. That process, through which the head of one department refers an action proposed by another executive branch department, includes timelines, opportunities for both agencies to present their views, opportunity for public involvement and ultimate resolution in a number of ways, including elevation to the President. 40 CFR § 1504.00 *et seq.* CEQ also has a formal dispute resolution process in the event that agencies cannot decide which agency should be the "lead agency" for purposes of the NEPA process. 40 CFR § 1501.5(3). More frequently, CEQ routinely resolves interagency disputes and concerns raised by private citizens, governors, Members of Congress and a whole host of others who have concerns about a particular implementation issue associated with NEPA.

Question 4. Mr. Howard specifically recommends that permitting processes should take no longer than 2 years, but this one-size-fits-all approach seems like it would quickly fail for larger and more complex projects.

4a. Is a lack of mandated timelines actually a hurdle to efficient environmental review?

Answer. I do not think that the lack of congressionally mandated timelines are a hurdle to efficient environment review; I think the lack of qualified staff to manage the NEPA process *is* a huge hurdle. Agencies are not only free to set timelines, they are already *required* to do so if an applicant requests time limits. 40 CFR § 1501.8. Interestingly, this is the provision in the CEQ regulations most requested by business and industry representatives during the development of the regulations, but it is almost never invoked. Besides applicants, state or local agencies or members of the public may also ask agencies to set time limits. The regulations provide that the agency may consider a number of what I believe are quite sensible factors in arriving at those time limits and call on agencies to designate a person with NEPA responsibility to expedite the NEPA process. A big problem today is that many agencies do not have such a staff person who is both knowledgeable about NEPA and experienced in management.

4b. Do you think there would be negative environmental impacts caused by this kind of mandated time limit?

Answer. I am afraid that mandated time limits for all projects *will* have a deleterious effect on the environment. When agency staff get the signal that speed is more important than anything else and when agencies are understaffed, problems will get missed or short changed. I fear that in the rush to meet mandatory timelines, serious oversights will come back to haunt our communities and our public lands and that future generations will reap the results.

Questions Submitted by Rep. Costa

Topic 1: NEPA Delegation Authority

Question 1. Some states have enacted state level public disclosure laws similar to NEPA whose standards meet or even exceed NEPA's requirements.

*For instance, in 1970 my home state enacted the California Environmental Quality Act, which **actually mandates** that environmental mitigation be performed if an action has an impact on the environment. Unfortunately, in many instances, analysis under CEQA does not meet the statutory requirements of NEPA, leading to duplicative work and delayed project delivery.*

I've heard that this is especially problematic for projects where CEQA analysis and review has already been completed and as a result of a Federal agency interaction either through a required permit or a Federal funding agreement, an environmental review process under NEPA is required. In fact, I've heard of some instances where local agencies have rejected Federal funding because the delay to complete NEPA, despite already having completed CEQA, would result in a greater project cost.

This is simply unacceptable.

As you've mentioned, Congress has taken some steps to streamline these analyses, specifically for highway projects. This could prove beneficial to streamline projects in many congressional districts and specifically for those projects in California, like the Atwater-Merced Expressway that's needed to redevelop Castle Air Field or the California High-Speed Rail project.

1a. Do you think that there are benefits to allowing projects in states that have equally stringent environmental disclosure laws as NEPA to move forward under a single environmental analysis?

1b. Is it reasonable for Congress to explore additional ways in which NEPA delegation authority can be extended to the states?

1c. In your opinion, what sorts of agency actions lend themselves to enhanced delegation authority? For instance, Reclamation projects, FERC projects, or projects with Federal grant funds disseminated?

1d. If it is beneficial, is further action by Congress necessary to move forward to expand delegation authority?

Answer. I agree that having separate documents (i.e., an EIS under NEPA and an EIR under CEQA) is problematic. In the vast majority, if not all, cases, it is also unnecessary and unwarranted. In my experience, the problem virtually always lies with bad management of the process, not the law itself.

First, NEPA *already provides* that a state agency or official with statewide jurisdiction and the responsibility of carrying out a program funded by Federal grants to the states may prepare an environmental impact statement (EIS). 42 U.S.C. § 4332(D). If the state chooses to do so, the Federal agency involved must provide guidance, participate in the process and independently evaluate the EIS to ensure that it meets Federal standards. The Federal agency also retains the responsibility to defend the EIS in Federal court if there is a legal challenge. In my experience, the principal user of this provision has been state highway departments, although there the provision is not limited to federally-funded highways. In the case of California, as you point out, there is both a strong environmental review law and capacity. I am not sure why other agencies, besides the California Department of Transportation, don't avail themselves of this provision.

Under CEQ's regulations, a state or local government agency can be either a joint lead agencies, typically used when the state has a so-called "little NEPA" law to avoid doing the process twice, or assert jurisdiction by law or special expertise to become a cooperating agency. *If there is state law or local ordinance in addition but not in conflict with NEPA, Federal agencies are instructed to cooperate in fulfilling those requirements so that **one** document will comply with applicable laws at all levels of government*. 40 CFR § 1506.2. Similarly, *joint planning processes, joint*

environmental research and studies, joint public hearings and joint environmental assessments are already authorized under the same regulation.

Finally, CEQA already provides that if a project requires compliance with both NEPA and CEQA, state or local agencies should use the Federal document rather than preparing a separate state document and add to that document the additional CEQA requirements if they are not included in the state document. Cal. Code Regs. Title 14, § 15221. Indeed, rather than CEQA documents not being adequate for purposes of NEPA, my sense is that it is more frequently the other way around—additions are needed to a NEPA document to make it compliant with CEQA. Even so, there is no reason to have two separate documents (and the processes that are associated with each document).

Given that legal authorization and mechanism already exist to not only allow but promote one document instead of two documents for environmental review and yet we continue to hear of situations where two documents are produced, I would suggest a first step would be to task either the General Accountability Office (GAO) or the Congressional Research Service (CRS) initiate a discrete study to identify and analyze perhaps half a dozen of situations where both a NEPA and a CEQA document were produced, to determine: (a) the reasons that two documents instead of one were produced, and (b) recommendations to address those reasons. In the absence of a clear understanding of the reasons that existing legal mechanisms were not used or did not work, I am concerned that further legislation will not actually achieve the intended goal.

1a. Yes, I think there are benefits to allowing projects in states with equally stringent environmental disclosure laws to move forward under a single environmental analysis. In my view, that single document should be a joint Federal/state document.

1b. Per my answer above, I think a very specific study about the reasons current mechanisms for joint documents and processes are not utilized should be undertaken prior to passing more legislation.

1c. As noted above, NEPA *already provides* that a state agency or official with statewide jurisdiction and the responsibility of carrying out a program funded by Federal grants to the states may prepare an environmental impact statement (EIS). 42 U.S.C. § 4332(D). I should also add that anyone—an applicant, state, local government or tribe, may prepare an environmental assessment.

1d. It is important to keep in mind that the purpose of NEPA is to inform decision making and so ultimately, it is the deciding body that should have ultimate responsibility for NEPA. Delegating NEPA wholesale to the states, for example for FERC projects, makes little sense when FERC holds the decision-making authority. On the other hand, when a state or local grant applicant is truly the decision-making authority, then delegating the environmental review responsibilities makes some sense. Congress has already done that in the case of the Community Development Block Grant Program and the Urban Development Action Grant program. There, the local communities are responsible for NEPA compliance and stand fully in the shoes of the Department of Housing and Urban Development (including in Federal court) as opposed to, for example, FERC's authority to permit natural gas pipelines, under which it has statutory authority in some circumstances to over-rule state agencies.

Topic 2: FAST Act Streamlining Provision Implementation

Question 2. I have heard concerns from many infrastructure project stakeholders that too much time is required to complete all of the environmental reviews under NEPA (i.e., environmental assessments (EA) and environmental impact statements (EIS). The U.S. Department of Energy reported that the average completion time for an EIS in 2015 was 4.1 years, and the average cost was $4.2 million. A 2014 GAO report found that the average completion time for an EIS in 2012 was 4.6 years from the notice of intent to prepare an EIS through the issuance of the record of decision. I have heard that these figures may underestimate both time and costs. Available data from Federal agencies generally do not account for costs beyond third-party contractor fees, including a project applicant's data-development costs. The time estimates do not include the work that precedes the decision to prepare an EIS or the cost of defending them in court. I have heard other comments that expediting reviews could lead to potential litigation which could account for longer project delays beyond those that would have occurred using a more slow and steadfast approach under NEPA.

Specific to infrastructure, there are NEPA streamlining reforms in the FAST Act already. With the FAST Act, Congress and the Obama administration sought to improve on past attempts to streamline the NEPA process by coordinating and expediting NEPA review across a broader range of agencies and industry sectors. The Act establishes a Federal Permitting Improvement Council (the Council), composed of officials from CEQ, OMB, and 13 other Federal agencies, to coordinate this streamlining effort. The range of projects covered by the FAST Act includes: "renewable or conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, [and] manufacturing." In addition, the Council has the authority to designate projects in other industry sectors by majority vote.

To trigger the FAST Act, a project must be subject to NEPA; be likely to cost more than $200 million; and either: (1) not qualify for abbreviated environmental-review processes under any applicable law, or (2) because of its size and complexity, would likely benefit from enhanced coordination. Important aspects of Title XLI of the FAST Act include:

- *Coordinated Project Plans. The plans will identify the lead agency and cooperating agencies and set out a permitting timeline. The lead agency is to develop the permitting timetable in consultation with the cooperating agencies and the applicant.*
- *Permitting Dashboard. An expanded online database will track the status of Federal NEPA reviews for each covered project. The lead agency must post information, including the permitting timetable, status of compliance for each participating agency, and any memoranda of understanding between the agencies.*

In summary, the FAST Act already contains NEPA streamlining language for infrastructure projects. There seems to be little data on whether or not these provisions have been implemented or whether they are working to accelerate project delivery in a way that is consistent with the public disclosure requirements and alternatives analysis required by NEPA.

2a. Is there information available about whether the existing streamlining provisions have been fully implemented and what effect, if any, they have had on project delivery timelines?

2b. If this information were available, would it assist Congress in making any policy changes necessary to implement NEPA more effectively?

2c. If this information is not available, how would you recommend this information be acquired and presented to Congress?

Answer.

2a. There is some information available about the implementation of the streamlining provisions under the FAST Act. A fair amount of information can be found on the website of the Federal Permitting Improvement Steering Council (https://www.permits.performance.gov/) and the Permitting Dashboard (https://www.permits.performance.gov/). The FAST Act requires an annual report to Congress, and the first such report was filed in April of this year (https://www.permits.performance.gov/about/news/fast-41-report-Congress) and it is worth reviewing. Some of the time to date, of course, has been spent setting up the administrative infrastructure to administer the Act. However, 38 projects are currently in the pipeline under FAST-41. The Federal Permitting Improvement Steering Council has issued some guidance to agencies. I am concerned about the extent of education and training within the Federal agencies about implementation of the Act. In terms of understanding the effect of the streamlining provisions, I think it may be a bit early to assess the effect yet, as most projects in the pipeline, for a variety of reasons (not all related to environmental review) are still in process, although 11 projects have been completed.

2b. I do think that analysis regarding the effect of FAST-41 on the environmental review process would be useful to Congress in determining whether to make further changes.

2c. I would suggest waiting a bit longer until more projects have gone through the FAST-41 pipeline (perhaps 3 years from the date of enactment of FAST-41) and then asking either GAO or CRS to analyze the impacts of FAST-41, identifying both successes and problems.

Topic 3: Local Development Experience

Question 3. Recently approved by all permitting agencies last June/July was a major "new town" project in my district that is designed for roughly 5,000 new residences, 3 million square feet of commercial and light industrial development, two new public schools, parks, trails, environmentally sensitive conserved lands, and various other related features. That project is now under construction.

The U.S. Army Corps of Engineers and the U.S. Bureau of Reclamation were key permitting agencies for this project, and NEPA compliance by these agencies played a major role. Fortunately for this project, both the Corps and Reclamation ended up working well together to resolve a wide variety of issues, including some tricky NEPA compliance issues. Other projects, I am told, have not fared so well.

However, with the benefit of 20/20 hindsight on this project, there are at least two areas where I am told we could be doing better:

- ***Need for a single lead agency for NEPA compliance.*** *Many projects, including the project in my district, require permits from two or more Federal agencies. Although the NEPA regulations contemplate a lead Federal agency for purposes of NEPA compliance, it is too often the case that Federal agencies work inefficiently with each other on NEPA compliance issues, leading to time-consuming delays and multiple meetings that can sometimes span weeks and even months.*

  I believe that the NEPA regulations could be strengthened in that regard with the intent of squarely assigning the responsibility of NEPA compliance in one Federal agency for all the Federal agencies that might be involved on a particular project.

  In my home state of California, our NEPA equivalent—CEQA—is an excellent model for how this notion of a single "lead" Federal agency can work well.

- ***Scope of analysis.*** *Closely related to the idea of a "single lead agency" for each project is the importance of defining a suitably encompassing "scope of analysis" for purposes of NEPA review. This is particularly important for purposes of Section 7 consultation under the Endangered Species Act.*

  If the "lead" Federal permitting agency defines its NEPA "scope of analysis" to only include the area of its particular permitting jurisdiction, then the other Federal permitting agencies for that same project may have no choice but to prepare their own separate NEPA analysis if their permitting jurisdiction does not coincide with that of the "lead" agency.

  For the project in my district, resolution of this particular issue took months longer than it needed to, and further clarity is needed for future projects. At base, there should be a single "lead" Federal agency with a project-specific "scope of analysis" that encompasses all Federal permitting issues, not just those of the "lead" agency.

3a. I have heard from constituents that the 6-year statute of limitations applicable to NEPA claims is too long. It creates too much uncertainty and can be a sticking point with the project finance community. Six years is too long to know whether an approved project is going to become the subject of litigation alleging NEPA non-compliance.

The comparable statute of limitations under CEQA is 30 days.

What are your views on the idea of new legislation to shorten the NEPA statute of limitations?

3b. Under NEPA, "alternatives" to the proposed project that must be assessed in an environmental impact statement (EIS) are, according to some Federal agencies and some courts, supposed to be reviewed at the same level of detail as the proposed project. This project-level review of the alternatives can be quite burdensome, difficult or impossible to undertake (e.g., how can a bio analysis be undertaken at an alternative site that is owned by someone else?), and ultimately, of little value to the ultimate analysis.

What are your views on the possibility or need for new NEPA regulations to better and more efficiently focus the "alternatives analysis" component of NEPA review?

3c. Under NEPA, each Federal agency is authorized to develop its own list of "categorical exclusions" that is intended to be a list of activities that are determined to be so relatively minor in their potential for environmental impacts as to excuse the need for further NEPA analysis. It seems like a good concept, but I wonder if there are improvements that could be made. In the interests of streamlining NEPA review across all Federal agencies, there may be merit in issuing new regulations that list categorical exclusions that are common to all Federal agencies (e.g., "minor

construction"), thereby reducing the possibility for inconsistent treatment of the same issue by different agencies. These common categorical exclusions could be in addition to the agency-specific "CatEx's" that are already in existence.

What are your views on the possibility of streamlining the CatEx process by issuing new regulations that create categorical exclusions that are common to all Federal agencies, perhaps in addition to the agency-specific CatEx's that already exist?

Answer. First, on the topic of lead agencies, as stated, CEQ regulations do provide for a lead agency. In the case of disputes over what agency should be the lead, CEQ has a 20-day dispute resolution process. 40 CFR § 1501.5(e). The regulations do provide for the possibility of joint lead agencies and when agencies opt for that construct, it is important for the agencies to set out in writing which agency is going to undertake what responsibilities. I am happy to learn that in your view, the environmental review process "new town" project in your district worked well under the auspices of the U.S. Army Corps of Engineers and the Bureau of Reclamation.

3a. In regards to the statute of limitations, Congress provided for a 2-year (instead of a 6-year) period in the FAST Act. I believe 2 years is a reasonable period of time.

3b. I strongly believe that alternatives are the most important element of the NEPA process, if done correctly. It is through the analysis of reasonable alternatives that meet the stated purpose and need that better decision can be made as opposed to just mitigating impacts from an action. There are numerous examples of agencies adopting better alternatives suggested by other governmental agencies or public citizens through the NEPA process. Many of those examples have resulted in millions of dollars of taxpayers money being saved, improved decisions and happier constituents.

That said, there is no set number of alternatives that must be analyzed in a NEPA document; the requirement is analyze "reasonable alternatives." If an alternative site is not available to the proponent, analysis of that site is, as you suggest, of little value to the decision maker. Agencies should be (a) aggressive in their pursuit of and listening to outsiders about possible reasonable alternatives and then (b) make a reasoned judgment about which alternatives are reasonable and which are not. Much of this work depends on appropriate training and good management. I would put the emphasis on those two elements—which are sorely lacking in many agencies—rather than changes to the regulations.

3c. There might be some merit in some carefully selected categorical exclusions that are applied throughout the executive branch. However, recall that agencies operate in extremely different types of ecosystems—for example, what would easily qualify as a categorical exclusion for projects in the continental United States might have considerable impact in the Arctic environment. It is already the case, though, that large departments, like the Department of the Interior, have promulgated common categorical exclusions that the agencies and bureaus within the department can utilize, supplemental by agency specific categorical exclusions. It is also important to remember that categorical exclusions are not supposed to be the equivalent of legislative exemptions from NEPA; if, in a particular case, there are extraordinary circumstances, an agency does generally need to prepare an EA.

I'm not sure there is an awareness of how many categorical exclusions already exist but there are hundreds of them. Sometimes we are seeing legislation to enact categorical exclusions for actions that are already categorically excluded. Agencies have been pressured by both CEQ and Congress for at least the past 16 years to promulgate more and more categorical exclusions. Rather than focusing on yet more categorical exclusions, I would suggest some oversight on how the existing ones are used. CEQ requires no paperwork at all for an activity that has categorical exclusions. Most agencies do require some documentation and it is sensible to put into the file 1–2 pages documenting what categorical exclusion was used for a particular proposed action so that someone else does not wonder whether NEPA was complied with for a particular project. But there is absolutely no need for the voluminous paperwork that some staff compile for each use of a categorical exclusion; again, often due to lack of training.

Topic 4: Potential Guidance Updates

Question 4. Some stakeholders have indicated that new guidance from CEQ would help streamline Federal review of infrastructure projects by clarifying NEPA duties and procedures that are routinely challenged legally. This is as important for agencies and projects as for the public and the reviewing courts.

While there are some who believe that the underlying NEPA statute is largely sufficient, some stakeholders assert that NEPA guidance has not kept pace with the specific issues and arguments that are now commonplace. Existing guidance tends to be high-level and conceptual; effectively leaving it to the courts to discern what is or is not required by NEPA. I have heard that areas for special focus could include:

- ***Purpose and Need**—NEPA analysis could properly reflect the purpose of the proposal before the agency, not the preferences of policy makers or opposition groups.*
  - *—For example, the purpose of a proposed interstate natural gas pipeline is generally to transport natural gas by pipeline from one or more regions or interconnections, to specific market areas or interconnections. This purpose is more specific than simply meeting the energy needs in a geographic area. Such a general purpose could theoretically be met by providing oil, coal, solar, or hydro power, requiring demand reduction, etc. But none of these is the proposal before the agency, and none expresses the purpose of the project or reflects the jurisdiction of the reviewing agency (in this case, FERC).*
  - *—To remain pertinent and useful, would it be beneficial to ensure that the scope of the NEPA review reflect the project's purpose?*
- ***Alternatives**—The alternatives analysis could be tailored to the purpose of the proposal before the agency, otherwise it leads to excessive analysis of irrelevant, tangential, or infeasible projects that are not before the agency for action.*
  - *—In the example above, solar or hydro power may not be considered appropriate alternatives to the gas pipeline project, even if these energy sources are preferred by certain agencies or groups.*
  - *—I have heard that the breadth of alternatives being considered has increased to the point where scores of major and minor route alternatives are put under the microscope for an interstate gas pipeline project. As a result, NEPA seems to have evolved into the vehicle to select the route—which is properly the province of the Natural Gas Act—and to ensure that it has least environmental impact—which is not NEPA's charge.*
  - *—The depth of analysis seems to have also increased to the point where full mapping and resource-by-resource analysis is often expected for many alternatives, setting up impact comparisons between alternatives measured in fractions of a wetland acre, etc. Such broad and intensive analyses require months of effort and entail enormous costs that may be out of proportion to the purpose of the alternatives analysis. They also lead the public to expect a greater degree of control—by the public and by the agency—over project development than NEPA affords, fostering litigation and eroding public trust in the reviewing agencies.*
  - *—Can you please speak to these concerns and whether you believe if new guidance is needed to tie alternatives, first, to the purpose and need of the proposed action of the agency and, second, to a more general level of analysis sufficient to discern whether an alternative is significantly more or less burdensome to the environment.*

Answer.

Purpose and Need. The law is very clear that the lead agency has the prerogative to define the purpose and need. There is simply no suggestion in the law or the CEQ regulations otherwise. 42 U.S.C. § 4332(d); see also, 40 CFR §§ 1501.5, 1506.5. For example, in the case of a proposed gas pipeline, NEPA analysis for a particular pipeline would not typically (nor would courts typically) require analysis of all types of alternative energy sources. However, if, for example, the Department of Energy decided to develop a national energy strategy, NEPA compliance for the that policy would need to consider various competing sources of energy. The key issue is the scale of the decision to be made.

Courts do recognize that agencies should respect the role of local and state authorities in the transportation planning process and appropriately reflect the results of that process in the "purpose and need" statement. *North Buckhead Civic Assoc. v. Skinner*, 903 F.2d 1533 (11th Cir. 1990). And to enhance coordination with states, when preparing a joint EIS/EIR, for example, it is prudent to develop a purpose and need statement that covers both the needs of the Federal and state agency. Further detail on the purpose and need requirement can be found in an exchange of letters between the Secretary of the Department of Transportation and the

Chairman of CEQ on this topic, posted here: https://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-purpose_need.pdf.

1. I agree that for the NEPA analysis to be pertinent and useful, the scope of the NEPA analysis should reflect the project's purpose and need. That is what the law requires now. Normally, the purpose and need should be articulated by the agency in one or two paragraphs. Far too often, agencies delegate this job to consultants who are not sure what the agency really wants to do.

Writing the purpose and need statement should be a government function. Frankly, I have seen situations where agency leadership didn't know why an EIS was being done or what decision they were expected to make at the end of the process. If a senior official in an agency proposing to do an EIS cannot sit down at the computer and write a couple of paragraphs (one or two paragraphs is all that is required) about why the agency is proposing to do something, the agency should not be initiating the EIS process. This is a management failure, not a problem with NEPA.

2. NEPA, the regulations and case law are clear that only reasonable alternatives that meet the purpose and need of the lead agency must be analyzed.

The NEPA process, in my view, can and should be used in a sensible manner to improve routing of facilities and activities. Let me briefly two such examples, both in California:

In the first instance, the Federal Transit Administration and the Los Angeles County Metropolitan Transportation Authority worked together to review an 8.5 mile light-rail metro extension serving southern Los Angeles County communities. Through the NEPA process, a 5-mile stretch of rarely used existing freight rail line corridor was identified that could be used instead of building new tracks. The railroad agreed to abandon the line and allow its use for the light-rail extension. The decision decreased project costs and time and reduced environmental disturbances to nearby communities. The project is currently being constructed.

In the second instance, the U.S. Navy and the National Park Service worked together on an environmental assessment that identified better routing for Navy flights over Joshua National Park. The result of the NEPA process was reduced impacts to visitors and natural and cultural resources on a route that actually improved training exercises. In the words of the individual who managed this process for the Navy, "Because of NEPA, the public and government decision makers were able to analyze the need for action, compare environmental impacts associated with alternatives, and bring together organizations and individuals with competing interests. The draft EA formed a basis for government officials and the public to exchange ideas and develop a consensus solution. The end result was a win-win solution for the National Park Service, the military, the general public, and the environment."

The Supreme Court has made it quite clear that NEPA does not obligate agencies to choose the most environmentally preferable alternative and lower courts have faithfully followed that holding. (*Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council*, 435 U.S. 519 (1978), holding that while NEPA does set forth significant substantive goals for the Nation, its mandate to the agencies is essentially procedural—that is, to insure a fully informed and well-considered decision, not necessarily a decision the judges of the court of appeals would have reached if they had been the decision maker.)

In my view, it is neither the law nor the CEQ regulations nor guidance documents nor case law that is actually driving the large volume EISs that are the subject of so much concern. Rather, it is lack of good management of the NEPA process. Indeed, courts have expressed more concern about lengthy documents than about brevity. Judges don't want to read thousands of pages any more than anyone else. What they—and agency decision makers—should be looking for is actual analysis of potential impacts, not pages and pages of material with little relevance to the decision. That is why CEQ's regulations already have page limits of 150–300 pages for the main body of an EIS. 40 CFR § 1502.27. Again, the problem is not the law or the regulations; rather, it's lack of trained staff within the agencies and overuse of contractors, many of whom get insufficient guidance from their client agencies.

The CHAIRMAN. Thank you.
Mr. Howard.

STATEMENT OF PHILIP K. HOWARD, CHAIRMAN, COMMON GOOD, NEW YORK, NEW YORK

Mr. HOWARD. Thank you, Chairman Bishop, Ranking Member Grijalva, and other members of the Committee. Thank you for having me here.

I am the Chair of Common Good, which is a not-for-profit that has been looking at how we can expedite the rebuilding of America's decrepit infrastructure. The context of this hearing is that America is living on infrastructure built 50 to 100 years ago, leaking trillions of gallons of water, wasting vast amounts of electricity in a rickety grid, and so forth.

The past 3 years we have written white papers with the help of former environmental officials from both parties, convened public forums, including senior officials and former Secretaries of Transportation from both parties, and there is broad agreement in the need to expedite the entire process by which infrastructure gets approved, including the environmental process.

There is also broad agreement that NEPA is an extraordinarily important statute, and probably should be made more effective, not less effective. It is a procedural step that prevents rash decisions on alterations that might have impact for a century or more. It is very important to have a pause, to have the facts, to look at the alternatives, so that the political leaders can make a decision about whether the right balance, as the statute says, between population and resources be met.

Under the regulations on the Council on Environmental Quality, environmental reviews, even from the largest projects, are not supposed to be more than 300 pages, and it should never last more than a year. You would be hard to find an environmental review that was that short on a large project, or one that did not take years.

NEPA has evolved into something that no one intended. Instead of highlighting material issues and alterations, it obscures the important facts in mountains of detail. It has become an academic exercise of no pebble left unturned. Much of the information is useless in the particular project. Requiring traffic studies on the replacement for the Tappan Zee Bridge or raising the roadway of the Bayonne Bridge makes no sense because the traffic is not changing. There is no impact to the traffic, so why do they have an extensive traffic study?

Instead of encouraging public input—actually, I think NEPA should do more to encourage public input, it has become an exercise available only to the insiders, many of which do not have the common good in mind. They are professionals who work for a particular advocacy group seeking a particular goal, many of which I agree with, but it is not accessible, a 5,000-page report is not accessible, to a member of the public. They will never have enough time to study a 5,000-page report. The density of these reports is driven by fear of litigation, because at the end of any project, someone who doesn't like it will sue, claiming that some detail is not accurate.

The process takes years, an average of 4.6 years for large projects. And then, on top of that, there is permitting.

In the case of raising the roadway of the Bayonne Bridge into Newark Harbor, a project with almost no environmental impact, because it uses the same foundations and the same right-of-way, it took 6 months to get a Federal agency to agree to be the lead agency. Then it took another year of meetings to get the scoping of the environmental review correct. This is a project that had an environmental assessment, which is supposedly a short-form environmental review. The review itself was 10,000 pages long, plus another 10,000 pages of appendices for a project using the same foundation and right-of-way.

The bottom line is that environmental review for large projects is now, typically, dramatically harmful to the environment. It is harmful to the environment because it prolongs bottlenecks that could be fixed in a matter of a year, or 2 or 3. Instead, they are not fixed for 6 or 7 years. We quantify those costs in our report, "Two Years, Not Ten Years," and it also, combined with permitting delays, often doubles the cost to taxpayers, typically, of large projects.

The solution, in my view, and we have proposed legislation, is to create clear lines of authority. So, among other things, the Chairman of CEQ has authority to decide issues on the scope and adequacy of review. Still has to comply with NEPA, but can say, in the case of the Bayonne Bridge, for example, "Oh, you are using the same foundations and right-of-way? Give me 50 pages on construction impacts."

Thank you very much.

[The prepared statement of Mr. Howard follows:]

PREPARED STATEMENT OF PHILIP K. HOWARD, CHAIR OF COMMON GOOD, NEW YORK, NEW YORK

Chairman Bishop, Ranking Member Grijalva, and members of the Committee, thank you for inviting me to testify before the Committee today about the need to modernize environmental review.

America is living on infrastructure built 50–100 years ago. Aging roads, fragile power grids, inefficient ports, and an antiquated air traffic system hamper America's ability to compete. Traffic bottlenecks, leaking pipes, waste overflows, and dirty power generation cause unnecessary pollution. Unsafe roads cause thousands of accidents each year.

The upside of modernizing America's decrepit infrastructure is as rosy as the current situation is dire. An infrastructure initiative will provide upwards of 2 million high-paying construction-related jobs, and provide a 21st century platform to enhance America's competitiveness. Not rebuilding infrastructure runs irresponsible risks. One failure at a critical transit chokepoint—for example, the two century-old rail tunnels under the Hudson River that were damaged by Superstorm Sandy [1]—could paralyze an entire region.

Rebuilding America's infrastructure requires Congress to do two things: Provide funding and create clear lines of authority to give permits. Congress provided money in 2009 as part of the $800 billion stimulus, but did not give the executive branch the authority to issue permits on a timely basis. Because "there's no such thing as shovel-ready projects," as President Obama put it,[2] the Administration ended up spending only 3.6 percent of the stimulus money on transportation-related infrastructure.[3]

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[1] See, e.g., Philip K. Howard, "Billions for Red Tape: Focusing on the Approval Process for the Gateway Rail Tunnel Project," Common Good, May 2016.

[2] Michael D. Shear, "Obama Lesson: 'Shovel Ready' Not So Ready," *New York Times*, October 15, 2010.

[3] Executive Office of the President, Council of Economic Advisers, "The Economic Impact of the American Recovery and Reinvestment Act Five Years Later," February 2014, p. 34.

My testimony today will focus on one element of permitting—environmental review under the National Environmental Policy Act (NEPA). Environmental review should be a vital tool in enhancing public input and improving the quality of projects. Instead, environmental review has become a bureaucratic swamp that bogs down vital projects and a potentially lethal weapon in the hands of anyone who opposes a project.

The effect, paradoxically, is that environmental review often harms the environment. Lengthy environmental reviews typically prolong bottlenecks and other inefficiencies which cause pollution. A 2015 report by the group I chair, *Two Years, Not Ten Years*, quantified these and other permitting costs for different categories of infrastructure delays. For example, a 6-year delay in rebuilding our Nation's crumbling highway infrastructure would release an extra 51 million tons of CO_2 emissions. America's antiquated power grid wastes an amount of electricity equivalent to the output of 200 coal-burning power plants.[4]

Overall, we also found that a 6-year delay more than doubles the effective cost of projects (including increased overhead and construction costs, lost economic opportunities, and the environmental costs of prolonged inefficiencies).

The core flaw in America's review and permitting process is that there are no clear lines of authority to make needed decisions to adhere to timetables, including to resolve disputes among bickering agencies or project opponents. At any step along the way, a project can get bogged down in the balkanized bureaucracy. The project to raise the roadway of the Bayonne Bridge required 47 permits from 19 different Federal, state, and local agencies. With multiple decision makers, even preliminary decisions can take years. With the Bayonne Bridge, it took 6 months to pick the lead agency for environmental review and another year to agree on the scope of review. The Bayonne Bridge construction had virtually no environmental impact—it used the same right of way and foundations as the old bridge—but the final environmental assessment ran 10,000 pages, with another 10,000 pages of appendices.[5]

No one deliberately designed this review and permitting process. It serves no legitimate public interest, and, by delaying modernization of infrastructure, actively harms the environment. Nor do multi-thousand-page environmental reviews enhance transparency of important issues; lengthy reviews obscure them in a jungle of trivial detail.

Congress in recent years has improved the process at the margin by creating committees to resolve disputes, shortening the statute of limitations, allowing some state-level processes to fulfill Federal requirements, and improving transparency via the Permitting Dashboard. What's needed, however, is a simple hierarchy, where designated officials take responsibility to make needed decisions at each step without months of delay. I attach here three pages of amendments that create clear lines of authority to make decisions needed to adhere to reasonable schedules. The effect will be to reduce the effective cost of infrastructure by half and to create a greener footprint.

THE DISTORTION OF NEPA

The 1970 National Environmental Policy Act was a landmark statute requiring that federally-funded projects review potential environmental impacts and consider alternatives before breaking ground. NEPA requires agencies to undertake an assessment of the environmental effects of their proposed actions so that they can strive to "achieve a balance between population and resource use."[6] NEPA is a tool for thoughtful process and democratic accountability, not a substantive requirement for environmentally correct decisions.

NEPA is supposed to provide the public with disclosure of major impacts, not dense academic analyses. One historian reports that "[t]he earliest [environmental impact statements (EISs)] were less than 10 typewritten pages in length. They were submitted to the Congress and went unchallenged."[7] The current regulations of the Council of Environmental Quality (CEQ), created to oversee NEPA, say that an EIS should generally be no more than 150 pages, and no more than 300 pages for complex projects.[8]

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[4] Philip K. Howard, "Two Years, Not Ten Years: Redesigning Infrastructure Approvals," Common Good, September 2015.

[5] See, e.g., ibid, and Sam Roberts, "High Above the Water, but Awash in Red Tape," *New York Times*, January 2, 2014.

[6] 42 U.S.C. § 4331.

[7] Daniel A. Dreyfus, "NEPA: The Original Intent of the Law," *Journal of Professional Issues in Engineering Education and Practice* 109, no. 4 (1983), pp. 252–3.

[8] 40 CFR § 1502.7.

NEPA has rightly been called "the Magna Carta of environmental law,"[9] and 160 nations have adopted similar frameworks for environmental analysis of government-backed projects since its inception. Other greener countries such as Germany, however, conduct their environmental reviews in months, not years.

What happened in America is that NEPA diverged from its original goal of public transparency to being an implied mandate for perfect projects. But there is no such thing as a perfect project. Every infrastructure project has an environmental cost—a desalination plant has a briny byproduct, a new power line or wind farm mars natural views, a new highway exit or intermodal facility will disrupt a neighborhood. Wringing our hands for years over these effects does not make these effects disappear; it just postpones the benefits of the projects while making them more expensive.

NEPA provided no private right of action. But activist courts in the 1970s implied a right of action, and lawsuits over environmental review statements became surrogates for questioning the wisdom and design of projects.

In effect, NEPA litigation transferred power from democratically-elected officials to project opponents and courts. For example, the environmentally-beneficial Cape Wind offshore wind farm project has faced numerous NIMBY lawsuits since its NEPA process began in 2001 as wealthy beachfront property owners use lawsuits to try to kill the project and protect their ocean views.

Lawsuits over environmental disclosures triggered a downward spiral of ever-denser detail—a process of no pebble left unturned. Former EPA general counsel E. Donald Elliott estimates that 90 percent of detail in Federal impact statements is there not because it's actually useful to the public or decision makers, but because it might help in the inevitable litigation—a form of environmental "defensive medicine."

At this point, environmental review has taken a life of its own, often unrelated to any meaningful public purpose. The environmental impact statement for the new Mario Cuomo Bridge (replacing the aging Tappan Zee Bridge over the Hudson River) spent over 300 pages *describing the methodology used in the rest of the statement*. It also included detailed traffic studies despite the fact that the new bridge would not meaningfully alter traffic patterns relative to the old bridge.[10]

Fear of litigation skews decision making toward mollifying the squeaky wheel. For instance, labor unions sometimes "greenmail" projects, burying them in environmental lawsuits until project proponents agree to labor demands. Striving for consensus means that delays can go on for years, often decades. A plan to plug a quarter-mile gap in a Missouri levee has been studied seven times since it was originally proposed, with no resolution in site.[11]

At this point, environmental review is often a weapon for opponents to demand changes or other concessions that undermine the common good. The public harm includes dramatically higher costs and delayed environmental benefits. The uncertainty over timing keeps many projects on the drawing board, and has been a kind of poison pill deterring private capital from committing to infrastructure investment.

FIXING NEPA BY RETURNING TO ITS ORIGINAL PURPOSE

The solution is to return to the original purpose of NEPA—to provide a short and plain statement of material impacts of projects. Congress can achieve this by enacting provisions that allocate authority to designated officials, and restating a few basic principles that will serve as a course correction to officials and courts. Specifically, Congress could enact a statute along the lines of what I attach here providing that:

1. Permitting processes should take no longer than 2 years, and authority should be given to designated officials and courts to allow them to enforce that schedule.
2. The Chair of CEQ should have the authority, consistent with the mandate of NEPA, to decide all issues relating to the scope and adequacy of environmental review. For the Bayonne Bridge project, for example, the review could have consisted of 50 pages on construction impacts, not 20,000 pages. The

[9] See, e.g., Daniel R. Mandelker, "The National Environmental Policy Act: A Review of Its Experience and Problems," *Washington University Journal of Law & Policy* 32 (2010), p. 293.

[10] See Department of Transportation, Federal Highway Administration, "Tappan Zee Hudson River Crossing Project Final Environmental Impact Statement," July 2012, and Philip Mark Plotch, "Politics Across the Hudson: The Tappan Zee Megaproject" (Rutgers University Press, 2015).

[11] Barry Meier, "Trump Wants More Big Infrastructure Projects. The Obstacles Can Be Big, Too." *New York Times*, November 18, 2017.

CEQ Chair will not have to decide most issues—just the availability of a common-sense decision will give backbone to officials down the line to resist absurd detail.

3. Courts should only have authority to review EISs for mis-statements or omissions which have a material environmental impact, and must do so within an accelerated litigation timetable.
4. The Chair of CEQ should be authorized to accelerate permitting where projects have a net positive environmental impact or where sponsors solicit meaningful public participation before the project is fully developed. Public input generally improves projects, but is needed in the planning process, not after the project design is set in stone.
5. For projects of interstate significance, state and local reviews and permits should be pre-empted if they delay approval beyond the Federal timetable. This is comparable to FERC provisions for gas pipelines.
6. Finally, an official designated by the President should have authority to resolve disagreements among Federal agencies.

CONCLUSION

Rebuilding America's decrepit infrastructure is a goal shared by most Americans. Streamlining permitting is good government, not bad government. Raising money to modernize infrastructure is a good investment, not government waste. This could be the impetus for bipartisan agreement in Congress. If Democrats agree to cut red tape and modernize NEPA, Republicans agree to unlock funding sources.

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ATTACHMENT

Accelerate Infrastructure Permitting
March 2017

Permitting for infrastructure projects can take a decade or more. Multiple agencies oversee the process, with no clear lines of authority. Once permits are granted, lawsuits can last years more. These delays are costly and, often, environmentally destructive.

To eliminate unnecessary delays, we must give officials authority to enforce deadlines and resolve lawsuits in expedited proceedings. To accomplish these goals, we recommend amending the FAST Act with the following provisions:

1. Except in unusual circumstances, decisions to approve infrastructure projects are made in *less than two years*.
2. The Chairman of the Council on Environmental Quality (CEQ) has authority to resolve all disputes regarding the scope and adequacy of environmental review pursuant to NEPA.
3. CEQ has the authority to grant a *fast track one-year review* for those projects that were developed with significant consultation with stakeholders and that demonstrate net environmental benefits.
4. The Director of the Office of Management and Budget has authority to resolve inter-agency disputes.
5. If state and local permits are delayed past issuance of Federal permits, the Chief Permitting Officer is authorized to grant final permits for projects of interstate or national significance.
6. Judicial review is limited to the question of whether the initial review failed to disclose material impacts and practical alternatives.

These changes will substantially improve review timetables and reduce construction costs while maintaining strong environmental protections for federal infrastructure projects. Here is the text of the bill to accomplish these amendments, which we call the Get America Building Act of 2017.

FAST Act (PL 114-94) as Amended by the Get America Building Act of 2017

1. Approval in Less Than 2 Years (§41002)

(aa) IN GENERAL.—The final completion dates in any performance schedule for the completion of an environmental review or authorization under clause (i) shall not exceed **2 years, unless there is a determination under Section 41003(c)(2)(B) that the project presents unusual and extraordinary circumstances**. ~~the average time to complete an environmental review or authorization for a project within that category~~.

~~(bb) CALCULATION OF AVERAGE TIME.—The average time referred to in item (aa) shall be calculated on the basis of data from the preceding 2 calendar years and shall run from the period beginning on the date on which the Executive Director must make a specific entry for the project on the Dashboard under section 41003(b)(2) (except that, for projects initiated before that duty takes effect, the period beginning on the date of filing of a completed application), and ending on the date of the issuance of a record of decision or other final agency action on the review or authorization.~~

2. The Chairman of the Council on Environmental Quality Resolves Disputes Regarding the Scope and Adequacy of Environmental Review (§41003)

(ii) DISPUTES.—~~If a dispute remains unresolved 30 days after the date on which the dispute was submitted to the Executive Director, the Director of the Office of Management and Budget, in consultation with the Chairman of the Council on Environmental Quality, shall facilitate a resolution of the dispute and direct the agencies party to the dispute to resolve the dispute by the end of the 60-day period beginning on the date of submission of the dispute to the Executive Director.~~ **The Chairman of the Council on Environmental Quality may resolve all disputes regarding environmental review pursuant to NEPA, including scope, adequacy, timetable, and incorporation of prior environmental review statements.**

(iii) FINAL RESOLUTION.—Any action taken by the ~~Director of the Office of Management and Budget~~ **Chairman of the Council on Environmental Quality** in the resolution of a dispute under clause (ii) shall: (I) be final and conclusive; and (II) not be subject to judicial review.

3. Unusual and Extraordinary Circumstances and Fast Track Review (§41003)

(B) FACTORS FOR CONSIDERATION.— (i) In establishing the permitting timetable under sub-paragraph (A), the facilitating or lead agency shall follow the performance schedules established under section 41002(c)(1)(C), but may vary the timetable **if a determination is made that the project presents unusual and extraordinary circumstances** based on relevant factors, including—

~~(i)~~ (I) the size and complexity of the covered project;
~~(ii)~~ (II) the resources available to each participating agency;
~~(iii)~~ (III) the regional or national economic significance of the project;
~~(iv)~~ (IV) the sensitivity of the natural or historic resources that may be affected by the project;
~~(v)~~ (V) the financing plan for the project; and
~~(vi)~~ (VI) the extent to which similar projects in geographic proximity to the project were recently subject to environmental review or similar procedures under State law.

(ii) If the Chairman of the Council on Environmental Quality determines that a project demonstrates significant net environmental benefits and was developed with significant consultation with affected stakeholders, the timetable may be set at one year or less.

4. The Director of the Office of Management and Budget Resolves Inter-Agency Disputes (§41005

(e) Issue Identification and Resolution.—

(4) DISPUTE RESOLUTION —

(i) IN GENERAL. —The Executive Director, in consultation with appropriate agency CERPOs and the project sponsor, shall, as necessary, mediate any inter-agency disputes regarding a project.

(ii) DISPUTES.—If a dispute remains unresolved 30 days after the date on which the dispute was submitted to the Executive Director, the Director of the Office of Management and Budget, in consultation with the Chairman of the Council on Environmental Quality, shall resolve the dispute.

(iii) FINAL RESOLUTION.—Any action taken by the Director of the Office of Management Budget in the resolution of a dispute under clause (ii) shall: (I) be final and conclusive; and (II) not be subject to judicial review.

5. Coordination with State and Local Governments (§41003(c)(3))

(E) For interstate projects, in the event that the coordination specified in (B) does not achieve a final determination on review and permitting under any applicable state, local, or tribal law by the respective state, local, or tribal agency by the time of issuance of a final Federal permit, the lead agency CERPO, in consultation with the Chairman of the Council on Environmental Quality and the Director of the Office of Management and Budget, shall be authorized to make a determination regarding any outstanding environmental review, authorizations, and permits.

6. Judicial Review (§41007)

(1) IN GENERAL.—Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of any authorization issued by a Federal agency for a covered project shall be barred unless—

(A) the action is filed not later than 60 days after the date of publication in the Federal Register of the final record of decision or approval or denial of a permit, unless a shorter time is specified in the Federal law under which judicial review is allowed; and

(B) in the case of an action pertaining to an environmental review conducted under NEPA—

(i) the action is filed by a party that submitted a comment during the environmental review; ~~and~~

(ii) any commenter filed a sufficiently detailed comment so as to put the lead agency on notice of the issue on which the party seeks judicial review, or the lead agency did not provide a reasonable opportunity for such a comment on that issue; **and**

(iii) the action is limited to claims that the lead agency failed to consider or disclose material impacts of the proposed project or practical alternatives to the project.

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Common Good (www.CommonGood.org) is a nonpartisan reform coalition that proposes simplified regulatory and legal structures to empower officials to use common sense and meet deadlines. Common Good's report "Two Years, Not Ten Years: Redesigning Infrastructure Approvals" details the costs of delaying infrastructure

permits. In August 2016, Common Good launched "Who's in Charge Around Here?," a national bipartisan campaign to build support for simplifying government. The Co-Chairs of the campaign are Bill Bradley and Philip Howard, with support from, among others, Mitch Daniels, Tom Kean, and Al Simpson. Learn more at www.SimplifyGov.org.

This proposed bill was developed with the assistance of Covington & Burling LLP, pro bono counsel to Common Good's infrastructure red tape project.

QUESTIONS SUBMITTED FOR THE RECORD TO MR. PHILIP HOWARD, CHAIRMAN, COMMON GOOD

Questions Submitted by Rep. Costa

Topic 1: NEPA Delegation Authority

Question 1. Some states have enacted state level public disclosure laws similar to NEPA whose standards meet or even exceed NEPA's requirements.

For instance, in 1970 my home state enacted the California Environmental Quality Act, which ***actually mandates*** *that environmental mitigation be performed if an action has an impact on the environment. Unfortunately, in many instances, analysis under CEQA does not meet the statutory requirements of NEPA, leading to duplicative work and delayed project delivery.*

I've heard that this is especially problematic for projects where CEQA analysis and review has already been completed and as a result of a Federal agency interaction either through a required permit or a Federal funding agreement, an environmental review process under NEPA is required. In fact, I've heard of some instances where local agencies have rejected Federal funding because the delay to complete NEPA, despite already having completed CEQA, would result in a greater project cost.

This is simply unacceptable.

As you've mentioned, Congress has taken some steps to streamline these analyses, specifically for highway projects. This could prove beneficial to streamline projects in many congressional districts and specifically for those projects in California, like the Atwater-Merced Expressway that's needed to redevelop Castle Air Field or the California High-Speed Rail project.

1a. Do you think that there are benefits to allowing projects in states that have equally stringent environmental disclosure laws as NEPA to move forward under a single environmental analysis?

1b. Is it reasonable for Congress to explore additional ways in which NEPA delegation authority can be extended to the states?

1c. In your opinion, what sorts of agency actions lend themselves to enhanced delegation authority? For instance, Reclamation projects, FERC projects, or projects with Federal grant funds disseminated?

1d. If it is beneficial, is further action by Congress necessary to move forward to expand delegation authority?

Answer.

1a. Yes. There are already some procedures in place to allow for state-level review documents to be adopted in whole or in part during NEPA review, and to the extent practicable this practice should be expanded. It makes no sense to duplicate review between state and Federal actors.

1b. Yes, particularly for projects that mainly impact state and local rather than regional interests. That's how Germany divides review authority to ensure minimal duplication of effort.

1c. Projects with primarily a state or local effect should enjoy this type of delegation; those with broader effects should have review run by the Federal Government. However, even in situations in which the state is running review under delegated Federal authority, the Federal Government still has a legitimate oversight interest, to ensure that local procedures do not impose undue costs or delays.

1d. Yes, and Congress should explicitly authorize CEQ to delegate this authority where appropriate. As noted above, delegation procedures have already been incorporated in previous transportation bills, but should be expanded to encompass all infrastructure sectors and should be explicitly housed in CEQ.

Topic 2: FAST Act Streamlining Provision Implementation

Question 2. I have heard concerns from many infrastructure project stakeholders that too much time is required to complete all of the environmental reviews under NEPA (i.e., environmental assessments (EA) and environmental impact statements (EIS). The U.S. Department of Energy reported that the average completion time for an EIS in 2015 was 4.1 years, and the average cost was $4.2 million. A 2014 GAO report found that the average completion time for an EIS in 2012 was 4.6 years from the notice of intent to prepare an EIS through the issuance of the record of decision. I have heard that these figures may underestimate both time and costs. Available data from Federal agencies generally do not account for costs beyond third-party contractor fees, including a project applicant's data-development costs. The time estimates do not include the work that precedes the decision to prepare an EIS or the cost of defending them in court. I have heard other comments that expediting reviews could lead to potential litigation which could account for longer project delays beyond those that would have occurred using a more slow and steadfast approach under NEPA.

Specific to infrastructure, there are NEPA streamlining reforms in the FAST Act already. With the FAST Act, Congress and the Obama administration sought to improve on past attempts to streamline the NEPA process by coordinating and expediting NEPA review across a broader range of agencies and industry sectors. The Act establishes a Federal Permitting Improvement Council (the Council), composed of officials from CEQ, OMB, and 13 other Federal agencies, to coordinate this streamlining effort. The range of projects covered by the FAST Act includes: "renewable or conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, [and] manufacturing." In addition, the Council has the authority to designate projects in other industry sectors by majority vote.

To trigger the FAST Act, a project must be subject to NEPA; be likely to cost more than $200 million; and either: (1) not qualify for abbreviated environmental-review processes under any applicable law, or (2) because of its size and complexity, would likely benefit from enhanced coordination. Important aspects of Title XLI of the FAST Act include:

- *Coordinated Project Plans. The plans will identify the lead agency and cooperating agencies and set out a permitting timeline. The lead agency is to develop the permitting timetable in consultation with the cooperating agencies and the applicant.*
- *Permitting Dashboard. An expanded online database will track the status of Federal NEPA reviews for each covered project. The lead agency must post information, including the permitting timetable, status of compliance for each participating agency, and any memoranda of understanding between the agencies.*

In summary, the FAST Act already contains NEPA streamlining language for infrastructure projects. There seems to be little data on whether or not these provisions have been implemented or whether they are working to accelerate project delivery in a way that is consistent with the public disclosure requirements and alternatives analysis required by NEPA.

2a. Is there information available about whether the existing streamlining provisions have been fully implemented and what effect, if any, they have had on project delivery timelines?

2b. If this information were available, would it assist Congress in making any policy changes necessary to implement NEPA more effectively?

2c. If this information is not available, how would you recommend this information be acquired and presented to Congress?

Answer.

2a. We are in the process of determining this now.

2b. Yes, however, there are a number of innovations that the FAST Act did not address. For instance, there must be clear lines of authority to set timetables and resolve disputes.

2c. Relevant CEQ and DOT staff would be best equipped to begin answering this question, and we plan on meeting with them soon to discuss this issue.

Topic 3: Local Development Experience

Question 3. Recently approved by all permitting agencies last June/July was a major "new town" project in my district that is designed for roughly 5,000 new residences, 3 million square feet of commercial and light industrial development, two new public schools, parks, trails, environmentally sensitive conserved lands, and various other related features. That project is now under construction.

The U.S. Army Corps of Engineers and the U.S. Bureau of Reclamation were key permitting agencies for this project, and NEPA compliance by these agencies played a major role. Fortunately for this project, both the Corps and Reclamation ended up working well together to resolve a wide variety of issues, including some tricky NEPA compliance issues. Other projects, I am told, have not fared so well.

However, with the benefit of 20/20 hindsight on this project, there are at least two areas where I am told we could be doing better:

- ***Need for a single lead agency for NEPA compliance.*** *Many projects, including the project in my district, require permits from two or more Federal agencies. Although the NEPA regulations contemplate a lead Federal agency for purposes of NEPA compliance, it is too often the case that Federal agencies work inefficiently with each other on NEPA compliance issues, leading to time-consuming delays and multiple meetings that can sometimes span weeks and even months.*

  I believe that the NEPA regulations could be strengthened in that regard with the intent of squarely assigning the responsibility of NEPA compliance in one Federal agency for all the Federal agencies that might be involved on a particular project.

  In my home state of California, our NEPA equivalent—CEQA—is an excellent model for how this notion of a single "lead" Federal agency can work well.

- ***Scope of analysis.*** *Closely related to the idea of a "single lead agency" for each project is the importance of defining a suitably encompassing "scope of analysis" for purposes of NEPA review. This is particularly important for purposes of Section 7 consultation under the Endangered Species Act.*

  If the "lead" Federal permitting agency defines its NEPA "scope of analysis" to only include the area of its particular permitting jurisdiction, then the other Federal permitting agencies for that same project may have no choice but to prepare their own separate NEPA analysis if their permitting jurisdiction does not coincide with that of the "lead" agency.

  For the project in my district, resolution of this particular issue took months longer than it needed to, and further clarity is needed for future projects. At base, there should be a single "lead" Federal agency with a project-specific "scope of analysis" that encompasses all Federal permitting issues, not just those of the "lead" agency.

3a. I have heard from constituents that the 6-year statute of limitations applicable to NEPA claims is too long. It creates too much uncertainty and can be a sticking point with the project finance community. Six years is too long to know whether an approved project is going to become the subject of litigation alleging NEPA non-compliance.

The comparable statute of limitations under CEQA is 30 days.

What are your views on the idea of new legislation to shorten the NEPA statute of limitations?

3b. Under NEPA, "alternatives" to the proposed project that must be assessed in an environmental impact statement (EIS) are, according to some Federal agencies and some courts, supposed to be reviewed at the same level of detail as the proposed project. This project-level review of the alternatives can be quite burdensome, difficult or impossible to undertake (e.g., how can a bio analysis be undertaken at an alternative site that is owned by someone else?), and ultimately, of little value to the ultimate analysis.

What are your views on the possibility or need for new NEPA regulations to better and more efficiently focus the "alternatives analysis" component of NEPA review?

3c. Under NEPA, each Federal agency is authorized to develop its own list of "categorical exclusions" that is intended to be a list of activities that are determined to be so relatively minor in their potential for environmental impacts as to excuse the need for further NEPA analysis. It seems like a good concept, but I wonder if there are improvements that could be made. In the interests of streamlining NEPA review across all Federal agencies, there may be merit in issuing new regulations that list categorical exclusions that are common to all Federal agencies (e.g., "minor

construction"), thereby reducing the possibility for inconsistent treatment of the same issue by different agencies. These common categorical exclusions could be in addition to the agency-specific "CatEx's" that are already in existence.

What are your views on the possibility of streamlining the CatEx process by issuing new regulations that create categorical exclusions that are common to all Federal agencies, perhaps in addition to the agency-specific CatEx's that already exist?

Answer.

3a. The FAST Act shortened the statute of limitations (SOL) for certain transportation projects, but this should be applied to all NEPA-related challenges. It is absurd that a disclosure statute should have a 6-year SOL. The SOL should be 30–60 days, and court review should be fast-tracked, as in preliminary injunction decisions.

3b. Here and elsewhere, a rule of reason should be applied to ensure that review remains relevant to the project at hand. Some projects legitimately need broad, detailed alternatives analysis; for others, it's wasteful overkill. There's no hard and fast rule; CEQ should be empowered to make scoping decisions like this for every project, on a case-by-case basis.

3c. Because of the difference in missions between the various agencies, I'm not sure that there's an obvious need for uniformity in the CatEx process/ However, CEQ should certainly be empowered to draw those guidelines if they deem it necessary.

Topic 4: Potential Guidance Updates

Question 4. Some stakeholders have indicated that new guidance from CEQ would help streamline Federal review of infrastructure projects by clarifying NEPA duties and procedures that are routinely challenged legally. This is as important for agencies and projects as for the public and the reviewing courts.

While there are some who believe that the underlying NEPA statute is largely sufficient, some stakeholders assert that NEPA guidance has not kept pace with the specific issues and arguments that are now commonplace. Existing guidance tends to be high-level and conceptual; effectively leaving it to the courts to discern what is or is not required by NEPA. I have heard that areas for special focus could include:

- ***Purpose and Need**—NEPA analysis could properly reflect the purpose of the proposal before the agency, not the preferences of policy makers or opposition groups.*
  - *—For example, the purpose of a proposed interstate natural gas pipeline is generally to transport natural gas by pipeline from one or more regions or interconnections, to specific market areas or interconnections. This purpose is more specific than simply meeting the energy needs in a geographic area. Such a general purpose could theoretically be met by providing oil, coal, solar, or hydro power, requiring demand reduction, etc. But none of these is the proposal before the agency, and none expresses the purpose of the project or reflects the jurisdiction of the reviewing agency (in this case, FERC).*
  - *—To remain pertinent and useful, would it be beneficial to ensure that the scope of the NEPA review reflect the project's purpose?*
- ***Alternatives**—The alternatives analysis could be tailored to the purpose of the proposal before the agency, otherwise it leads to excessive analysis of irrelevant, tangential, or infeasible projects that are not before the agency for action.*
  - *—In the example above, solar or hydro power may not be considered appropriate alternatives to the gas pipeline project, even if these energy sources are preferred by certain agencies or groups.*
  - *—I have heard that the breadth of alternatives being considered has increased to the point where scores of major and minor route alternatives are put under the microscope for an interstate gas pipeline project. As a result, NEPA seems to have evolved into the vehicle to select the route—which is properly the province of the Natural Gas Act—and to ensure that it has least environmental impact—which is not NEPA's charge.*
  - *—The depth of analysis seems to have also increased to the point where full mapping and resource-by-resource analysis is often expected for many alternatives, setting up impact comparisons between alternatives measured in fractions of a wetland acre, etc. Such broad and intensive analyses require months of effort and entail enormous costs that may be out of proportion*

to the purpose of the alternatives analysis. They also lead the public to expect a greater degree of control—by the public and by the agency—over project development than NEPA affords, fostering litigation and eroding public trust in the reviewing agencies.

—*Can you please speak to these concerns and whether you believe if new guidance is needed to tie alternatives, first, to the purpose and need of the proposed action of the agency and, second, to a more general level of analysis sufficient to discern whether an alternative is significantly more or less burdensome to the environment.*

Answer.

Purpose and Need: The scope of NEPA review is supposed to reflect the purpose and the effect of the project. Some projects with narrow purposes will have broad effects. Public policy choices require balancing effects and purposes, and NEPA was passed to ensure that the public and decision makers were able to make informed choices.

Alternatives: New guidance is needed to apply a rule of reason standard to the scope and timetable of environmental review. The first part of any analysis should be a judgment—by the sponsor and CEQ—about whether the time and effort spent on environmental review might be harmful to the environment. A version of the Hippocratic Oath must be applied to environmental review. "First, do no harm."

Please let me know if you or other members of the Committee have additional questions, or if you would like additional information. And thank you again for the opportunity to participate in this important discussion.

The CHAIRMAN. Thank you very much. By the rules that we have on our Committee, questions from the Committee members are limited to 5 minutes.

I am also going to have to leave early on in this hearing, so I am going to apologize ahead of time. That is why I came early, so I can leave early. But I apologize. I am not trying to walk out because I don't think the significance of what you are saying is here. It is extremely significant. It is just I am being rude and I am going to walk out. Because of that, let me start with some questions by myself, if I could.

Mr. Howard, let me start with you. One of the things you talked about in your testimony, is simply the fact that the goals of NEPA, as it started, have changed. And some of that has changed simply because of litigation. Is the goal of NEPA that was passed a half-century ago the same goal that we see today within the agencies who are administering it?

Mr. HOWARD. Excuse me?

The CHAIRMAN. The goals of NEPA, have they changed over the last 50 years?

Mr. HOWARD. I don't think the goals have changed. I think the goal of public review remains as valid as it was 50 years ago, perhaps even more valid.

We would encourage public input in advance, instead of after, but what has happened is the practice has changed, so that the goals have been subverted by a process that takes years and ends up interfering with important projects, instead of promoting better projects.

The CHAIRMAN. Has litigation played a portion of that change in the process of administering this law?

Mr. HOWARD. Undoubtedly. The fear of litigation, according to former EPA General Counsel E. Donald Elliott, probably accounts

for 90 percent of the extra detail. People are scared. It is a form of defensive medicine.

People are scared that someone might sue if you don't talk about the traffic study for the Tappan Zee Bridge. It might change 1 percent, and they will sue that you did not do that study. So, then you get months doing a study that makes no sense.

The CHAIRMAN. You had an interesting statement that you made in there, saying that we are harming the environment by the way we are dragging out these things. Do you want to go through that?

How can I convince other people the way we are defending the status quo right now actually can harm the environment?

Mr. HOWARD. Well, I would encourage you to talk to leading transportation officials from the prior Democratic administration on the projects that are important for the environment and what is holding them up.

Former Deputy Secretary John Porcari, for example, is someone who has spoken eloquently about how delay is harmful to the environment. We were involved in trying to expedite the projects for the gateway tunnel going into New York. The delay in that process dramatically increased the risk that the decrepit existing 100-year-old tunnels would close down. If they close down, which they do in a way that cannot be predicted, there is a 25-mile gridlock, which causes enormous pollution, as well as disruption of the economy.

The transportation grid, the highway bottlenecks, the rail bottlenecks, the water mains that leak, all of those things are happening, and they are delayed because of the——

The CHAIRMAN. So, the reality is certainly in contrast to what the goal and the intent, as noble as it was, was.

Mr. HOWARD. Completely.

The CHAIRMAN. Mr. Willox, can I ask you a simple question? We have heard part of the process is we don't have enough staff. How could counties like yours assist the Federal agencies to move the review process efficiently?

Mr. WILLOX. Well, Mr. Chairman, as I indicated, I think it is important that counties get engaged early and often in the process. That does require a commitment on the counties.

But even when the project is being proposed, before it is right in that formal setting, if we can be engaged early, we can help provide some of the social economic data that is important, some of the understanding of the local community and environment. So, early involvement would be definitely beneficial.

The CHAIRMAN. Early in your testimony, you talked about consultation and coordination with local officials. That is happening at a haphazard level right now. Would it be helpful if we actually defined what would take place, and insist that local officials have to be part of this process?

Mr. WILLOX. Mr. Chairman, I do think that would be helpful. Coordination is already part of the law, but it is implemented differently by different field offices and different directors. It does require a commitment on the local government officials, but I think the outcome would be better if that was more uniformly instigated at the local level.

The CHAIRMAN. I would hope we could actually codify that in some way, so agencies know what they are and are not supposed to do.

Mr. Bridges, I just have one simple question for you. You mentioned some of the people who turn up at hearings, and some of the testimony becomes more circus than it is reality. Are you telling me that sometimes our hearing process and our comment periods, they are really silly and useless?

Mr. BRIDGES. It seems to be. They can be pretty interesting at times. And they are given a lot of latitude to just come in, and I was probably understating some of the stuff I have seen.

For people that are protesting the projects, it is really emotion-based, and not a lot of fact-based. And there isn't any fact-checking with anything for the most part. They are just allowed to do their thing. And when I go there to do what I do, and our other people go to support the project, it is kind of intimidating. So, it is really hard for us to, even though we do——

The CHAIRMAN. All right, thank you. I am over my time. I apologize. It was my fault for asking the question so close to the end of it.

I warned you guys about doing that, so don't do what I just did ever, ever.

[Laughter.]

The CHAIRMAN. I also want to have unanimous consent to place in the record an Op-Ed by Cass Sunstein, who actually commends the Trump administration for some of their Executive Orders in an attempt to try to streamline this process that we are talking about here.

Without objection, that will be so ordered.

Mr. Grijalva, you are up.

Mr. GRIJALVA. I was going to defer to Ms. Tsongas.

The CHAIRMAN. Ms. Tsongas, you are up, then.

Ms. TSONGAS. Thank you, Mr. Chairman, and thank you to our witnesses for being here today.

As you all know, the National Environmental Policy Act is one of our Nation's bedrock environmental laws, and I was grateful to hear our Chairman say that, as well. Crafted on a bipartisan basis by Congress and signed into law by President Nixon, NEPA has informed Federal decision making and increased transparency for over 40 years.

To put it simply, NEPA makes sure that we "look before we leap," and are using taxpayer dollars wisely. NEPA is also one of the primary ways through which the public is able to participate in the Federal decision-making process, fulfilling the fundamental right of American citizens to have a voice regarding a proposed Federal project.

We saw the benefits of this public input process in my own district several years ago during a major Federal highway project. Thanks to the NEPA process, the project improved nearby wetlands and led to the construction of noise barriers to mitigate impacts on neighbors. The public comments that were submitted by my constituents demonstrate the immense popularity and benefits of the public review process, which would not have been possible without NEPA.

For example, a local trucking company submitted comments saying, "All the neighborhood residents, the commercial businesses, homeowners, and general public have been invited to each meeting and hearing. All comments are welcomed. Everyone in attendance feels that they have had a say in the development of this project."

Another resident wrote, "The project team has been excellent to work with. They have done an outstanding job of listening to the residents of Mathuen and, whenever possible, take local input."

Even residents who could have been negatively impacted came around to support the project, thanks to the NEPA public outreach process. "Although our land will be impacted, and the state will be taking some of it, we definitely support the project. We believe this project is necessary for the improved safety of everyone at the intersection, and for the economic development of the community. The engineers and architects for this project have done an excellent job listening to the community and modifying the plans whenever practical."

All these examples from my district show that NEPA ensures that all citizens have a right to participate in the decision-making process, and it ultimately improves the likelihood of long-term success and public support. And I have seen the benefit of this highway project, as it has gone forward in the ways in which the community has rallied around it.

Ms. Bear, as has been referenced, the vast majority of NEPA projects do not require a significant environmental impact statement. Ninety-five percent of all NEPA reviews are completed in just a few days. Just 1 percent of projects require a more comprehensive environmental impact statement. Can you describe your experience with those 1 percent of projects that do require a longer environmental review? In these cases, why is it so important that we take a hard look at a project's potential impacts?

Ms. BEAR. Well, the easy answer is because those are the proposed actions that are going to have significant environmental impacts, as the threshold for doing an environmental impact statement. And those impacts may last for a very long time.

In terms of what I have seen in the context of EIS preparation, yes, I have seen some delays that are unfortunate, and some problems that have been alluded to here.

I have also seen some very positive developments. You mentioned the enthusiasm of private citizens, which I have found was the most gratifying part of my work. And one of the most exciting developments in NEPA over the past decade, decade-and-a-half, I think, is citizens who have come together in various coalitions, not just one group, but maybe ranchers, counties, small businesses, public interest groups, a variety of people, tribes, and developed a comprehensive alternative and presented it to the agency, and had that reviewed in the EIS, once in a while chosen, either in whole or in part.

To me, that is really democracy in action, where they are really contributing the alternatives to their agencies, to their government. So, that has been very gratifying, to see that development.

Ms. TSONGAS. I thank you for that. One of the issues we have had—I want to see how much time, oh, I don't have enough time to go through this. Thank you for your testimony.

Mr. GOHMERT [presiding]. Thank you. At this time, the Chair recognizes the gentleman from Colorado, Mr. Lamborn, for 5 minutes.

Mr. LAMBORN. I want to thank the Chairman, first of all, for having this hearing on such an important issue. NEPA is a policy that directly impacts an entire scope of this Committee, and that is why our Committee has primary jurisdiction over it.

It should be obvious to any observer that, despite the good intentions behind the original passage of NEPA, it has now become, in many cases, nothing more than a weapon to stop or delay any kind of development, even development that is vital to creating jobs and giving us a higher standard of living. And when you look around the world and you see countries that have more prosperity, they have a better environment, they can afford to clean up the environment. I believe, if you want a clean environment, you should allow development to go forward.

Mr. Howard and Mr. Bridges, one thing that we try to do in our legislation here, especially as we look forward to possible infrastructure legislation going forward, is to allow for lead agencies to be designated for NEPA review and requiring agencies to sit down and coordinate at the very beginning. Would either of those two things erode the integrity of NEPA in any way?

Mr. Howard, or Mr. Bridges?

Mr. HOWARD. No, no. Coordination among agencies is vital. The problem has come up when the agencies have different agendas, which they do—Fish and Wildlife has a different agenda than the Corps of Engineers—and there is no effective means of resolving the disagreement. Those disagreements can last months or years. That is the problem. There are no clear lines of authority to resolve what are natural and honest differences in view.

Mr. LAMBORN. So, articulating and defining those areas of agreement ahead of time, either by Congress or by the agencies, would be a positive development?

Mr. HOWARD. Well, I think it is impossible to resolve a disagreement ahead of time. I think you need to create clear lines of authority.

Mr. LAMBORN. Clear lines of authority, thank you.

Mr. HOWARD. To resolve disagreements.

Mr. LAMBORN. Mr. Bridges, in your testimony you mention a project that has been tangled up in a seemingly never-ending NEPA review, the Millennium Bulk Terminals project in Washington State. Why was there such a Federal-State disconnect, first of all?

Mr. BRIDGES. I don't know why there is such a disconnect there. I have been more involved with the state process. It has been going on for almost 6 years.

Just from an outsider looking at it, it seems to be, no matter which agency you are talking about, everybody is waiting for somebody else to be the first one to say yes. And that is kind of what I feel like, and you will see it in my written testimony, the people that oppose these projects have figured out the way to stall things and create a timeline that most businesses are not going to be able to survive and outlast.

It is so open-ended to try to put a timeline on it, that is really what we are looking for. We are not looking for de-regulation or anything, just some type of predictable timeline for our communities and for the businesses that are trying to invest in our community.

Mr. LAMBORN. Thank you. Would having designated a lead agency have expedited the project?

Mr. BRIDGES. I would think so, yes. I think there would be less finger-pointing about whose turn it is to make a decision.

Mr. LAMBORN. Last, I would like to say that the original intention of NEPA was to allow stakeholders to have a voice in the project. But I think sometimes that gets hijacked.

[Slide.]

Mr. LAMBORN. Up on the TV screen there are some photos that are going to be shown. And this has to do with a public scoping meeting in Bangor, Maine for the then-proposed North Woods National Monument. But these were people that were bussed in, a 2-hour bus ride from some distance away. They were not local business owners or even local residents, but they were calling themselves local opposition.

Mr. Bridges, have you ever seen cases of people being bussed in to provide so-called public comment?

Mr. BRIDGES. Yes, that is exactly what we have been experiencing in my area with all the projects. We have three large projects, and they have a really good coalition, and they are just kind of moving around. And we see the same people, whether it is in Vancouver, Washington, Longview, Washington, and most of them are coming from the Puget Sound area, the Seattle area, or from Portland.

We do have a few local opposition folks, but you can usually count those on one or two hands, the regulars that show up. I think it does discourage the community from coming because it has gotten to be where either you have to put a blue shirt on or a red shirt on, and that is not what this process is supposed to be about.

But they made it a choice between jobs and environment, and I don't think that is really what we are looking at.

Mr. LAMBORN. Thank you very much.

Mr. GOHMERT. Thank you. At this time the Chair recognizes Mr. Lowenthal from California for 5 minutes.

Dr. LOWENTHAL. Thank you, Mr. Chair. One of the greatest things about NEPA, in my opinion, is that it gives ordinary Americans a tool to weigh in on projects that can affect them, environmentally, economically, and culturally.

This is especially true for those communities that are highly impacted by projects. In my area of California, especially true for the low-income, which are frequently minority communities whose neighborhoods are the most affected by infrastructure projects.

I think of all the areas that this Committee has under its jurisdiction, NEPA is the most important for my district.

The district I represent includes what locals used to say all the time and now say less and less is the diesel death zone, which are those neighborhoods, primarily low-income and minority neighborhoods, that border the busiest port complex in the United States. These communities have above-average rates of asthma attacks,

cancers, especially pulmonary cancers, and other health-related issues that are associated with air pollution.

But on the other hand, the economic activity of the Ports of Long Beach and Los Angeles generate a great deal of positive benefit for our community. There are thousands of jobs because the ports are there.

At the same time, there are serious health concerns, especially in the neighborhoods, as I pointed out, around the ports. For example, schools have to have filters, kids cannot go outside, unfortunately, on too many days when the air quality is bad during their recess.

But even though the ports have made significant improvements in the environmental conditions in or around them, and I must compliment them, there is still much more that needs to be done. And the decisions that we are going to be making in this port complex and throughout the Nation on infrastructure matter a great deal to those communities that are affected.

NEPA is the Federal tool in these communities in my district that they have for weighing in on any major project as it is being evaluated and finalized. Unfortunately, many of the reforms that we are discussing today would cut out these very important voices of my constituents, the ones that need NEPA the most, potentially.

So, I have a question, first, for Ms. Bear. Even the most economically beneficial projects, they can hurt the environment of nearby communities in the absence of clear public review, both public and Federal agencies. NEPA exists so we don't have to make those kinds of trade-offs, and instead can move toward sustainable economic development.

During the NEPA review, when we have projects, such as one of the recent projects in the Port of Los Angeles, the Everport Project, where in the review, the EPA expressed concerns about the project's air quality and human health impacts, particularly on the low-income communities around it. In the final EIS, the Army Corps strengthened its air quality mitigation measures to specify that all the dredging equipment be electric. That really reduced the impact of the project's construction emissions, while still allowing the project to go forward. Is this what you mean by win-win situations, where we allow and have sustainable projects go forward, but we also protect communities?

Ms. BEAR. Yes, very much so. And I would just add, I alluded earlier that health, along with social and economic impacts, are one of the kinds of impacts that I think need to be given more attention in the NEPA process. I served on a National Academy panel looking at the role of public health issues in the NEPA process. There is a lot of work there to be done, and I am glad to hear that in the Los Angeles Port situation that worked, and worked well.

Dr. LOWENTHAL. And finally, finalizing on that, would such outcomes where we both had a sustainable development, would they be less likely if some of these proposals we are hearing today, like shortened review time frames, limits on scientific analysis, restricted public input—if they were adopted, would this negatively impact the ability to have this?

Ms. BEAR. I can't answer. OK. I thought I was out of time.

In my view, it depends on which measure we are talking about and some caveats. Let me just explain. Certainly cutting back on scientific analysis, yes. Cutting back on public involvement, yes.

In terms of the time, there has been a lot of discussion and testimony about time and size of EISs. And there is no doubt that some of the length of time and the length of EISs, which are the smallest percentage of NEPA documents, is too long. And I would like to see that cut, and that would be consistent with CEQ's perspective.

That is where I get to the point that, unfortunately, to do less in some ways, and certainly to do it faster, you need people. I think many of us went to school, heard our English teacher saying it takes longer to write a shorter document—which is true, you need to do some editing, and you also need people, staff, that understand what the right issues are, or can even oversee consultants.

I remember, just to give you an example, if I have another second.

Dr. LOWENTHAL. Real quickly, our time is limited.

Mr. GOHMERT. The time is expired.

Ms. BEAR. I am sorry. OK, thank you.

Dr. LOWENTHAL. Thank you. I yield back. Thank you, Mr. Chairman, for your forbearance.

Mr. GOHMERT. Thank you. At this time, the Chair recognizes the gentleman from California, Mr. McClintock, for 5 minutes.

Mr. MCCLINTOCK. Thank you, Mr. Chairman.

Mr. Bridges, is a cost benefit analysis done before NEPA is applied to a project? Does anybody ask how much is this going to cost and how much value can we expect it to add for the public?

Mr. BRIDGES. Yes. Usually that is done early on in the process, from my experience.

Mr. MCCLINTOCK. OK, and if the cost of the study exceeds the value that can be expected from it, do we do the study anyway?

Mr. BRIDGES. Are you talking about the cost of the EIS?

Mr. MCCLINTOCK. Yes.

Mr. BRIDGES. Yes, I don't think that any of these projects probably anticipated the cost of what the EIS would be after——

Mr. MCCLINTOCK. So, as far as the EIS is concerned, the sky is the limit?

Mr. BRIDGES. Yes.

Mr. MCCLINTOCK. To what extent do these requirements inflate the cost of projects?

For example, I have a community in my district, Foresthill. They get their water from the Sugar Pine Reservoir, a small reservoir that was built years ago with a dam with an 18-foot spillway, but no spillway gate. They didn't need the water at the time; they do now.

So, they went out and priced a spillway gate for this little community of about 5,000 people. The cost of the gate is $2 million. But then the cost of the environmental studies is expected to be over $1 million, and the environmental mitigation over $2 million. So, a $2 million project that was a heavy lift for this little community, but within reach, becomes a $5 million cost-prohibitive boondoggle. Is that typical of these projects?

Mr. BRIDGES. Yes, the scale that I am looking at from the projects that I am talking about, they are sizable projects,

$1 billion, $2 billion projects. Some of the EISs I have seen are upwards of $14 million right now for the state.

Mr. MCCLINTOCK. Often in multiples of what the actual cost of the project is.

Mr. BRIDGES. Yes.

Mr. MCCLINTOCK. With no consideration of the cost benefit to be derived.

Mr. Howard, has anyone estimated the value of projects that are never initiated because of the anticipated cost of these NEPA requirements?

Mr. HOWARD. It is very hard to quantify what is not done.

It is generally believed, in the infrastructure business, that private capital sits on the sidelines for the kinds of projects it would be appropriate for in the United States compared with, for example, Europe and the United Kingdom, because there is no certainty as to the timing of approval.

And no, they don't do a cost benefit analysis before doing an EIS. It is all or nothing. In many projects, like the one you suggested, the absence of any common-sense decision making to do what the statute says, which is to balance the public needs versus environmental needs, is one of the deficiencies.

Mr. MCCLINTOCK. Has anyone estimated the total cost to the economy of these requirements? I think taxpayers deserve, in fact, everybody deserves, accurate price signals of what benefits we get and at what cost from all of our laws, but NEPA in particular.

Mr. HOWARD. If you simply look at the infrastructure that needs to be remade, most of which does require environmental impact statements, it is not in these sort of trivial actions but the big ones, we are talking about multiple trillions of dollars over the next decade.

We did an analysis that said if there is a 6-year delay, which is not caused only by NEPA, but also caused by multiple permitting requirements, that more than doubles the cost of that. So, if you had a $4 million infrastructure build over a decade, it would end up costing, in effect, including opportunity cost, twice as much.

Mr. MCCLINTOCK. We are told, though, that just 1 percent of projects require this full-scale environmental, so what is the problem?

Mr. HOWARD. That is a very misleading number, because the categorical exclusions typically apply to very minor things, like can we put a falcon's nest over at this part of the park. You have all these sorts of daily executive decisions that fall under the categorical exclusion.

Mr. MCCLINTOCK. So, it is the 1 percent that are absolutely killing us and imposing these costs, and impeding communities meeting the needs of their citizens.

Mr. HOWARD. The 1 percent aligns with the American Society of Civil Engineers report on the infrastructure needs.

Mr. MCCLINTOCK. Mr. Willox, let me go to forest management for a moment. We used to actively manage our forests to match tree density to the ability of the land to support them. This created a revenue stream to the Treasury for forest management and local governments, not to mention very healthy commerce.

NEPA has made forest management virtually impossible. We are told that NEPA is one of our landmark environmental laws, yet we are now, because of the requirements, carrying four times the tree density that the land can support in the Sierra Nevada, and the result is these trees are badly stressed, and they lose their natural resistance to drought, disease, pestilence, and fires.

I think we are entitled to ask, after 45 years of experience with this law, with the promise it was going to improve our forest environment, how is the forest environment doing?

Mr. WILLOX. It is clear that the diseased and insect-infested trees are a fire danger. And if you have ever read about a forest fire in the West, the smoke and carbon released in that fire is way more detrimental than reasonable logging and harvesting of that lumber would be.

Mr. GOHMERT. Thank you. The gentleman's time has expired. At this time the Chair recognizes the gentleman from Florida, Mr. Soto, for 5 minutes.

Mr. SOTO. Thank you, Mr. Chairman. I am excited that we are talking about infrastructure. I worry, with the proposed tax reform that will add $2.3 trillion to the debt, we may not have any money for it. But let's assume for a second that we have an ability to do that.

First, Ms. Bear, what do you think an appropriate staff number would be for NEPA review?

Ms. BEAR. I am sorry——

Mr. SOTO. You had mentioned that there is not enough staff to review these NEPA claims.

Ms. BEAR. Right.

Mr. SOTO. What would be an appropriate number to make sure we could speed these things up within appropriate reason?

Ms. BEAR. For the entire Federal executive branch?

Mr. SOTO. Let's just focus on this one area, shall we?

Ms. BEAR. Infrastructure? OK, but that infrastructure involves a number of agencies, of course, the Department of Transportation, the Army Corps of Engineers, and a lot of other agencies. I would really like to get back to you on the record in terms of a number for infrastructure.

Mr. SOTO. I think it is important, if you think there is a certain appropriate number, we would love to hear about it.

Ms. BEAR. Sure, OK.

Mr. SOTO. Let me go to the next question then. What would happen if NEPA was eliminated, Ms. Bear? What would be the consequences?

Ms. BEAR. I think, first of all, a lot of people would be very surprised. A lot of private citizens in the United States would be surprised much more than they realize now by things that were happening that they didn't know were going to happen in advance. And I say that because I think today many people take for granted, particularly people that live near public lands and use them, or in urban areas where there is infrastructure, that if something is going to happen of some import to them, they will know about it in advance. And if you take NEPA away, most of the time that is not necessarily true.

There are exceptions to that, there are other laws that require some sort of public notice or involvement. But NEPA is, by far, the broadest and most systematic of those laws, so that is issue Number one.

Issue Number two, I think, while the agencies would probably continue to try to mitigate some of the most important adverse impacts, I think you would lose the alternatives analysis, which is really the heart of the NEPA process. It is what forces people to think outside of their own little box, into thinking about better ways to accomplish what we are trying to achieve in a particular context.

Mr. SOTO. So, it is more comprehensive and provides alternatives?

Ms. BEAR. Yes.

Mr. SOTO. Thank you.

Mr. Bridges, thank you for coming. We don't want to have NEPA get in the way of opportunities, obviously, particularly for our building trades and our working families. What do you think the time limit should be for a review? Because you mentioned that some of them are going too long.

Mr. BRIDGES. Yes. We talk about 2 years as a fair timeline. I know there are so many different processes and different agencies that are in there, but that seems like a fair timeline, and have some predictability there.

Mr. SOTO. OK. Mr. Howard, you had mentioned that there are some de minimis things that are required. You mentioned the Bayonne Bridge and a traffic study. What do you think should be the mechanism, if we are talking about something that is de minimis, in your opinion?

Then you also mentioned balance with cost benefit analysis. What are you advising us should be the rule on these sorts of potentially de minimis issues and striking this balance?

Mr. HOWARD. I think the way the process should work is that there should be incentive for project developers to engage the public before the environmental impact statement, so it is not fully baked by the time it gets to a public hearing.

Then, I think that the environmental officials in charge of environmental review, and I agree with beefing up the staff, I think it is very important, should have the authority, if there is a dispute over the scope of review for a project, to make decisions. We elect people, they appoint people. You need to make a decision about how much review is needed for the Bayonne Bridge or for the tunnel. The tunnel has a significant environmental impact, but not doing the tunnel immediately has an incredibly catastrophic environmental impact.

So, someone in the Administration has to be authorized to say, however we build this tunnel, it is better to get it started tomorrow than to get it started in 5 years. Someone needs to have that job.

Mr. SOTO. So, a preliminary hearing on scope, or a meeting among the developers and the government would be helpful, you think?

Mr. HOWARD. Well, that would be helpful, and also engaging the public. But most important is having the Chair of CEQ or having CEQ have the authority to make these kinds of balancing

decisions, whereas now, in part because of the fear of litigation, the presumption is no pebble left unturned. So, it ends up just taking much longer than it ought to take. Most reviews should take a year or less, even big ones.

Mr. SOTO. I yield back.

Mr. GOHMERT. Thank you. The Chair recognizes the gentleman from Alaska.

Mr. YOUNG. Thank you, Mr. Chairman.

Mr. GOHMERT. He has 5 minutes.

Mr. YOUNG. I think this is a very important hearing. NEPA itself was never intended to be an obstructionist part of our infrastructure, nor building of any other thing. But it has been used as that.

I will give you an example of Alaska's national forest, the Tongass, one of the largest forests in America, in fact, it is. A small portion of the Tongass is managed by the state. The vast majority is by the Federal Government, who does not manage it. It takes less than 18 months for the state to plan and offer a timber sale in Tongass. At the same time, the Forest Service sales are delayed by 5 years, largely because of NEPA.

And you look at NEPA and here is one thing, gentlemen on this Committee, whether you want to eliminate it, I don't think we can, but we ought to at least take and streamline it.

There are 90 statutes that govern the management of the Forest Service, 90 statutes, which are not connected or working together as we go through this and, consequently, have bad forest management in not only the Tongass, but other parts of the United States.

In the 35 years I have served on this Committee, we have had two pulp mills, five large saw mills, and many smaller mills that have been forced to shut down because of the lack of timber because of the inefficiency of the Forest Service. We have lost 5,000 family wage jobs in this area that used to take and support small communities that no longer exist. Some people like that, but NEPA should not be used to slow down and impede the development because it does not protect the environment. And that is really what we should be talking about. I think we ought to recognize that as a Committee, that the environment is not protected by this law. In fact, it increases the problems we have.

I noticed someone in their testimony talking about when we slow down traffic congestion, that adds more to the environment degradation than we do ordinarily because of NEPA.

And, by the way, we are the only country in the world that can spend money as we are spending it to achieve nothing. We are spending money, this is as bad as some of the wars we have had. We do not achieve anything in this effort, because we don't really address the environment. We don't take into consideration the impact upon communities, the individual jobs. The prosperity of this Nation is being held up because of this law. It does need to be improved.

Mr. Howard, in your written testimony, you talk about labor groups and delay tactics. But when a project's applicant and labor groups are on the same page, isn't that something that should be looked at as a positive for NEPA review?

When these groups are on the same page and we still see delays, why? And what does it accomplish?

Mr. HOWARD. There are many projects that everyone agrees ought to go forward, and labor is arm and arm with the National Association of Manufacturers and the regional plant associations and such, and it still takes years, unnecessarily. So, your point is extremely well taken.

But I go back to the point that if you don't have a decision maker whose job it is to balance, you have this utopian assumption that every project gets full review, even though everybody knows that the right thing to do is to go clear out this part of the forest. And society doesn't work without people using judgment. We cannot create automatic government and utopian solutions. Unfortunately, NEPA has evolved into that delay for no good purpose.

Mr. YOUNG. As a member of the Transportation Committee and the chairman at one time, we were replacing a bridge because the old bridge was wore out. And we had to have a NEPA review on the fish activity on the new bridge. The new bridge was 24 feet from the old bridge. Now that is stupidity beyond any stupidity action you can possibly have.

Mr. HOWARD. Oh, I can——

Mr. YOUNG. It held up the project for 4 years, because we were studying the fish that went underneath the old bridge all those years. Now we build a new bridge, we had to have this NEPA study. That is stupidity. And yet this Nation allows that to happen.

We have to change this law so it has more sense, so we have quicker decisions, we don't have all the statutes, we don't have all the agencies that are involved, so that projects are held up forever and ever and ever, and which cost more money and hurts the environment.

Anybody disagree with that at that table? Anybody disagree with that?

An old bridge and a new bridge, what was right with that, or why was it necessary to have it done? That was under your watch, by the way.

Ms. BEAR. Congressman Young, that is not a specific issue I was involved in, I cannot speak to that bridge. But to the extent that the issue is bridge replacement, I would like to give you an example of where NEPA did make a positive difference on a community related to a bridge replacement.

Mr. YOUNG. Did it make a difference on the fish?

Ms. BEAR. On the case I was going to mention, the fish were not the issue I was aware of. It was an issue affecting the community and businesses in the community.

Mr. YOUNG. I was speaking about, and I think you ought to consider it, that is what held up that bridge for 5 years, or 4 years.

Ms. BEAR. OK.

Mr. YOUNG. That is the stupidity of this Act. Mr. Chairman, thank you. Because if we don't change this Act, we don't have the money to continue how it is being implemented by mostly easterners, by the way, and I am a westerner.

[Laughter.]

Mr. GOHMERT. All right, thank you. The Chair recognizes the gentleman from California for 5 minutes, Mr. Huffman.

Mr. HUFFMAN. Thank you, Mr. Chairman. I wish we did spend more time talking about how these laws are being implemented,

and how we can make them work better, instead of constantly scapegoating the laws themselves, and the policies behind them. And I am disappointed that today's hearing seems to have been set up for us to simply talk past each other to try to box the Democratic side of the aisle in as those who are the defenders of delay and bureaucracy, and the Republican side as those who want to see major projects happen.

If we could stop talking past each other, for example, my colleague from Colorado literally said NEPA has become nothing more than a weapon to stop projects. I would like to have a conversation about that, because I think he knows that is not true. He knows that NEPA, in 98 percent, 99 percent of projects, is not a source of significant delay at all. There is no challenge, these projects are moving forward. You are simply requiring public notice, public input, and an alternative consideration, which is, frankly, a way to make for better projects.

It was said earlier, very casually, that NEPA was blamed for a small spillway gate project at Sugar Pine Reservoir in California, a project that is not even owned by the Federal Government. There is probably a NEPA review somewhere in the course of the many permits and reviews necessary to raise that spillway gate. But I would like to talk to my friend, Mr. McClintock, a little more about that project, because I am willing to bet, dollars to doughnuts, that NEPA is not the reason the review process and the planning process for that project cost more than the construction of that project. And to suggest, as the colloquy between the Member and the witness did, that it is somehow typical for the NEPA cost to exceed the project cost, we are now drifting into the realm of hyperbole, scapegoating, and factual distortion that just prevents smart policy making.

So, I would love to get back to the real world and the real facts. Ms. Bear, I would like to ask you about one of the claims that was made to again trivialize this idea of public input. It was suggested that for an offshore wind project, lawsuits were about protecting ocean views. In reality, my understanding is that opponents argued that stakeholders, including fishermen, were simply not adequately consulted, and that alternatives were not identified. These are key components to the NEPA process: consult people who are impacted, consider alternatives.

Can litigation actually argue against a project's design?

Ms. BEAR. No, that would not be a kind of claim that would be brought under NEPA, in terms of the design. There might be a claim associated with failure to look at some sort of reasonable alternative to that design, but the courts don't weigh in on the goodness or badness, so to speak, of the design or the project itself.

The point of NEPA litigation is whether or not an agency followed the procedural requirements of NEPA.

Mr. HUFFMAN. All right. And what about the importance of this public input? There has been an effort to trivialize public input, to suggest that it is a circus, that people dress up in costumes, and that that is what public input under the NEPA process is all about.

I can't help but think that right now they are cleaning up an oil spill in part of the Keystone Pipeline, and I wonder if maybe they should not have listened to the people that came to public meetings

dressed up as fish and in tribal outfits and raising their posters high, instead of just listening to the oil executives who are now hiding under their desks and never seem to be around when things go wrong. Maybe we need to be more careful and have more public input for some of these big, polluting projects.

But why do we value public input in this process?

Ms. BEAR. Because it matters, and because we are a democracy.

I have seen a number of situations, I am not going to sit here and say every single one, but I have seen decisions fundamentally change through public involvement, and that matters. It matters a whole lot to the citizens to know that they have actually played a role in government decision making. And it has improved the environment.

Mr. HUFFMAN. Well, I am not claiming that NEPA is perfect, nobody is claiming it is being implemented perfectly. But do you have any thoughts to close out my time on how we could make NEPA faster, more efficient, more effective, without gutting the important purposes?

Ms. BEAR. I think it is critical to focus on implementation. And I don't have much time left, but I will just take one of several examples here.

Mr. Howard has spoken about the 6-month delay in choosing a lead agency for the Bayonne Bridge. I understand why that would be frustrating. There is a process in the CEQ regulation, a 65-day max to determine the lead agency. Anyone can trigger that process, and there are many other examples.

I am out of time.

Mr. HUFFMAN. OK, I yield back.

Mr. GOHMERT. This time the Chair recognizes the gentleman from New Mexico, Mr. Pearce, for 5 minutes.

Mr. PEARCE. Thank you, Mr. Chairman. It was interesting to hear my friend talking about hyperbole coming from our side, and in the next breath talk about oil execs hiding under their desks. That appears to be maybe just a little bit over the top, itself. But I appreciate the gentleman's observations.

Mr. Willox, this whole idea that somehow we are overblowing the effects that you face on the ground, I hear from county commissioners, I represent a 34 percent Republican district, so most of the counties' elected officials are Democrats. I hear from them equally as much as Republicans that there are bad effects coming from the NEPA process that affect their forests and the jobs.

So, tell me, from your perspective, is the process only 1 percent of the time destructive? Is it more destructive? I don't know. Tell me from a county commissioner point of view.

Mr. WILLOX. Well, I think it is important to distinguish between the big projects and the little projects. This is the draft EIS for a big project, our Converse County oil and gas one. We have a checkerboard ownership, minor Federal surface.

And I talked earlier, the Federal nexus is a mile away from the disturbance. Why should that private land be encumbered by the NEPA process because we are touching Federal minerals a mile away? This law was written before horizontal access to minerals, so I think that is a bad decision when we impact private landowners and their surface that they own.

The other examples are on minor projects. I talk about a power line in our area—you will see power lines that literally take two 90-degree angles, or three, to go around Federal surface so they don't have to go through the process and the cost of the shortest, most reasonable route that would have the least impact on the environment. So, the negative consequence of following that process is we build a longer power line with more disturbance that costs more. Absolutely against the goals of making positive decisions for the environment, and informed decisions.

Mr. PEARCE. You are just mentioning the 1 percent, so 99 percent is OK?

Mr. WILLOX. No, the——

Mr. PEARCE. OK, I just wanted to clarify.

Mr. WILLOX. To be clear, the power lines are in that 99 percent, because it falls under those small——

Mr. PEARCE. I am just razzing you, thank you.

Mr. WILLOX. Yes, thank you.

Mr. PEARCE. I appreciate that.

Mr. Bridges, you heard Ms. Bear say that one of the great benefits of NEPA, I think it was in response to the question if there was no NEPA, that people would be surprised by the things that are happening, that it is important to know in advance. How many projects do you think your association would move forward without notifying people that it is going on?

In other words, I am trying to evaluate the validity of the comment that was made by a fellow panelist. Do you keep things kind of secret, and the only reason you bring them up is because of the NEPA process?

Mr. BRIDGES. No, I don't think it would be secret. But I also agree that we have heard some great examples from Ms. Bear and others about collaborative things that happen and things that get put into projects, mitigation and things that may not have happened. And those are good things. I just have not had that personal experience during the hearing processes with that.

We have had success in working with the private investors that are wanting to spend the money in our state.

Mr. PEARCE. OK. All right, I need to keep rolling. Mr. Howard, the same question. Do you keep things silent, hidden below the dark, and they only surface because of NEPA?

And I need a quick answer on that.

Mr. HOWARD. No one in modern America would be smart to do that. I come at this as a civic leader, so I am used to really dumb decisions by public officials on projects that make no sense, and opposing them.

I do think that NEPA is important, and I think the public role ought to be beefed up, not cut down. As I said earlier, it should be done earlier in the process, you really get meaningful feedback, rather than after you have a 1,000 or 10,000-page environmental impact statement.

Public input is important. What is not important are academic studies and bickering over whether you disclosed something accurately in page 556.

Mr. PEARCE. All right. I have another question I need to ask here. I get the idea, and I appreciate your input. Sorry to rush along.

Mr. Willox, what is the effect on the schools when we kill the jobs in these rural areas? I suspect Wyoming has some areas much like my district, very massive rural areas. The only jobs used to be keeping our forests clean. Now we are burning our forests down, but it doesn't take any jobs to do that. So, what is the effect on our schools when we don't have these clean-up projects in our forests?

Mr. WILLOX. Well, you are absolutely right. The local economies are hurt any time we lose jobs for any reason. And forestry was a big part of parts of Wyoming. Some of those have converted to firefighters, which is a very unfortunate transition, from timber to firefighting.

So, not just the schools, but the community and all that is part of that community is hurt any time jobs are lost for reasons that seem to be out of the control of the locals, and seem to not be in the best interests of the local socio-economic environment.

Mr. PEARCE. OK, thanks.

I yield back, Mr. Chairman, thank you.

Mr. GOHMERT. Thank you. At this time the Chair——

Mr. GRIJALVA. Ms. Barragán and then——

Mr. GOHMERT. OK, the Chair recognizes the gentlelady from California, Ms. Barragán.

Ms. BARRAGÁN. Thank you, Mr. Chairman. I wanted to follow up on this. It seems like we are hearing a lot of complaints about NEPA, horror stories about the Act holding up economic development. Some of my colleagues have said it is not true. I am one of those, that it is less than 1 percent of instances where NEPA causes these delays.

We just had one of my colleagues question Mr. Willox about what is happening in his county, and whether it is actually less than 1 percent. And I just want to remind everybody that the actual figure we are using is coming from a report that is being cited not just by our side of the aisle, but the other side of the aisle. It is a 2014 U.S. Government Accountability Office report. So, I would much rather focus on what we are all relying upon than just one select county.

Ms. Bear, I wanted to give you an opportunity. You had started to give an answer about some of the implementation suggestions you had. Did you want more time to complete that response?

Ms. BEAR. I appreciate that. One of these days I will learn to hit the button. Apparently I am a slow learner on that.

Anyway, yes, I do appreciate that opportunity. I wanted to make several observations about issues that have been brought up in the testimony that I am very sympathetic to, but that really run to the point of implementation issues because of either lack of staff or, frankly, staff that have not been given appropriate training to do their jobs. I have met some staff people who have been given NEPA assignments and, frankly, don't know anything about it.

I already mentioned very briefly, Mr. Howard has used the example of the 6-month dispute over a lead agency there, and also the need for a decision maker. There is a dispute resolution process specifically geared toward CEQ making a final decision in the case

of a dispute over a lead agency and affected parties. Mr. Howard could have brought it, anybody could bring that in to CEQ, and CEQ has 20 days to make that decision, and it is a final decision.

Mr. Bridges pointed out the difficulty and frustration of having two separate environmental impact statements done: the Federal EIS, and I think, I could be wrong, a 13,000-page state EIS. That is horrifying. And it is one of the things that I found saddest when I was trying to do oversight for many years, as the only person overseeing 85 agencies. That never should have happened, unless there was some very extraordinary circumstance. That should have been a joint EIS. The agencies should have done it together to fulfill both the state and Federal requirements.

The ID teams, the early involvement and ID teams that Mr. Willox mentioned, absolutely. The county and the state, if it is appropriate, the tribe, and the tribal government, if there is one involved, should all be at the table, should be part of the ID team, and should be making major contributions about areas that they are very familiar with, including the social and economic structure of the community.

There are many more examples, but I just wanted to pick some that were relevant here. All of those are already addressed in the CEQ regulations, or CEQ guidance. Clearly, they are not being perfectly implemented. And we are never going to get to perfection, but I think we could do a heck of a lot better, in terms of implementing it, with adequate capacity.

Ms. BARRAGÁN. Great, thank you. When I looked into this, I reached out to my own area in Los Angeles and heard success stories. The Los Angeles County Metropolitan Transportation Authority's Crenshaw/LAX transit corridor project was one of the Federal Transit Administration's first projects piloting a new NEPA process that helped identify and mitigate project risks more efficiently through the project review process.

The Transportation Authority determined that a 5-mile stretch of the project could actually utilize a rarely used existing freight rail line corridor, instead of building new tracks in that section. The railroad agreed to abandon the line and allow the Authority to use it. That decision decreased project cost, saved time, and reduced disturbances for a nearby community by using an existing right-of-way, while providing significant environmental benefits, economic development, and employment opportunities throughout Los Angeles County.

Ms. Bear, is this the kind of outcome that NEPA was created to produce?

Ms. BEAR. Absolutely, yes.

Ms. BARRAGÁN. Thank you.

I yield back.

Mr. GOHMERT. Thank you. At this time, the Chair recognizes Dr. Gosar from Arizona for 5 minutes.

Dr. GOSAR. I thank the Chair. Mr. Chairman, I just heard a conversation from my colleague from California about talking past ourselves and bringing up issues. It has been noted that the Minority witness is one of the chief litigants from one of the major litigation groups in the country.

I have this document, it says donate here, the name is right on the front, here are over 500 litigations from the Defenders of Wildlife, right here. I find that kind of interesting, that when we are talking about solutions, that we would bring a headhunter like we have right here.

Number two, we might be a form of democracy, but we are a representative republic. And I caution everybody to make sure you understand that. It is a higher degree in that regard.

Mr. Howard, in your written testimony, you mention that former EPA General Counsel E. Donald Elliott estimates that 90 percent of detail in Federal impact statements is there not because it is actually useful to the public or decision makers, but because it might help in the inevitable litigation—a form of environmental "defensive medicine." Has the original purpose of the NEPA been lost in its quest to have the most litigation-proof NEPA environmental review?

Mr. HOWARD. The original purpose has been undermined by this form of implementation that really makes it inaccessible to the public and not practical for reasonable decisions.

Dr. GOSAR. So, how has the NEPA litigation shifted the balance of power of who is ultimately in charge of permitting projects and held accountable for those decisions?

Mr. HOWARD. The litigation over NEPA in many cases shifts power to opponents who can then use it to achieve—sometimes these benefits may be in the public good, and sometimes they are for the good of the group.

So, for example, in the Bayonne Bridge, the group funding the litigation against the environmental impact statement was the union for the Port Authority, which wanted to use the litigation as the lever to get the port to agree to be a closed union shop. They were using the NEPA litigation as a lever to get something that had nothing to do with the environment.

Dr. GOSAR. So, the fact that I brought up these 500 litigations actually has a big influence upon that process, does it not?

Mr. HOWARD. It does.

Dr. GOSAR. Interesting. So, Mr. Willox and Mr. Bridges—first, Mr. Willox. There are some who would argue that because the number of projects that require an environmental impact statement is small compared to the overall number of projects reviewed, that reform is not necessary. The assumption here is that companies pursue projects without considering the realities of navigating the NEPA process. We know that is not true.

Can we actually quantify the number of projects that are never initiated due to the lack of confidence in the efficiency of the Federal approval process? Mr. Willox first.

Mr. WILLOX. Unfortunately, I cannot quantify that for you, but it is a daunting task. We are 4 years into an oil and gas project in Converse County. The environment for oil and gas development is entirely different than when they started the project.

So, for private companies to try to forecast and work through a process like this, and not know what their business environment is going to be like at the end of it, is for some an unreasonable risk to take, so they look for avenues that may avoid that.

Dr. GOSAR. So, it is like moving the goalpost?

Mr. WILLOX. The goalpost is always moving. Then you throw 14 referees in the middle of it, it makes it a little hard.

Dr. GOSAR. And then you have this in the background, any little thing may be sued upon.

Mr. Bridges, your opinion?

Mr. BRIDGES. I would agree with Mr. Willox on that. Just from my personal experience, the goalpost continues to move and evolve. And that is all we are really looking for, predictability. And I think that is what business is looking for. When you have a project that you want to get built, and you have the community and business behind it, some reasonable timelines would be great.

Dr. GOSAR. So, the two of you, have you ever encountered or observed a situation where, prior to initiating a new project, you have seen a threat of an extensive NEPA play a final impact on the final review, or going forward with that project? Have you seen a project like that, Mr. Willox?

Mr. WILLOX. I have not seen one specifically. Anecdotally, I have heard it, but not in our area. But I could visit with more colleagues in our area to find out if people have said no.

But it also affects government projects. If we want to do something, if local government wants it, we can trigger that. And there are times that that cost or implementation is definitely a consideration at the local level, whether to move forward with a road improvement project or something like that.

Dr. GOSAR. I think everybody should acknowledge that it is not just about being no or about being yes, but how do you do it right?

Mr. WILLOX. Correct.

Dr. GOSAR. And that is the key here. Instead of just saying no, no, no, no, no, it should be about what is it going to take to be yes.

Thank you, and I yield back.

Mr. GOHMERT. Thank you. This time the Chair recognizes the gentleman from California, Mr. Costa, for 5 minutes.

Mr. COSTA. Thank you very much, Mr. Chairman and Ranking Member, for holding this hearing today, and having the opportunity to review how we might improve the National Environmental Policy Act, otherwise referred to as NEPA, that was first implemented when President Nixon, on January 1, 1970, signed it into law.

Having sat through more of these hearings than I care to recount, I guess I kind of have an idea on how this one is going. My colleagues across the dais will talk about delays that have occurred as a result of NEPA for a host of reasons, like permitting under other laws. Of course, we do, as the witnesses have testified to, have that complicating factor of state and local laws that are done in conjunction with, but are not actually required by the environmental impact review process under NEPA.

Most reasonable people, I think, would agree that some of the delays are caused by an abuse of the National Environmental Policy Act by stakeholders who want to delay or even stop a project to extract concessions or some resulting legitimate debate about reasonable alternatives that the Federal Government might pursue.

Some of my colleagues on this side of the dais will say that NEPA is not the real cause of these delays, and that our

Republican colleagues are simply trying to weaken or eliminate environmental laws. I have said a number of times, there is truth in both observations.

But relating anecdotal stories doesn't count all the changes that have occurred since 1970 in what clearly is a much more litigious society that we live in today than back in the 1970s and the 1980s, and I think we need to get past it.

In 2015, in a transportation bill, we did amend NEPA to, I think, provide a better way in which we can process this effort. But at the end of the day, working together with Republicans and Democrats is the only way we are going to improve the environmental review process under NEPA, and to increase responsible public agencies, and also to ensure the right projects are built at the right scale in the right areas in a timely manner. And the timely manner gets to the point.

I will give you an anecdotal story. In 2011, some of my colleagues were in the state legislature. I had been there up until 2002 for many years. We waived a portion of the state equivalent under CEQA for a football stadium. We know a lot of these things deal with not only public policy, but the politics on a host of these projects. It was determined in the public interest that this stadium was very important. So, we limited the time for judicial review, and we waived the period to deal with the superior court, so that if there was a suit brought forth, it would have to go to the appellate court.

I don't know if that was good public policy or not. But the point is that, for reasons that we thought were meritorious, be they political or otherwise, we changed the law. OK?

So, nothing is perfect. Nothing is set in stone. I think the Congress was designed to function and to provide oversight and review, and a lot has changed since 1970. And I think it is appropriate, and I would like to see changes in NEPA, that we would try to figure out how we chart a course to pursue good public policy.

Ms. Bear, I was taken by your comments, because I think whether we are Republicans or Democrats, rich or poor, the economy and the environment, everyone has a stake in ensuring that good public policy is pursued, that we do not delay and have sort of tactics that really deal with people who don't want a project.

But you talked about some observations you had, joint EISs, having multi-agencies work together. What reforms would you recommend, with your experience working with Democrats and Republicans, and you are involved with CEQ, on how we could make a better mousetrap, for lack of a better term?

Ms. BEAR. There are a number of provisions in the CEQ regulations that were specifically designed to reduce delay. Many of those are not getting implemented on a regular basis. And I would like to see some serious oversight on why those are not getting implemented.

In terms of changes to the statute, I don't think that is necessary to expedite the process. I really do think most of this is implementation issues. There are other reasons for delays, of course, besides NEPA that get caught up in the NEPA process, including compliance with other laws, funding proponents, changing plans.

In California, which is also my home state, there is a provision, as I understand it, in CEQA that allows the state to essentially use the Federal EIS; although sometimes, for other reasons, California does do joint documents. But certainly better coordination between the state governments and the Federal agencies is a big part of what could be improved.

Mr. COSTA. Can you supplement a state law for a Federal law, if it exceeds the requirements?

Ms. BEAR. There is a pilot project essentially right now under the FAST Act for that. And CEQ has recently published for public review and comment criteria that would define that. So, we will see how that works. That already is part of the law.

Some states like California certainly have capacity for that, and a lot of experience under CEQA. The majority of states don't have a "little NEPA law" like California and New York City and New York does, so I think that would be much harder for the states.

Mr. GOHMERT. Your time has expired.

Mr. COSTA. Thank you. You might want to provide the Committee with maybe some subsequent information that might be helpful.

Ms. BEAR. Sure, happy to supply more for the record.

Mr. GOHMERT. Thank you. At this time, the Chair recognizes Mr. Tipton for 5 minutes.

Oh, I am sorry. I recognize Mr. Hice for 5 minutes.

Dr. HICE. Thank you, Mr. Chairman.

Mr. Howard, is it fair to say that the NEPA review process is very costly, as a general rule?

Mr. HOWARD. Yes. For large projects, many millions of dollars, not counting the time.

Dr. HICE. And with that, obviously, it is also time consuming.

Mr. HOWARD. Yes.

Dr. HICE. Many of you have mentioned that, in essence, this becomes a magnet for litigation, would you agree?

Mr. HOWARD. For many large projects, yes.

Dr. HICE. It is just set up for that. Others of you agree, basically, with this?

Mr. Bridges, you mentioned earlier about many people coming from, and others did as well, not the local area, but from extended areas, particularly for the Millennium Bulk Terminal project. In the process of those individuals coming, would you say that at least portions of the project were hijacked by those individuals for their political agenda, whatever that may have been?

Mr. BRIDGES. That is what it seemed like to us. It seemed to be more based on the particular commodity or whatever, instead of actually looking at using the process to look at how it really impacts the state and the area.

Dr. HICE. That is the impression I got, that is why I am using that.

Mr. Willox, would you say as well that that is frequently a reality?

Mr. WILLOX. It definitely exists. I don't know if it is frequently, but there definitely is some of that. We had comments come from Germany and Europe on prairie dogs in northern Converse County

that the agency must consider and look at. That seems to be a time sink to me, that the agency's time could be better spent.

We talked about staffing. Why review comments from foreign countries on prairie dogs? It seems not the best use of resources.

Dr. HICE. Not exactly local. All right, so GAO has said we are looking at an average of 4½ years.

Mr. Howard, I think you said 4.6, is that correct?

Mr. HOWARD. That is correct, yes.

Dr. HICE. All right, so this is, in any way you look at it, a cumbersome process, not exactly the intent of Congress originally in 1970.

Mr. HOWARD. Early environmental impact statements were dozens of pages long. And the regs say that even in the largest projects they should never be more than 300 pages.

Dr. HICE. Would you say that your view is that public comment ought to come earlier in the process? With them coming as they currently are, is that detrimental?

Mr. HOWARD. Yes. I think there should be informal and perhaps some formal public process before the environmental review is done to talk about the project, and get the public's concerns. It is really important to get public input.

After the project is done and you have a multi-thousand-page report, you end up having this thing that often does resemble a circus, and people are just justifying their decisions.

Dr. HICE. And having public opinion at that point creates more problems?

Mr. HOWARD. It creates many problems. Sometimes some good comes of it, but not nearly as much as if you do it earlier.

Dr. HICE. All right. Mr. Bridges, with you, on the public input part of things, your experience in both observing and participating in all this, what have you observed with the public input?

Mr. BRIDGES. Well, I think I mentioned this earlier. It seemed to be that, because of the way the process works, people get involved later on after the draft EIS is out, and it is so publicized, it is in the paper, it is advertised. It allows these groups, the coalitions, to get together. And, I think, it prohibits the people in the public that really want to participate, because they do not want to have to pick a side. They want to go and do what Ms. Bear talked about, and talk about what they want to see in mitigation, or their real concerns, not be part of the sideshow.

Dr. HICE. So, again, your experience right now, the public input part as it currently exists, is it detrimental to the overall project?

Mr. BRIDGES. I think so, yes. It just adds drama that does not need to be there, instead of dealing with the real facts of the project.

Dr. HICE. All right, with the Millennial Bulk Terminal project, for example, how is the public input part being detrimental?

Mr. BRIDGES. I guess because there really is not any limitation, it discourages people that would participate to stay on the sidelines, and it just leaves it to the proponents and the people that are fighting. So, there does not seem to be a middle ground of like what Ms. Bear was describing in some of the transportation projects.

That is where I would like to see things, where we are working together to try to get this stuff done. But right now it is——

Dr. HICE. I will yield back. But you say it is detrimental to the project itself, as well. I just want clarification.

Mr. BRIDGES. Yes.

Dr. HICE. OK, yes. Thank you, Mr. Chair.

Mr. WESTERMAN [presiding]. The gentleman's time has expired. The Chair now recognizes the Ranking Member, Mr. Grijalva, for 5 minutes.

Mr. GRIJALVA. Thank you very much, Mr. Chairman. And thank you, Ms. Bear, for being with us. Good to see you again. And your expertise on this, on NEPA, is one of the best in this country, and we appreciate that and your advocacy on a variety of issues.

But let's talk a little bit about a comment that my colleague, Mr. Huffman, made about our side of the aisle here just defending the status quo of NEPA, and not acknowledging anything else in there. Part of the status quo has been, from 2011 until now, less resources, less training for staff, less staff. And you kind of build this self-fulfilling prophecy around NEPA, that because NEPA is taking so long, that there must be other, more dramatic efforts that need to be undertaken to reform NEPA, such as eliminating it, constricting it, and putting mandates on it that effectively will kill the public input that is the whole point of NEPA.

I find it curious in some of the comments that by inviting public input we somehow limit other public input. I do not understand the logic of that.

Could you talk a little bit about resources in the agency? You already mentioned the training.

But also, when projects are delayed, there are also delays associated with the lack of funding and adequate funding for that particular project to go forward, and somehow NEPA ends up getting blamed for that. And the remedies that already exist within NEPA to deal with some of the issues that have been brought up by my colleagues in the Majority, if you wouldn't mind.

Ms. BEAR. Right. And I think I already mentioned some of those.

Just at the beginning, if you don't mind, I want to take 1 second to say that I am appearing here in my own capacity. I just want that on the record, as former General Counsel, not representing any organization, although I am very proud to be a member of Defenders of Wildlife.

In terms of the time delays and the capacity issues, let me just give a couple of quick examples. I think I already alluded to one, which was an agency that essentially stopped appointing anybody with any NEPA expertise to do NEPA, and told everybody in the agency that they had to "do NEPA," who had not been trained. That is kind of a recipe for inefficiency.

In another situation, I met a gentleman who had been told he was the regional coordinator for NEPA. He had spent 6 months getting questions from staff on how to do things, didn't even know who to call to ask. Fortunately, he did come to a forum where I and some of my colleagues were doing some training, and he had yellow pads full of questions that he had written down, didn't know the answers. I spent an evening with him going over every question.

So, those kinds of things certainly hurt. But one of the things I found that nobody has mentioned, and I am not trying to cast aspersions on proponents, but proponents sometimes make major changes in their projects for good reasons, but they hit the pause button in terms of giving information to agencies, or it has changed enough that there needs to be a change in the analysis. And you have already alluded to funding.

There are a lot of remedies I would love to talk at great length about, some of the issues, I have already mentioned doing joint EISs with the state and Federal Government. There is a lot of flexibility.

Mr. GRIJALVA. And the utility of CEQ, in terms of being arbitrator, mediator——

Ms. BEAR. Right.

Mr. GRIJALVA [continuing]. And that point of decision making, so when the issue of we don't know who the lead agency comes up, that there is a mechanism to settle that.

Ms. BEAR. Yes. There are two formal dispute resolution processes in the CEQ regulations, and the Supreme Court has said on numerous occasions that lower courts owe "substantial deference" to CEQ's interpretation of NEPA, and that no court has ever overturned that or questioned that.

Mr. GRIJALVA. OK. Thank you very much.

Mr. Bridges, in terms of the Millennium project that your testimony addresses, the role of the State Department of Ecology in that, they are in support of the project at this point?

Mr. BRIDGES. We have one permit and we have others that have been challenged that are in appeal.

Mr. GRIJALVA. So, is that particular action at the state level, is that contributing to the delays that you talked about earlier?

Mr. BRIDGES. Yes, I think so.

Mr. GRIJALVA. So, one cannot place the entire responsibility for your complaints about delay entirely on the NEPA process, in so far as the Department of Ecology for the state has not given you complete green light.

Mr. WESTERMAN. The gentleman's time has expired. The Chair now recognizes Mr. Tipton for 5 minutes.

Mr. TIPTON. Thank you, Mr. Chairman, and thank the panel for taking the time to be able to be here.

I think what I found interesting is, on both sides of the aisle, people are talking about a NEPA that does need some changes. It is not perfect. That seems to be a common thread that is going through, to be able to make sure that we can actually have those opportunities to be able to have real win-wins.

And I do find it disturbing when Mr. Willox is stating that we are getting comment, though, coming in from Germany having the full weight of an American citizen being able to comment on those projects, and taking in that consideration.

And maybe just to go off of the foreign connection end of it there, Mr. Howard, you had cited in your testimony, I believe, how long did it take in Germany to be able to get an approval process?

Mr. HOWARD. The most complex projects typically take less than 2 years, 1 to 2 years. Environmental reviews generally finish within 1 year, again, on complex projects. But it is not because they are

less environmentally sensitive, it is thought to be a much greener government and society than America, it is because they have clear lines of authority to make decisions.

Mr. TIPTON. So, that streamlining process, that authority, is something that is going to be really critical.

Mr. HOWARD. Authority is critical in a culture, and the fact that there is a procedure to appoint a lead agency and to make a formal request to appoint it is not a substitute for an official who says it is my job to make sure this moves along, and I want to make the decision.

So, processes take a long time to wind their way through.

Mr. TIPTON. Could you maybe describe for me, with that streamlining, I think Ms. Bear had talked to it, as well. What if a lawsuit is filed? Even though you have had it streamlined, you have had an approval, if a lawsuit is filed, will that hold up a project?

Mr. HOWARD. Lawsuits do hold up projects, typically. It depends on the project. The kinds of lawsuits we have been talking about are disclosure lawsuits at the end of an environmental review. That is typically when they are brought.

Much of the delay comes in the internal processes of first you do this, and then you have to have the scope, and then you do the scope, and then you come back, and then this agency is disagreeing with that agency, and then they schedule a meeting, and before you know it, years have gone by.

Mr. TIPTON. So, you are on the cusp of approval, and then that is when the lawsuits will happen. I think you and Mr. Bridges have both cited in your testimony that at times the process has been hijacked, almost, by litigation coming in from activists to be able to just literally stop a project.

In my own district in Colorado, we have a mining project that is currently 8 years in the process right now to try to be able to get the approvals, have constant lawsuits which are coming up that are stymying that. And it is impeding, actually, the ability to be able to achieve what I think on both sides of the aisle we would hope our goal is, is to be able to have adequate environmental review, and to be able to keep the trades working, and people employed, and people to be able to provide for their families.

Mr. Bridges, Mr. Howard, can you maybe give us, we have had a few ideas Ms. Bear has thrown out, how do we actually fix this to make sure that process is addressed?

Mr. HOWARD. We have proposed legislation attached to my testimony. But making it clear, create clear lines of authority to make decisions about scope and adequacy of environmental review in CEQ, just making it clear that that is their job, that is one thing.

Second, making it clear to courts that litigation would be countenanced unless there are sort of either illegalities, omissions, or misstatements that materially affect the environment, not a sort of a nitpicking thing, and creating an expedited timetable to do that.

If you had an expedited timetable and you had clear decision makers, you could constrain these processes from 8 to 10 years down to 2 years, we think, without more legislative action than that.

Mr. TIPTON. Mr. Bridges, in the last 35 seconds, do you have something to add?

Mr. BRIDGES. Nothing really to add to Mr. Howard, except just the timelines are key, just to keep things moving and have a predictable timeline.

Mr. TIPTON. Great. Thank you, and I appreciate you being here. I yield back, Mr. Chairman.

Mr. WESTERMAN. The gentleman yields back. The Chair now recognizes the gentleman from California, Mr. LaMalfa, for 5 minutes.

Mr. LAMALFA. Thank you, Mr. Chairman. Thank you, panelists, for being here with us today.

My district is in Northern California, where we have a lot of issues with timber, timber management, and water management. We have two very large lakes, Lake Oroville and Lake Shasta, and two large river systems, Feather River and Sacramento River, as well as highway projects, and a potential water storage project called Sites Reservoir in my neighboring district to the west side of the Valley.

I find that NEPA and California's level CEQA are very effective tools to stop development. And I certainly understand the need to have a review, and a review process, but each year hundreds of thousands of acres burn on forest land in California, so you would think that, after that has occurred, and you have a window of time to recover timber that still has some value there, 6 months, even up to a year, you can help pay for the cost of refurbishing the forest by getting out there and getting after it.

So, why in the world do you need a NEPA to do something that is already an established practice on a pretty well-known zone? Yes, certainly, you figure out where the waterways are, and you don't drive tractors through the streams, et cetera. But then you also have to counter-balance, and this is what I think we need.

The Forest Service and others need to use the NEPA on their side of the issue, on the management side of the issue. What are we doing by not taking action with forestry, salvage, either salvage after a fire or ongoing when you have drought, when you have over-crowding, over-inventory of forests with way too many trees per acre on the drought?

Mr. Willox, could you touch on a little bit, would Forest Service actually be able to use NEPA and set a blueprint, not a NEPA every single time you have to do 100 acres? I mean, that is just a real great thing for the cottage industry of people out there preparing NEPA—how many pages do you have in those two binders there? It must be, what, 400, 500?

Mr. WILLOX. Oh, close to 1,000.

Mr. LAMALFA. Is there 1,000 in that?

Mr. WILLOX. There are 500 in that one and 500 in that one, front and back, small print.

Mr. LAMALFA. If we were to open to that, to anywhere, and just pick, say, two-thirds of the way through, what would two lines say in there? Would they say anything that actually meant anything? How can you put that many words in a binder that actually mean something on managing a forest, or managing a levee, or building a highway? What words can you come up with?

Mr. WILLOX. This particular page is talking about school districts and their enrollment on the social economic part of it, but I can

assure you that the social economic part is smaller than the air quality analysis.

Mr. LAMALFA. Is that all boiler plate they use from CEQA, or NEPA to NEPA document? Or do they have to reinvent it every time they have something that might be near a school district?

Mr. WILLOX. It is reinvented for the school district, specifically.

But going back to your original question on the forest, if you have a forest plan that you can manage an entire area under a document, then you would not have to do individual, small ones, you could take a broader landscape approach view to how you should do forest health, because it is inter-related.

You could do one in the front range of Colorado. You could do one for the southern Wyoming and then be able to harvest that.

Mr. LAMALFA. Like we have in California, the northwest forest plan.

Mr. WILLOX. Yes, absolutely.

Mr. LAMALFA. So, it is supposed to be regional, you would have a blueprint to do anything you need to do, without having to stop the works.

Again, when you are getting back to timber salvage——

Mr. WILLOX. Correct.

Mr. LAMALFA [continuing]. You are losing the time, the window to salvage that timber. Now it has become useless. And there is not enough money in any Treasury to do all the millions of acres that need to be done at a non-profit level. And that is the sad thing with all this.

Mr. WILLOX. I think the thing that the NEPA process causes a problem for is sometimes there is an emergency or a short-term situation that you need to get in there in a reasonable time, and the current time frame that we exist under sometimes does not allow it to be reasonable to get in there, let alone even allow it to be in there.

Mr. LAMALFA. Well, thankfully, I also have Lake Oroville, where the spillway broke this last February, and we were able to put aside some things because it was an emergency threatening downhill communities, and maybe the integrity of the dam. But again, we are losing opportunity to make the area safer.

Maybe, Mr. Bridges, you would like to touch on this a little bit. We had a lot of great jobs that were being done up there on the dam recovery, as well as a potential project called Highway 70 south of Oroville and Butte County, which would be the last link to actually have four lanes all through a fairly populous county. Yet, my understanding of the cost is it is going to be $30 million to do a combined NEPA and California CEQA environmental document to add a couple lanes to an already-existing highway. It is already there. No new sin is being committed. More lanes and anywhere from 2 to 4 more years of study. Please touch on what that means, as far as getting the work done and getting the jobs out there.

Mr. BRIDGES. It sure sounds like a lot for what you are describing, just to add a couple of lanes. It just seems that would impact, that is all going to be running through California's budget.

Mr. WESTERMAN. The gentleman's time has expired.

Mr. LAMALFA. Federal money and state money, yes.

Mr. WESTERMAN. The Chair now recognizes the gentlelady, Ms. Bordallo, for 5 minutes.

Ms. BORDALLO. Thank you, Mr. Chairman. I apologize for being late. I had another committee hearing.

Ms. Bear, I have a question for you. Thank you for your career of service under both Republican and Democratic administrations at the White House Council on Environmental Quality.

The U.S. Department of Defense is among our largest Federal management agency. Can you please speak to the role the NEPA process plays in holding the Defense Department accountable to concerns raised by local communities?

Ms. BEAR. Sure. The military services, in my experience while I was at CEQ, there are some exceptions to this, but as a general rule, they are some of the most efficient agencies in implementing NEPA. But it is critical to the communities around installations and bases that they do so.

And I had a number of experiences with private citizens—this is not an area, frankly, where either trade associations or a lot of public interest groups tend to focus. But private citizens in the communities around military installations focus a lot on what changes are going to be impacting their businesses and quality of life.

And just to give a short example, a lady called me one day at the CEQ. She had never heard of NEPA until the week before she called me. And that is true of a lot of citizens, they are not familiar with the law until something happens to bring it to their attention. She ran a small recreation business in New Mexico. I think it was near a mountain range, and there was a lot of recreation. And part of the base was also used for recreation.

Long story short, she found our regulations. She told me that she read the entire booklet of regulations out loud to her husband while they were driving back from Las Vegas. They were still married at the end of the trip, which I thought was interesting.

But seriously, she was so excited to learn that there was a framework where she could talk to the Air Force, and that they had to respond to her about the changes they were proposing, which were going to reduce recreation opportunities, that she would have a chance to have input into that.

That is just one example. There are a lot of examples in, of course, Hawaii and other places in the Pacific, where it is certainly critical.

Ms. BORDALLO. Thank you. I have another. Do you see a connection between enactment of the National Environmental Policy Act, the NEPA, in 1970 and better public health and environmental safeguards at U.S. military installations today?

Ms. BEAR. Yes. I think the passage of NEPA and some of the other laws that were passed in the 1970s have done a lot to raise the military consciousness, and again, this is a wild generalization, but a lot of installations on bases try very hard to be good environmental citizens, but that was spurred by the passage of those laws.

Ms. BORDALLO. Right. I just have a comment to make, Mr. Chairman. On Guam, more than one-fourth of the island is U.S. Department of Defense land. The NEPA is oftentimes the only

mechanism for the public to have a seat at the table so their voices are heard.

Absent the NEPA process, those on Guam lacking on-base access privileges would have no way of influencing or even knowing about decisions made by the Defense Department affecting our island. I just wanted that information to get to you.

And I think that is just about it. I have one more question. Do I have any time? All right.

Do you agree that the NEPA process generally results in well-planned projects, and ultimately more responsible Federal decisions for taxpayer resources?

Ms. BEAR. Generally, yes.

Ms. BORDALLO. Yes. All right. Thank you, Ms. Bear.

And thank you, Mr. Chairman. I yield back.

Mr. WESTERMAN. The gentlelady yields back. The Chair now recognizes the gentleman from Louisiana, Mr. Graves, for 5 minutes.

Mr. GRAVES. Thank you, Mr. Chairman. Thank you all for being here. Ms. Bear, thank you for your government service over many years.

I have a question. The National Environmental Policy Act applies to projects that involve Federal dollars, Federal lands, or events when Federal waters, for example, may be impacted. If those criteria are not met—I believe there are four criteria, as I recall, in terms of triggering the application of NEPA.

So, for example, if a private entity, if a state entity, or a local entity wanted to carry out a project that did not cross those thresholds, would NEPA apply?

Ms. BEAR. No.

Mr. GRAVES. OK, so in most instances NEPA would not apply.

Mr. Chairman, I think it is important to point out that the majority of projects that are carried out across this Nation do not go through a NEPA process. And the reason I point that out is because there were some comments that were made earlier that suggest, I think the question was asked if NEPA were eliminated what would happen. And that question was somewhat bizarre, and I think it was unfair, because it is based upon a premise that our local governments, our state governments don't care about the environment. And I refuse to believe that.

As a former state government employee, I spent much of my life working on efforts to find the right balance. In fact, I would argue that we probably did more to restore our coastal resources in Louisiana than anywhere else in the United States. It is fascinating to me that that seems to be lost.

So, I want to say it again: The majority of projects carried out across the United States, NEPA does not apply. And in many cases, there are public engagement requirements by local governments, by state governments, and others that would apply, that would allow for an opportunity for the public to be engaged in projects.

Ms. Bear, I am not sure if you are familiar, but I believe you were at CEQ at the time. Following Hurricanes Katrina and Rita in 2005, CEQ, and I want to thank you to the extent you were involved, helped work with us and the Corps of Engineers to negotiate alternative arrangements for compliance with NEPA. Without

getting into all the details, because as I recall it was a pretty thick document, we were allowed to go through this IEPR process where we were able to effectively do the environmental mitigation and quantifying of environmental impacts after the fact. Most of the environmental groups—in fact, I am not going to say my memory is perfect, but I don't recall a single environmental group indicating there were any problems that resulted from that.

Do you recall that, or other experiences, where alternative arrangements were worked out?

Ms. BEAR. Yes.

Mr. GRAVES. And where it didn't result in a detriment to the environment?

Ms. BEAR. Yes. There is a provision in the CEQ regulations to deal with emergencies that allows CEQ to develop alternative arrangements when normally an environmental impact statement would be required. That has been used about 37 times or so. I can submit the list for the record.

And that has been used in a variety of circumstances, natural disasters, people shooting each other over fishery management lines—fortunately, that was only one time—but a wide variety of situations. And that has been done, I did one in 48 hours that was a critical emergency. A lot of times, most of the time, frankly, even though it is an emergency, and people cannot take 2 years or 4 years, or whatever it might take otherwise, they may need 3 weeks or a month or 6 weeks to get equipment and engineers and everything.

So, CEQ will take what time is available before action can be taken, and essentially take the most important elements of the NEPA process, spend a lot of time on the phone, sometimes do site visits or public meetings for alternative arrangements on a very quick basis, and get everybody involved. Not everybody has always been happy——

Mr. GRAVES. All right, let me interrupt you there. I am running out of time, and I have two other points I need to make.

Number one, Mr. Chairman, every hearing where there is any degree of relevance, I like to point out the fact that the Federal Government, our own Federal Government, has caused 2,000 square miles of coastal wetlands loss, and the primary cause of that loss in the state of Louisiana, surprisingly, NEPA has been applied in this case, yet our own Federal Government is the greatest historic ongoing and future cause of wetlands loss in the United States, as a result of how the U.S. Army Corps of Engineers manages the Mississippi River system and its resources.

They have done nothing, absolutely nothing, to mitigate those losses that they have caused. Efforts by the state of Louisiana, including nearly $1 billion in Federal funds—excuse me, in non-Federal funds—that are in the bank today for a project Mid-Barataria, designed solely to restore the environment is now being obstructed by the Corps of Engineers and by NOAA under the auspices of environmental reviews.

Mr. WESTERMAN. The gentleman's time has expired.

Mr. GRAVES. Five years, let me just make one comment, just for the record, Mr. Chairman, I know I am out of time.

Mr. Chairman, earlier Mr. Huffman noted that the Keystone Pipeline had spilled oil. I think it is really important that we make comments based upon fact. The reality is, when you look at statistics, transporting oil by pipeline is a safer mechanism than rail, by boats, and other things, trucks, and others.

So, while I will not support, obviously, and I don't support the spilling of oil in any circumstance, I do think it is important that we discuss facts here. And it is safer to transport oil by pipeline.

With that, I yield back. Thank you.

Mr. WESTERMAN. The gentleman's time has expired. The Chair now recognizes the gentleman from Louisiana for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman. I want to associate myself with all the comments of my learned colleague from Louisiana, Garret Graves. We agree on all that.

Thank you to the witnesses for taking your time today to be here and share your testimony with our Committee. It is valuable. All of us cannot be here all at the same time, but we all review the record, and you know how this works, so thank you.

NEPA has been hailed as the Magna Carta of environmental law, but its implementation has historically been plagued by bureaucratic burdens. And you have all offered a lot of insight on that today. It is important to ensure that the EIS process is efficient and is free from undue burden as possible. Unfortunately, the EIS process is extremely time-consuming and expensive, as we have discussed. The greatest contributor to the problem arises from appeals in litigation from outside groups. That is my firm belief. And that, of course, causes delays and increased cost.

A 2014 GAO report revealed that the average time to complete an EIS was 4.6 years. Equally as troubling, the average cost of a single EIS for the Department of Energy is $6.6 million. At that time, no governmental-wide analysis was available to calculate an average EIS cost across all the agencies. But the same GAO report found that less intensive environmental assessments cost a whole lot less. They are between $5,000 and $200,000 across all agencies. Furthermore, the CEQ estimates that EAs take an average of only 13 months to complete, as opposed to 4.6 years.

Mr. Willox, a couple of questions. The appeals and litigation are clearly part of the problem with regard to time and cost. And the question is, are there ways we can work within the current framework to minimize the delays that add to the process?

Mr. WILLOX. Thank you. The litigation one is a hard one to address, because the law allows that litigation. So, unless you create some sideboards of what is litigatable, and I think Mr. Howard had a recommendation that you narrow it to the actual impacts, not technical things, would be beneficial. And the fear of litigation is postponing or delaying projects, whether it happens or not.

I mentioned I have 830 pages of air quality analysis. You are going to find something in there that you could probably object to. So, I think that would be one sideboard that would be helpful.

Mr. JOHNSON. That is great. Another question. Secretary Zinke issued a memo in March of this year that raised several concerns about the NEPA process. I know that has been brought up today. One of the Secretary's concerns dealt with transparency in creating

EISs, including proper accounting of time frames, delays, and financial cost of those analyses.

What should be done to address the Secretary's concerns and foster greater transparency, so that the agencies can be held accountable for the inefficiency?

Why don't you start with that?

Mr. WILLOX. Well, public input has been talked about here, and I don't think you can eliminate public input. But as we put it, early input is important. Having the local government officials there early who do represent the public, we are all elected from that body, as are you. So, having that early and often as part of the process would be helpful.

I think it is a very transparent process, it is just cumbersome. This is transparent. It is all here. But how does the average member of the public do a fair job of commenting on something that is this large?

I think having more brevity and more succinct EISs would allow for better comment, so the public can actually know what is going on, and then provide reasonable alternatives if they so desire.

Mr. JOHNSON. I agree with you. Simplicity and efficiency help with transparency. No one can wade through all this, and that is part of the problem.

Mr. Howard, one for you. In this effort to increase transparency, what role does information-sharing between agencies play in streamlining the NEPA process to reduce some of this duplicative and disproportionate analyses? Do you have a thought on that?

Mr. HOWARD. There is an unavoidable complication when you have a project that has a dozen or more agencies involved. And I will go back to my one theme: Somebody has to be in charge of the process, and somebody has to be able to make decisions.

To the transparency point, and I have talked to Secretary Zinke about these problems, it would be so important to have an analysis at the beginning of a project about what the effects of delay of the environmental review will be. In other words, you need to balance, like we were talking about a forestry example, the cost of the delay with the benefits you are going to get from it. There ought to be a rule of reason at the outset. And they don't do that. It is all about, let's study as much as possible.

If you really want to do a human-scale effective environmental review process, you need to actually make decisions at the outset, and this requires somebody to be in charge asking how much should we really do here, and what would be the cost if we waited an extra year or two? Because the costs often are going to harm the environment.

Mr. JOHNSON. Thank you for that.

I only have 10 seconds left, so I think I am out of time. I yield back.

Mr. WESTERMAN. The gentleman yields back. I now recognize myself for 5 minutes.

I would like to thank all the witnesses for being here today, and for your testimony.

Mr. Willox, I found your testimony to be particularly relevant to a situation being experienced by residents in my home state of Arkansas. In March of 2016, former Secretary of Energy Ernest

Moniz granted Federal eminent domain to a private, for-profit company by approving the Clean Line Energy project. This was after Arkansas' Public Service Commission, the legislature, and every member of our Federal delegation opposed this project.

This electric line will cover a path across private land through Arkansas' Ozark Mountains, a river valley, and delta regions, which are some of the most beautiful and productive land our state has to offer.

I said all of that to say this: Some of the struggles and headwinds that Clean Line faced from hundreds of private property owners and the Arkansas Public Service Commission could have been avoided by running the transmission line through one property owner, the Ozark National Forest.

[Slide.]

Mr. WESTERMAN. And if you look at the map, you see the red line, and all that green just north of the red line is Ozark National Forest.

Like Mr. Willox mentioned in his testimony, Clean Line declined to do this, citing the overly burdensome and bureaucratic red tape they would face in that situation. I find this to be very two-faced of a government formed to protect the rights of the governed. On the one hand, the rules are so onerous that developers don't even consider Federal land, and on the other hand, the same government sanctions the unprecedented confiscation of private property by a private corporation.

Mr. Willox, when did you first notice that industry was beginning to re-route projects to avoid any type of Federal land?

Mr. WILLOX. It has been ongoing for some time. The power line that I cite in my testimony is actually a fellow commissioner that does it for a living, and he is constantly re-routing stuff. You see it in pipelines. Many times you will see a pipeline go and it just does 360s to go around Federal ground, imposing a burden on private property rights, which I think is a pertinent point that you make.

That seems to be incongruent with what we want to have happen, as let's have the Federal Government say no so we can impose it on the private property owner. And that seems to be a problem, and not right.

Mr. WESTERMAN. I want to shift gears a little bit and talk about NEPA and how it specifically relates to forestry. Being a forester, I have never really understood why NEPA is so complicated for forestry projects.

I think back to when I was in forestry school, and I had a classmate who was actually an instructor at the Yale School of Medicine. He decided to come over to the forestry and environmental school and learn forestry, and he made an interesting observation one day. He said that in forestry, trees are like people, and foresters are like doctors. He said, "Foresters apply the best science to keep trees and forests healthy." That is really what forestry is.

Forestry is not clear-cutting. Forestry is not just about producing timber, which, by the way, is the most environmentally friendly material we have. Forestry is about forest health and conservation. Foremost, that is what it is about.

And we know that actions do speak louder than words. Since NEPA, instead of forest science, the controlling factor in management of the forest has been NEPA. Our Federal timber land health has suffered greatly since that has happened. Of our 193 million acres of Forest Service land, 80 million right now, according to the Forest Service, are subject to catastrophic wildfire. And we saw over 8.5 million acres go up in flames just this year.

We have heard how NEPA only delays 1 percent of projects, but, Ms. Bear, can you give me just one modern example where NEPA has made a forest healthier, or not delayed science-based forest management practices from being implemented?

Ms. BEAR. Actually, Congress passed a law, I am not going to get the year right, but I am thinking it was about 2005, called the Healthy Forest Act, which was designed to address a lot of the concerns that you raised, and it has an expedited process for addressing a lot of those concerns.

Mr. WESTERMAN. That process has not been used.

A quick question, Mr. Howard. Does the current NEPA process work for the common good of the forest?

Mr. HOWARD. There are benefits to the current NEPA process. I think the review is important. But it is undermining the common good by taking too long and being too inaccessible to real people.

Mr. WESTERMAN. I am out of time. I recognize the Ranking Member, Mr. Grijalva.

Mr. GRIJALVA. Thank you, Mr. Chairman. I ask for unanimous consent to enter into the record the following materials: a letter from the Labor Council for Latin American Advancement, an organization composed of union members representing 2 million unionists in this country, supporting a strong NEPA; The City Project, GreenLatinos also submitted a letter; a letter from 29 conservation groups opposing this Committee's attacks on NEPA and requesting additional funding for NEPA implementation and reinstatement of NEPA climate change guidance; and a memo from the Center for American Progress debunking the false claims made in the Common Good report, "Two Years, Not Ten."

With that, thank you, Mr. Chairman, and I ask unanimous consent to submit those for the record.

Mr. WESTERMAN. Without objection.

I would like to thank the witnesses for their valuable testimony, and the Members, there are only three of us still here, for their questions.

The members of the Committee may have some additional questions for the witnesses, and we will ask you to respond to those in writing.

Under Committee Rule 3(o), members of the Committee must submit witness questions within 3 business days following the hearing by 5:00 p.m., and the hearing record will be held open for 10 business days for these responses.

If there is no further business, without objection, the Committee stands adjourned.

[Whereupon, at 12:22 p.m., the Committee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

Rep. Denham Submissions

PREPARED STATEMENT OF THE HON. JEFF DENHAM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

In the 114th Congress, I introduced H.R. 2497, the NEPA Reciprocity Act. This legislation proposed changes to Title 23 of the United States Code to create a program for alternative environmental reviews and approvals whereby state law would substitute for Federal laws in certain circumstances. A state could apply if they are able to demonstrate that a state environmental review law is equivalent to or more stringent than NEPA.

Under this process, California projects (if accepted into the program) could bypass a duplicative and redundant second layer of review, dramatically streamlining the project delivery process. A participating state could manage the program with approval of the appropriate Secretary and exercise the program on behalf of local governments for local projects. Flexibility of this kind would expedite the permitting process in constructing important infrastructure projects faster, saving taxpayer dollars and growing the economy.

This legislation was the genesis for Section 1309 of the Fixing America's Surface Transportation (FAST) Act, titled Program For Eliminating Duplication of Environmental Reviews. This section of the law established a pilot program at the Department of Transportation very similar to my bill. The project allows up to five states to substitute statewide environmental review laws for NEPA in respect to transportation projects, if they meet certain criteria.

Please notice that substituting NEPA reviews with state environmental review laws is a different concept from allowing states to be delegated NEPA authority, which currently occurs.

Although this was already signed into law, we do not yet have concrete results since the project is not yet underway. The comment period for the proposed rule just closed yesterday. However, state interest, especially from California, has already been significant.

PREPARED STATEMENT OF AMERICAN ROAD & TRANSPORTATION BUILDERS ASSOCIATION

On behalf of the American Road & Transportation Builders Association (ARTBA) and its more than 7,500 member firms and public agencies nationwide, the association would like to thank Chairman Bishop and Ranking Member Grijalva for holding today's hearing on "Modernizing NEPA for the 21st Century."

ARTBA, now in its 117th year of service, provides federal representation for more than 7,500 members from all sectors of the U.S. transportation construction industry. ARTBA's membership includes private firms and organizations, as well as public agencies that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than $380 billion annually in U.S. economic activity and sustains more than 3.3 million American jobs.

ARTBA members must directly navigate the regulatory process to deliver transportation improvements. As such, they have first-hand knowledge about specific federal burdens that can and should be alleviated. Because of the nature of their businesses, ARTBA members undertake a variety of activities that are directly impacted by the National Environmental Policy Act (NEPA). ARTBA supports NEPA and realizes it is an integral component of the transportation planning process. Many, if not all, of the significant environmental achievements of the transportation community and ARTBA members would not be possible without NEPA.

ARTBA recognizes that regulations play a vital role in protecting the public interest in the transportation project review and approval process. They provide a sense of predictability and ensure a balance between meeting our nation's transportation needs and protecting vital natural resources. These goals, however, do not have to be in conflict. The most successful transportation streamlining provisions have been process oriented and have essentially found a path for regulatory requirements to be fulfilled in a smarter and more efficient manner.

According to a report by the U.S. Government Accountability Office prior to the enactment of MAP-21, as many as 200 major steps were involved in developing a transportation project, from the identification of the project need to the start of

construction. The same report also shows it typically takes between nine and 19 years to plan, gain approval of, and construct a new major federally-funded highway project. This process involves dozens of overlapping state and federal laws, including: NEPA; state NEPA equivalents; wetland permits; endangered species implementation; and clean air conformity.

Further, project delays carry severe financial consequences. According to a 2016 report by the Texas A&M Transportation Institute, project delay is estimated to cost $87,000 per month for small projects (e.g., reconstruction), $420,000 per month for medium-sized projects (e.g., widening) and $1.3 million per month for large projects.[1] Both political parties recognized that the current system was simply too long and too expensive a way to deliver transportation projects that improve mobility and safety. As such, finding meaningful ways to expedite this process has been a congressional priority for more than 15 years.

Significant progress was made on a bipartisan basis to streamline the permitting and approval process for transportation improvements in the past four reauthorizations of the federal surface transportation program: the Transportation Equity Act for the 21st Century (TEA-21) of 1998; the Safe, Accountable, Flexible Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005; the Moving Ahead for Progress in the 21st Century (MAP-21) Act of 2012; and, most recently, the Fixing America's Surface Transportation (FAST) Act of 2015. Each of these measures provides valuable insight about the successes and failures of legislative efforts to reduce delay in the delivery of needed transportation projects without sacrificing regulatory safeguards.

Reducing Project Delay

Reducing the amount of time it takes to build transportation improvements was first addressed in 1998 with the passage of TEA-21. Efforts to reduce delay in this legislation concentrated on establishing concurrent project reviews by different federal agencies. The concept was that multiple reviews done at the same time, as opposed to one after the other, would reduce the amount of overall time it took to get a project approved. While this improvement was a step in the right direction, it had limited impact, as concurrent reviews were discretionary, rather than mandatory. Thus, it was up to the federal agencies involved in a project whether or not to take advantage of this new benefit.

In 2005, SAFETEA-LU sought to further reform the project delivery process by establishing a wider range of new ways to deliver transportation improvements. Specifically, SAFETEA-LU gave greater authority to the U.S. Department of Transportation (U.S. DOT) as "lead agency" during the project delivery process, limited the window during which lawsuits could be filed against projects, and reformed the process for determining impacts on historical sites and wildlife refuges.

SAFETEA-LU represented a far more expansive reforming of the project delivery process, by addressing the schedule for project reviews and also factors outside of the process itself which contribute to delay. SAFETEA-LU also went further than TEA-21 in that some of its reforms, such as the limitation on lawsuits, were mandatory, as opposed to optional.

The clear lesson between the 1998 and 2005 surface transportation bills was that simply giving federal agencies the ability to complete regulatory reviews in a more efficient manner in no way guarantees that authority would be utilized. As such, SAFETEA-LU took more aggressive steps to influence non-transportation agencies into making transportation project reviews a higher priority.

While SAFETEA-LU's environmental streamlining provisions were a significant step forward from those enacted in TEA-21, the transportation project delivery process remained at an unacceptable pace. As such, both MAP-21 and the FAST Act took project delivery reform even further, with more tools for reducing delay. In addition to building upon the concept of "lead agency" begun in SAFETEA-LU, MAP-21 and the FAST Act also included specific deadlines for permitting decisions as well as a scheduling mechanism to ensure environmental impact statements (EISs) do not take longer than four years. As with SAFETEA-LU, however, it is important to note that many of the reforms made in MAP-21 and the FAST Act were discretionary. The more state and federal agencies choose to use these reforms, the greater the impact will be.

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[1] "Assessing the Costs Attributed to Project Delay During Project Pre-Construction Stages," Texas A&M Transportation Institute, March 2016, available at: https://static.tti.tamu.edu/tti.tamu.edu/documents/0-6806-FY15-WR3.pdf.

Expansion of the Use of Categorical Exclusions

One of the most significant changes to existing law in both MAP-21 and the FAST Act was an expansion of the use of categorical exclusions (CEs) during the environmental review process. A CE is used when projects create minimal impacts on the environment. The difference between a CE and an environmental assessment (EA) or environmental impact statement (EIS) is multiple years added on to the amount of time it takes to complete a project review. Under MAP-21, many sorts of routine projects were automatically classified as CEs, these include rehabilitation and repair projects, projects within an existing right-of-way, projects with minimal federal resources and projects undertaken as a result of an emergency situation. Expanding the use of CEs to these additional areas enables local governments to have more certainty as to when a CE can be used and also allows routine projects to be undertaken without burdensome, unnecessary levels of review.

MAP-21 also called for the development of CE guidelines for projects being constructed in response to an emergency or natural disaster. To qualify for CE status, such a project must be of the same mode/type and in the same right-of-way as the facility it is replacing and started within two years after the emergency/natural disaster. It should be noted that MAP-21 also offers states additional flexibility in emergency situations by allowing the issuance of special permits to overweight vehicles delivering relief supplies and allows states to use any federal highway program apportionments other than those dedicated for local governments to replace transportation facilities damaged by a national emergency.

Only three months after the emergency/natural disaster CE was promulgated by the U.S. Department of Transportation (U.S. DOT), it was put to use in May 2013 when a truck hit the I-5 Skagit River Bridge in Mount Vernon, Washington. Application of the CE allowed repairs to the bridge to begin swiftly, and correctly recognized that in times of emergency, the focus should be on responding as promptly and effectively as possible. Specifically, in this instance repairs began within 24 hours after the accident and the bridge was re-opened to traffic in just 27 days and fully repaired within 115 days.

MAP-21 also created a CE for projects within an existing right-of-way. This is a logical application of the CE process, as an environmental review would have already had to be completed in order for the right-of-way to be obtained. Thus, requiring a second environmental review for a project within that right of way is duplicative and adds no additional environmental protection. The Texas Department of Transportation (TXDOT) noted a Houston widening project undertaken prior to MAP-21 involving a widening of a four-lane road. Although no additional right-of-way was required, an EA was deemed necessary. The EA took three years and cost $100,000. Under MAP-21, that same project would qualify for a CE and be completed in a fraction of the time and cost.

NEPA was never meant to be a statute enabling delay, but rather a vehicle to promote balance. While the centerpiece of such a balancing is the environmental impacts of a project, other factors must be considered as well, such as the economic, safety, and mobility needs of the affected area and how a project or any identified alternative will affect those needs. Allowing certain types of projects to be classified as CEs is a very effective way of reducing delay in the review and approval process, ensuring that projects with minimal environmental impacts are not put through a needlessly long regulatory process.

Additionally, the current system for processing CEs should be examined in order to reduce unnecessary delay. Under Section 1315 of the FAST Act, FHWA, on behalf of the Secretary of Transportation, developed a programmatic agreement template for CEs as required by the legislation. The FAST Act specifically states the template was to be developed for CEs listed in section 771.117(c) of title 23, Code of Federal Regulations. ARTBA believes the intent of this requirement was to provide a single, uniform process for processing CEs on the "c list", which now include three previous "d list" CEs and associated constraints. Previously, there were no constraints associated with the use of "c list" CEs except for "unusual circumstance". It should be noted that FHWA already has a 1989 programmatic model for the "d-list" CEs.[2]

As stated in 23 CFR 771.117(c), "c-list" CEs normally do not require any further NEPA approvals by the FHWA while "d-list" CEs require additional documentation to be sent to a federal agency as outlined by FHWA's 1989 programmatic model for "d-list" CEs. The purpose of the programmatic agreement template under the FAST Act was to ensure that with the addition of the three previously listed "d-list" CEs and associated constraints to the "c-list" that a template be developed to provide

[2] https://www.environment.fhwa.dot.gov/projdev/docuceda.asp.

guidance on how to properly document "c-list" CEs which now includes the three CEs with constraints in an efficient manner.

FHWA did not develop a template for the "c-list" CEs as required by the FAST Act, but one for both the "c-list & d-list" CEs. While there is not a specific issue with a template that covers both the "c-list and d-list" CEs, there is an issue with the template placing historical "d-list" constraints on the use of "c-list" CEs and constraints which are not required under Federal Regulations. The FHWA developed template is more restrictive and burdensome than the Federal Regulation for those projects with "c-list" CEs and requires more case by case review by FHWA than what the Federal Regulations require. This was not the intent of the FAST Act language, nor the intent of programmatic agreements.

FHWA should be directed to re-examine the FAST Act developed model programmatic agreement for CEs and remedy the language to fit the intent of the FAST Act and its underlying regulations.

Delegation of Environmental Review Responsibilities

Under SAFETEA-LU, a pilot program was established allowing five states (California, Alaska, Ohio, Texas and Oklahoma) to assume the role of the federal government during the NEPA process. MAP-21 expanded the opportunity to participate in the program to all states. States choosing to take part would conduct their own environmental reviews, potentially saving time as a result of not having to go through multiple federal agencies.

Of the five states allowed to participate in the delegation pilot program under SAFETEA-LU, only California chose to do so and was approved in 2006. Under MAP-21, Texas was approved to participate in December of 2014. More recently, Ohio applied for the delegation program in 2015 and has just had its first federal audit while both Florida and Utah submitted applications last year.

The Committee needs only to look to California and Texas—the two states which have the longest running NEPA delegation programs—to see what continued use of the delegation program can achieve. Specifically, an Oct. 30, 2015, fact sheet published by the California Department of Transportation demonstrates the following significant reductions in delay preparing environmental review documents:

- Draft EAs have seen a median time savings of 10.7 months;
- Final EAs and Findings of No Significant Impact (FONSI) have seen a median time savings of 11.5 months;
- Draft EISs have seen a median time savings of 22.9 months, and;
- Final EISs have seen a median time savings of 130.8 months—nearly 11 years![3]

Similarly, the Texas Department of Transportation has (TXDOT) credited NEPA delegation with increased time savings, a more organized internal project delivery program and greater predictability.[4] Further, the Ohio Department of Transportation (ODOT) estimates the time saved by NEPA delegation will lead to a cost savings of $45 million once the Ohio program is fully established.[5]

Put succinctly, NEPA delegation works. As FHWA stated on Dec. 22, 2016, "The NEPA Assignment Program reduces duplication, saves time and resources, and avoids compromising our high standards for protecting the human and natural environment. Empowering states in this way saves time and money, making it good government AND good business."[6]

Additionally, MAP-21 allows states to also assume control of just the CE process as opposed to full environmental reviews. TXDOT has experienced a significant reduction in the time it takes to review CEs through this partial delegation program. Prior to assuming responsibility for CE review, the process took about one year. Under the program, the average time is now less than 45 days. Further, the documentation requirements have been reduced. CEs which used to span more than 100

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[3] Available at http://www.dot.ca.gov/hq/env/nepa/pdf/nepa_assignment_fact_sheet_q33_oct2015_rev.pdf.

[4] See Dec. 8, 2015 testimony of Carlos Swonke, Director of Environmental Affairs, Texas Department of Transportation before the House Committee on Oversight and Government Reform Subcommittee on Transportation and Public Assets, available at: https://oversight.house.gov/wp-content/uploads/2015/12/12-8-2015-Transportation-Subcommittee-Hearing-on-MAP21-Swonke-TX-DOT-Testimony.pdf.

[5] Available at https://www.dot.state.oh.us/NEPA-Assignment/Pages/NEPA_Assignment_History.aspx.

[6] Available at https://www.transportation.gov/fastlane/fhwa%E2%80%99s-%E2%80%98every-day-counts%E2%80%99-initiative-empowering-states.

pages are now two-page checklists. Utah has also assumed control of the CE process under MAP-21 and is now completing CEs in as little as six days for routine projects. Finally, Alaska has also assumed responsibility for CEs and is experiencing favorable results from the program.

While the reason for non-participation thus far by the other states has varied, potential liability and litigation costs were an overriding issue, as the state would also be assuming federal responsibilities for litigation over any project where delegation was used. Still, ARTBA believes delegation of environmental review responsibilities to states could be an important tool to save resources and speed project delivery without sacrificing regulatory safeguards.

Greater Strength for "Lead Agencies"

SAFETEA-LU established U.S. DOT as the "lead agency" for the environmental review of transportation projects, including "purpose and need" and "range of alternatives" determinations. MAP-21 expanded upon this authority by allowing U.S. DOT, as the lead agency for all transportation projects, to name a single modal administration as the lead agency in the case of multi-modal projects. The Secretary of Transportation also may, within 30 days of the closing of the comment period for a draft EIS, convene a meeting of the lead agency, participating agencies and project sponsor to set a schedule for meeting project deadlines. This new authority allowed the U.S. DOT to be the focal point of the review process, as opposed to a peer on equal footing with non-transportation agencies.

The basic problem is that the development of a transportation project involves multiple agencies besides DOT evaluating the impacts of the project as required by NEPA. While it would seem that the NEPA process would establish a uniform set of regulations and submittal documents nationwide, this has not been the case. For example, the United States Environmental Protection Agency (EPA), Army Corps of Engineers (Corps), Fish and Wildlife Service (FWS) and their companion state agencies each require an independent review and approval process, forcing separate reviews of separate regulations, and unique determinations of key benchmark issues—such as the purpose and needs of a project—and requiring planners to answer multiple requests for additional information. Also, each of these agencies issues approvals according to independent schedules.

The opportunities to reduce the delay caused by inter-agency conflict provided by SAFETEA-LU, MAP-21 and the FAST Act in the area of lead agency are significant. However, these reforms are only effective to the degree that the U.S. DOT chooses to take advantage of them. In other words, it is not mandatory that the agency take advantage of any of the benefits of "lead agency" status.

Even as an optional tool, though, "lead agency" status is an important mechanism for improving the project delivery process.

Additional Project Delivery Reforms

MAP-21 also improved project delivery by limiting the time during which lawsuits may be filed against projects. This concept was also part of SAFETEA-LU. SAFETEA-LU set a deadline of 180 days after the issuance of a federal decision on a project for the filing of a lawsuit. MAP-21 shortened this deadline to 150 days. Establishing a firm deadline for lawsuits ensures that any possible litigation is dealt with at the beginning of the delivery process. By addressing conflicts early, planners then are able to set schedules without fear of litigation after the deadlines have passed. Further, the deadline allows conflicts to be heard and resolved sooner, rather than later.

Under MAP-21, project sponsors were allowed to request the Secretary of Transportation to set an expedited schedule for projects undergoing an EIS for more than two years. This schedule would ensure the project's EIS would be completed within two additional years. MAP-21 also establishes new deadlines for permitting decisions from federal agencies. If these deadlines are not met, the agencies suffer financial penalties. It should be noted, however, that these provisions of MAP-21 have not yet been utilized and it remains to be seen how they would work in practice.

Other Suggestions for NEPA Reform

Encouraging concise NEPA documents: Currently, the EIS process for a new highway project is a multi-year endeavor. A major reason for this is the length of the EIS itself, which can literally span multiple volumes totaling thousands of pages under the current NEPA regulations.

The EIS is meant as a resource for affected members of the community to gain information about the proposed project. Current EISs are impossible for many lawyers to understand and completely inaccessible to community members without any prior training in the fields of law or environmental consulting. One factor behind lengthy EISs is the fear of litigation on the part of project developers. In an effort to anticipate issues which could be used to delay a project through litigation, project developers have reportedly attempted to "bulletproof" their EISs. This results in a document which attempts to address every possible issue or scenario to arise in connection with a proposed project no matter the relevance or how likely it is to be a factor in environmental decision making. The end product of this process is an EIS which is completely unwieldy and does not serve its intended purpose.

ARTBA recommends setting a page limit threshold on the length of EISs that would help them better serve the communities for which they are intended to be written. It would also force the authors of EISs to write in clear and more concise terms. Finally, it would reduce the delay associated with new transportation construction projects by dramatically cutting down the time needed to complete the final document.

Integrating NEPA with planning: Another reform ARTBA supports is integration of NEPA with the transportation planning process. ARTBA has recommended increased integration of NEPA in both legislative and regulatory settings repeatedly and the issue is also one ARTBA has recommended be part of the next reauthorization legislation for the federal surface transportation program.

For transportation projects, an extensive amount of information is gathered during the planning process, which often occurs prior to the actual triggering of NEPA requirements. Allowing information gathered during the planning process, to the extent it is still current and relevant, to satisfy NEPA requirements would limit duplicative reviews and reduce the amount of delay in the NEPA process. If current information is already available as the result of compliance with transportation planning requirements, that information should satisfy NEPA regulations as well. This would increase efficiency and maintain environmental protection. Duplicative reviews serve no redeeming purpose as part of the NEPA process, and should be eliminated wherever possible.

Clear time lines for NEPA reviews: There is no set time limit for NEPA decisions. When they begin a NEPA review, project planners have no sense of when the process is going to be completed. Strict, enforceable timelines for NEPA decisions would add predictability to the NEPA process and allow project planners to more accurately plan schedules for environmental review.

However, ARTBA recognizes that a uniform deadline may not work for every project. In setting NEPA schedules, discussions involving the lead agency and project sponsor should take place in order to determine a realistic time frame for the project and allow for project-specific flexibility.

Still More Work to Do

Unfortunately, a number of the MAP-21 and FAST Act project reforms mentioned do not have many examples upon which to evaluate their success. A major reason for this is the uncertainty over long-term federal funding. Federal funds, on average, support 52 percent of annual state department of transportation capital outlays for highway and bridge projects. Uncertainty surrounding the short and long-term fiscal condition of the Highway Trust Fund continues to have a significant effect on state transportation planning.

Following the expiration of MAP-21 and prior to the passage of the FAST Act in December 2015, Congress put in place a series of short-term program extensions and temporary Highway Trust Fund revenue patches to keep highway and public transportation funds flowing to the states. This period of uncertainty led DOT officials in 35 states to publicly declare their state programs would be impacted by a shutdown of the federal surface transportation funds. In fact, eight states delayed or canceled projects valued at $1.9 billion.

The types of projects which require an EIS (and sometimes even an EA) are complex, multi-year projects. Without the assurance of long-term federal funding, states were often reluctant to proceed with such projects. With the FAST Act's assurance that federal investment will be provided through FY 2020, states will hopefully undertake more long-term transportation construction projects and we will have a better opportunity to witness more project delivery reforms in practice. Still, the long-term stability of the Highway Trust Fund needs to be addressed to provide states full confidence to undertake large-scale new transportation improvements.

Conclusion

The transportation sector has made significant strides in the area of project delivery. Beginning with TEA-21 and continuing through to the FAST Act, members of both parties have worked together to ensure our nation's infrastructure continues to improve at a pace matching the growth of our country. Continuing to streamline the NEPA process for our nation's infrastructure is essential in assuring the public the government is making every dollar spent of transportation go as far as possible without sacrificing necessary regulatory safeguards. ARTBA looks forward to continuing to work with the Committee on these efforts.

PREPARED STATEMENT OF THE CALIFORNIA AGRICULTURAL COMMISSIONERS AND SEALERS ASSOCIATION BY MARTIN SETTEVENDEMIE, PRESIDENT

Chairman Bishop and Ranking Member Grijalva, members of the Committee on Natural Resources, thank you for scheduling this important hearing on Modernizing National Environmental Policy Act (NEPA) for the 21st Century. It is important for the Committee to better understand the impacts of an outdated NEPA process and the need for reforms.

Fifty-four California County Agricultural Commissioners and Sealers of Weights & Measures are members of the California Agricultural Commissioners and Sealers Association (CACASA), a 501 c 6 non-profit professional organization. Representing all of California's fifty-eight counties, County Agricultural Commissioners and Sealers of Weights and Measures have the dual roles of promoting and protecting the state's food supply, agricultural trade, the environment, public health and safety, consumer confidence and ensuring an equitable marketplace in California. California County Agricultural Commissioners and Sealers are appointed by their respective County Boards of Supervisors. We work cooperatively with California Department of Food and Agriculture and Department of Pesticide Regulation, federal and other state agencies, and stakeholders to implement regulatory programs at the local level ensuring compliance with applicable laws, regulations, ordinances and policies.

One of our many responsibilities includes working cooperatively with Weed Management Areas (WMAs) throughout California. WMAs are made up of local stakeholder groups and public and private land management entities. WMAs have proven to be an efficient and effective method for controlling the spread and impact of invasive plants, including noxious weeds throughout California. Left unmanaged invasive plants add to fuel loads that if not properly managed can lead to catastrophic wildfires and impact their behavior and severity.

The spread of invasive plants in-and-around our nation's national forests have an impact on wildfires by constantly changing fuel load properties. The recent devastating series of wildfires in Northern California that claimed the lives of 43 people, injured hundreds and destroyed thousands of buildings and homes were undoubtedly fueled by dry vegetation. The wet winter of 2016 and spring of 2017 spurred plant growth and this was followed by extreme heat and dry conditions over the summer of 2017. This unmanaged, dense fuelbed combined with the diablo winds from the northeast to increase the intensity of the fires and carried them quickly across the landscape.

The spread of invasive plants can alter ecosystem properties. As they do, needed management activities must also be altered to timely control the spread. There are multiple management activities that can be deployed to reduce risks associated with the potential severity of wildfires. Some of those activities include; biological control, treatments such as mechanical thinning and prescribed fires, as well as herbicide treatments. All activities can help achieve multiple management objectives. Last year the USFS reported, "reduced hazardous fuels (activities occurred) on over 3 million acres of National Forest System, state, and private lands."

The varying management activities all come with pros and cons. For instance, biological control is a critical element of an integrated pest management (IPM) program which can help to reduce herbicide applications. However, in some cases professionally applied and controlled herbicides may be the only practical consideration for very large infestations. Prescribed fires successfully reduce hazardous fuel loads but may impact air quality and public safety.

Despite the pros and cons there is simply too much at stake, as exhibited by the recent northern California fires, to impede management activities that reduce hazardous fuels in-and-around our nation's forests. In testimony before this Committee in September 2017 witness Lawson Fite, American Forest Resource Council testified, "Our federal forests, managed by the Forest Service and Bureau of Land

Management (BLM), urgently need active management to reduce the risk of severe wildfire. At least 58 million acres of national forest are at high or very high risk of severe wildfire, and over 4.5 million homes are at risk."

The USFS reports that the varying management activities work! More than 1,400 hazardous fuel treatments since 2006 have shown that they are effective in reducing both the cost and damage from wildfires.

Yet, regulatory, legal and funding impediments exist and projects, including those managed by WMA's in California to reduce hazardous fuel loads, are continuing to mount. The USFS estimates eleven million acres of National Forest System lands located in or near the Wildland Urban Interface, where homes and communities are present, would benefit from fuel treatments that reduce risks to wildfires.

A more persistent and long-term impediment to the spread of invasive plants and management activities to reduce hazardous fuel loads in, near National Forests is that most forestry projects are subject to the National Environmental Policy Act (NEPA). NEPA requires agencies to complete a detailed Environmental Impact Statement (EIS) for activities "significantly affecting the quality of the human environment." If activities do not have a significant impact, agencies can complete an Environmental Assessment (EA). If proposed management activities are: (1) similar to activities that an agency has already determined do not have the potential for significant environmental impacts, and (2) NEPA procedures are already established for proposed management activities, or (3) Statute does not require an agency determination for the management activity, a categorical exclusion (CE) applies and an EIS and EA are not required.

Some of the work carried out by the California County Agricultural Commissioners has historically taken place on public lands including USFS-managed lands. About fifteen years ago, the USFS halted most of the work done by the County Agricultural Commissioners because the appropriate NEPA documentation had not been completed on many forests. Since that time very little NEPA analysis has been completed.

California's Sierra Nevada mountains and foothills are a patchwork of private and federal lands. Threats such as tree-mortality, catastrophic wildfire, and the spread of invasive species do not discriminate among landowners or recognize jurisdictional boundaries. Counties such as Plumas, Sierra, Nevada, Placer, El Dorado, Amador, and Calaveras have worked diligently over the last several decades, utilizing shoestring budgets, to stop the spread of invasive weed species such as Yellow Starthistle, Spotted Knapweed, and Musk Thistle. One of the greatest challenges to the efficacy of these efforts has been the ability of local governments to treat invasive weed infestations when they occupy both federal and private lands. In many instances, the lack of NEPA coverage means that the county agriculture department is required to stop otherwise effective treatments (either chemical or mechanical) at federal land boundaries, and leave populations of invasive weeds untouched on federal lands where they reproduce and re-infest the adjoining private lands. In many instances, lack of NEPA coverage is the single biggest obstacle to effective treatment of invasive weed populations in the Sierra Nevada range.

According to information highlighted in a Committee on Natural Resources Federal Lands Subcommittee hearing earlier this year, the federal government does not have a lot of data and analytics on NEPA. In an April 2014 report, "National Environmental Policy Act, Little Information Exists on NEPA Analyses," the Government Accountability Office (GAO), said "Government-wide data on the number and type of most NEPA analyses are not readily available, as data collection efforts vary by agency."

An EIS contains more procedural requirements and more time to complete according to the GAO. "Based on the information published in the Federal Register, the National Association of Environmental Professionals (NAEP) reported in April 2013 that the 197 final EISs in 2012 had an average preparation time of 1,675 days, or 4.6 years—the highest average EIS preparation time the organization had recorded since 1997."

More recently, the NAEP website shows that in 2016, 312 Draft, Final, and Supplemental Environmental Impact Statements (EISs) were published in the Federal Register. The Forest Service published the most documents with 67 (21% of total), followed by the U.S. Army Corps of Engineers (37/12%), Bureau of Land Management (30/10%), Fish and Wildlife Service (18/17%), and Federal Highway Administration (16/5%) (based on information in the U.S. Environmental Protection Agency (EPA) database of EISs.

In addition, in their 2016 NEPA Annual Report, NAEP reported that "the average time to prepare the 177 Final EISs issued in 2016 (measured from Notice of Intent to Final EIS) was 5.1 years. This continues the recent trend of increasing Final EIS preparation time. The average time to prepare the Draft EISs issued in 2016 again

showed signs of a decreasing trend. Seventeen percent of Final EISs were prepared in two years or less, a small increase from 2015."

We are aware of one project on the Shasta-Trinity National Forest requiring an Environmental Analysis that has taken eight years to complete. The 100+ acre noxious weed treatment project still has not received Final approval. Reasons cited for the delay include lack of funding, use of herbicides, adding additional alternatives and re-prioritizing projects.

Preparing an EIS also comes at a cost. In their 2014 Report GAO found that the Department of Energy (DOE) tracks the funds it pays contractors to prepare NEPA analyses (excluding the time spent by DOE employees). "The average payment to a contractor to prepare an EIS from calendar year 2003 through calendar year 2012 was $6.6 million, with the range being a low of $60,000 and a high of $85 million."

Knowing about significant environmental impacts is vital but the processes to discover those impacts should not impede progress on controlling biological challenges. Invasive plants and grasslands continue growing with no regard to a NEPA EIS or EA being completed. Any government program dealing with biology and nature that is under-managed, untimely and/or inconsistently or inadequately funded will result in profound consequences. In this case, and as has been witnessed in the recent California wildfires, the fires behaved differently and burned more intensely and spread quicker.

Only a few National Forest managers in California have completed the NEPA analysis required to employ Integrated Pest Management (IPM) methods for invasive noxious weed control. Multiple statutes have been developed over the last sixty years emphasizing the need to control invasive species, but little has been done to follow through with NEPA completion.

The National Forests surrounding the Tahoe (El Dorado, Lake Tahoe Basin MU, Plumas) all have completed invasive plant NEPAs that allow them to use herbicides. The Tahoe, despite having significant issues with musk thistle, has refused to consider any options other than mechanical control. This approach has resulted in a limited success over 20+ years of ongoing control projects. If the Tahoe National Forest had completed NEPA when musk thistle was first discovered this project it would have reduced the significantly burdensome challenge it remains today. Instead, there is no end in sight to their continuous mechanical control efforts which draw on federal grant monies that could be used to fund other projects—and, musk thistle continues to spread in eastern Nevada, Sierra, and Placer counties.

Sufficient program funding remains a challenge. Many Forest supervisors would be willing to proceed with NEPA, but program-specific funding has not been made available. We understand this is a more broader challenge and Congress and the USFS are working to lessen the impact of the practice of fire borrowing which impedes progress in other USFS programs such as hazardous fuel reduction and healthy forest initiatives.

Another challenge of completing management activities targeted at hazardous fuel reductions in/near National Forests is NEPA-origin lawsuits. According to the USFS litigation trends nationally for the number of cases filed against the Forest Service that contain at least one NEPA claim between fiscal year 2012 and 2017 have been relatively steady or decreasing slightly. While the number of NEPA-origin lawsuits may have slightly reduced in recent years what has not been reduced is their broad implications that increasingly obstruct progress of projects.

For instance, the National Strategy and Implementation Plan for Invasive Species Management clearly demands an IPM method for weed control and management. Many critical management activities are impossible to implement if the USFS does not complete NEPA-authorizing IPM treatments such as chemical, mechanical, and biological invasive noxious weed control management.

More broadly, in a study published in the January 2014 Journal of Forestry, "Twenty Years of Forest Service Land Management Litigation" (Miner, Malmsheimer and Keele) researchers provided a comprehensive analysis of USFS litigation from 1989 to 2008. During this period researchers found that "1,125 land management cases were filed in federal court. The Forest Service won 53.8% of these cases, lost 23.3%, and settled 22.9%. It won 64.0% of the 669 cases decided by a judge based on cases' merits. The agency was more likely to lose and settle cases during the last 6 years; the number of cases initiated during this time varied greatly. The Pacific Northwest region along with the Ninth Circuit Court of Appeals had the most frequent occurrence of cases. Litigants generally challenged vegetative management projects, most often by alleging violations of the National Environmental Policy Act and the National Forest Management Act. The results document the continued influence of the legal system on national forest management and describe the complexity of this litigation."

The reason that litigants challenge vegetative management projects based on NEPA is simply because it is easy to do. In their 2014 "Guidance on Best Practice Principles for Environmental Assessments" report to the Council on Environmental Quality (CEQ), the National Association of Environmental Professionals (NAEP) explain how they developed a process to produce Best Practice Principles (BPPs) for preparing an effective environmental assessment. One of the first steps taken was to prioritize the 535 positive features NEPA practitioners identified in a survey as "features typically associated with adequate environmental assessment." That's right, 535 positive features for an adequate environmental assessment. Likely each one of the 535 features is a potential subject for litigation. To their credit the NAEP and CEQ are working to prioritize these features down to between 15 and 23 best practices for environmental assessments. However, it still leaves a lot of interpretations for the U.S. federal court system to settle.

Moreover, NEPA-origin lawsuits do not have to be legally successful in court to be successful. NEPA-origin lawsuits are often time-consuming and add to the burden of an already strained U.S. federal court system.

Without the completion of NEPA invasive noxious or non-native weeds will continue to proliferate on public and private lands throughout California threatening the state's critical infrastructure, its biodiversity, and ecological integrity. County Agricultural Commissioners (CACs) are also concerned about infestations of serious weed species such as Scotch Thistle, Musk Thistle, Leafy and Oblong Spurge, Scotch Broom, and Diffuse and Spotted Knapweeds to name just a few. These species can seriously reduce the productivity on grazing and pasture lands, infest hay fields and timberlands, deplete water resources, make recreational areas almost unusable by the public, and last but not least displace the very native flora and fauna that the U.S. Forest Service is obligated to protect.

There are some modernized practices that if continually undertaken can improve upon the challenges to timely completion of environmental analyses under NEPA. Two restoration-related categorical exclusions to promote hydrologic, aquatic, and landscape restoration were approved in 2013;

1. learning networks are established within the agency to promote adaptive management, focused environmental assessments, and iterative environmental impact statements; and
2. "Electronic Management of NEPA" (eMNEPA) investments have reduced administrative workload by $7 million per year from 2005 to 2010 and are projected to save $17 million through 2014.

Implementing the new planning rule and improving NEPA will help land managers focus on collaborative watershed restoration while promoting jobs and economic opportunities in rural communities.

In addition, more NEPA "predecisional" collaborative processes should be used with a goal of avoiding litigation. Earlier decisions by collaborative partners helps speed the completion of NEPA processes.

Other ideas to modernize the NEPA process include:

- Incentivize MOU's and project grants for quick implementation of management activities developed by local collaboratives.
- Provide Categorical Exclusions (CEs) under the National Environmental Policy Act that allow forest management projects to be quickly prepared, analyzed, and implemented.
- A reasonable length of time must be established and mandated for completion of EAs, CEs and EIS.
- Support U.S. Forest Service hiring additional staff that solely focus on completing NEPA and NEPA-origin lawsuits to gather required information for USFS attorneys defending these lawsuits.
- Support increases in hazardous fuel reduction programs line item. A portion of these funds should be set aside specifically for U.S. Forest Regions to complete NEPA and management activities such as control of noxious weeds.
- The hazardous fuel reduction budget line item specifically addresses biological challenges. To appropriately address biological challenges, the hazardous fuel reduction account should at least remain static and portions of such funding should be specifically targeted toward abatement of noxious weeds as a preventative measure to reduce hazardous fuel buildup and increase risks of wildfires.

- The USFS must expedite its work on needed NEPA documentation for invasive noxious weed control to cover entire infestations on public land and for all the national forests in California.
- USFS must maintain consistency between forests with regard to weed policy, project management and better communication and continued collaboration to leverage limited resources.
- Continuing public input in the NEPA process is strongly encouraged and needed early in the process, before an environmental assessment begins.
- Early input should include itemization and detail of things that will occur if the proposed project is delayed.
- Staff across all federal agencies need NEPA training.
- The internal NEPA process needs a designated lead agency. The lead agency should be authorized to make decisions when conflicts arise. A defined chain of command is needed among varying agencies involved in NEPA processes.
- Congress should hold oversight hearings on The White House Council on Environmental Quality (CEQ) guidance on NEPA processes. These processes require collaboration between agencies at all levels; County, State, Federal, Tribal. Collaboration between all agencies is vital early in the NEPA process.
- Federal and State EIS must be completed jointly, not separately.
- If possible, litigation should only be allowed on material, technical components of NEPA.

We appreciate this opportunity to present our thoughts.

Rep. Grijalva Submissions

GREENLATINOS,
THE CITY PROJECT,
LOS ANGELES, CALIFORNIA

November 29, 2017

Hon. ROB BISHOP, *Chairman*,
Hon. RAÚL GRIJALVA, *Ranking Member*,
House Committee on Natural Resources,
1324 Longworth House Office Building,
Washington, DC 20515.

Re: Strengthen and Fully Fund NEPA Review to Protect People, Places, and Values

Dear Chairman Bishop, Ranking Member Grijalva, and Honorable Members of the Committee:

We appreciate the opportunity to provide written comments for the Committee's November 29, 2017, hearing on "Modernizing NEPA for the 21st Century." Please accept these comments for the hearing's official record.

Republican President Richard M. Nixon signed the National Environmental Policy Act (NEPA) into law with bipartisan support in 1970. NEPA is effective in providing the public and public officials with the information we all need to make better decisions. "Thank God for NEPA because there were so many pressures to make a selection for a technology that might have been forced upon us and that would have been wrong for the country," according to then-Secretary of Energy James Watkins (ceq.doe.gov/NEPA). Secretary Watkins, a Navy admiral, served as Secretary of Energy under Republican President George H.W. Bush. NEPA has been a proven bulwark against hasty or wasteful federal decisions by fostering government transparency and accountability. It has ensured that federal decisions are at their core democratic, by guaranteeing meaningful public involvement. It has achieved its stated goal of improving the quality of the human environment by relying on sound science to reduce and mitigate harmful environmental impacts.

We support strengthening the law, and full funding, to enable fair and efficient review under NEPA, including the impact of policies and programs on people of

color and low income people. This Congress has proposed bills that would waive NEPA via legislative categorical exclusions, limit the scope of environmental reviews to ignore climate impacts, and reduce government accountability to we the people by limiting judicial review. These attacks reflect an ideological effort to eliminate this law and the legacy of bipartisan support for it.

NEPA and other regulations are not the major cause of delay in infrastructure development and government decision-making. The Congressional Research Service (CRS) identified causes entirely outside the NEPA process, such as lack of funding. The U.S. Department of Treasury concluded "a lack of funds is by far the most common challenge to completing" major transportation infrastructure projects.[1]

NEPA plays a vital role in distributing fairly the benefits and burdens of environmental policies and programs for all. What the environmental justice movement has demonstrated is that racially identifiable communities are at a greater risk of environmental harms, disproportionately lack environmental benefits, pay a larger cost, and carry a heavier environmental burden than other communities regardless of income and class. Latinos are among the strongest supporters of environmental protection for several major reasons, namely, local exposure to pollutants, the effects of climate change and pollution on migrant farmworkers, and the impact of global warming on Latin American nations. Latinos and other people of color nevertheless are often marginalized by public officials, government agencies, mainstream environmentalists, and the media.[2] Proper enforcement of NEPA can help address that injustice.

GreenLatinos is a national coalition of Latino environmental, conservation, and civil rights leaders. The City Project's mission is equal justice, democracy, and livability for all. EarthJustice, a nonprofit environmental law organization, fights for justice to advance a healthy world for all. The Urban & Environmental Policy Institute at Occidental College is an applied research and advocacy center with the mission of advancing community-driven programs and policies to build healthy, thriving communities and achieve social, economic, and environmental justice.

We urge this Committee in the strongest possible terms to foster better decisions, improve transparency and accountability, and ensure taxpayer dollars are invested to protect our health, our people, and our environment. People of color care about protecting people, places, and values under NEPA. And we vote.

Very truly yours,

Mark Magaña
President
GreenLatinos

Robert García
Founding Director-Counsel
The City Project

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[1] Congressional Review Service (CRS), *Accelerating Highway and Transit Project Delivery: Issues and Options for Congress* (2011), www.aashtojournal.org/Documents/August2011/CRSinfrastructure.pdf; Toni Horst, et al., *40 Proposed U.S. Transportation and Water Infrastructure Projects of Major Economic Significance*, AECOM (2016), www.treasury.gov/connect/blog/Documents/final-infrastructure-report.pdf.

[2] *See generally* Samuel Garcia, *Latinos and Climate Change: Opinions, Impacts, and Responses* (Policy Report GreenLatinos & The City Project 2016), www.cityprojectca.org/blog/archives/43303; Prof. Gerald Torres & Robert García, *Pricing Justice: Carbon Pricing and Environmental Justice* (Policy Report, The City Project 2016), www.cityprojectca.org/blog/archives/43641; Ariel Collins & Robert García, *Climate is a civil rights and moral issue as well as a health, economic, and environmental issue* (Policy Report, The City Project 2015), www.cityprojectca.org/blog/archives/35499; Environmental Justice Leadership Forum, *Guidance to Incorporate Environmental Justice and Civil Rights in State Clean Power Plans*, https://www.cityprojectca.org/blog/archives/41618.

LABOR COUNCIL FOR LATIN AMERICAN ADVANCEMENT,
WASHINGTON, DC

June 5, 2017

Dear Member of Congress:

On behalf of the Labor Council for Latin American Advancement (LCLAA), home of the Latino labor movement, we write to strongly oppose any and all attacks on the National Environmental Policy Act (NEPA). NEPA provides our communities a voice in some of the most consequential government decisions, impacting where we work, how we work, and even the rights and safeguards we have on the job. As Latino workers, we play a major role in building and maintaining our nation's transportation and energy infrastructure, the same infrastructure that allows our country to prosper. In many instances, Latino workers and working families bear the brunt of federal projects, making our communities most vulnerable to rushed or ill-planned decisions. An attack on NEPA is an attack on Latino priorities and our voice, in particular.

We represent the interests of over 2 million labor unionists, with 50 chapters across the United States. Our members include some of the most prominent unions in the country, including the United Automobile Workers (UAW), the United Steel Workers (USW), the American Federation of State, County and Municipal Employees (AFSCME), the Amalgamated Transit Union (ATU), the Service Employees International Union (SEIU), and the Office and Professional Employees International Union (OPEIU) amongst many others. We recognize that our country is in dire need of job-creating infrastructure investment but that investment must be used in ways that serve and respond to the needs of the American public. This can only happen through a strong and well thought out NEPA process.

NEPA provides an important voice for Latino workers and working families as we tend to be among the most impacted by federal projects. Latino workers account for over 43% of ground, maintenance and construction workers and up to 75% of agricultural laborers. Our families live, breathe, learn and play in communities next to federally funded highways, incinerators, power plants, pipelines, and toxic waste sites. How these projects are built and how they are run dictate the quality of our health and safety as workers within those facilities as well as the health of our families who live near them. We need a say in how these projects are developed and NEPA provides it.

We consistently use NEPA's public disclosure mandate to learn about how projects are developed and how they will impact our families. We use NEPA's public comment opportunities to fight against worker exploitation and for safer and healthier work places. We also use it to improve the projects with our trade and local expertise. Overall, we use NEPA to make projects better; to make jobs better and to keep our communities safe.

Although NEPA has historically been used to address environmental priorities, it is also a tool we use to address related but independent issues that impact labor, immigrant, and human rights. For example, when a power plant is being developed, we use the NEPA process to address workers' safety; when an immigration detention center is planned, we use it to address the lack of healthcare for immigrant detainees; and when the administration wants to militarize the border with a wall, we use it to show how pointless and hateful the idea is. NEPA is an environmental protection statute but it is also a civic engagement one that we cannot afford to lose.

We are concerned by the increasing volume of attacks on this critical law. In each of the last three Congresses, we have seen over 160 bills that undermine NEPA by shortening public comment periods and statutes of limitation, establishing arbitrary deadlines for environmental review, limiting the consideration of better alternatives or waiving the law altogether. All in all, these harmful measures give industry a green light to recklessly build projects without addressing or even considering how Latino workers, their families, and countless communities of color will be impacted or disenfranchised in the process. We ask that you protect and recognize our right to meaningfully participate in the national infrastructure development process by defending NEPA and all the safeguards it guarantees.

Therefore, as the home of the Latino labor movement, we urge you to oppose any efforts that threaten to undermine our voice in government decisions. We, the

workers who contribute so much everyday to building and maintaining our national infrastructure urge you to protect our voice in government. Protect NEPA!

Sincerely,

Hector Sanchez,
Executive Director
Labor Council for Latin American Advancement (LCLAA)

Milton Rosado,
LCLAA National President
United Auto Workers (UAW)

Eddie Rosario,
LCLAA New York City Chapter President
American Federation of State County and Municipal Employees (AFSCME)

Carlos Pelayo,
LCLAA San Diego/Imperial Counties Chapter President
Labor Environmental and Political Activist

[LIST OF DOCUMENTS SUBMITTED FOR THE RECORD RETAINED IN THE COMMITTEE'S OFFICIAL FILES]

Rep. Bishop Submissions

—Bloomberg Op-Ed, "Trump Did Something Good This Week," by Cass R. Sunstein, August 17, 2017.

—Letter addressed to Chairman Bishop from Thomas F. King dated November 25, 2017.

Rep. Gosar Submission

—Defenders of Wildlife, Board of Directors and Advisory Committees List.

Rep. Grijalva Submissions

—Center for American Progress, "Debunking the False Claims of Environmental Review Opponents," by Kevin DeGood, May 3, 2017.

—Letter addressed to Chairman Bishop and Ranking Member Grijalva from 29 conservation groups dated November 29, 2017.

Mr. Howard Submission

—"Red Tape, Not Progress: The Center for American Progress Defends Bureaucratic Paralysis," by the Common Good dated June 2017.

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