

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
BISMARCK DIVISION

STATE OF IOWA,)
STATE OF NORTH DAKOTA,)
STATE OF ALASKA,)
STATE OF ARKANSAS,)
STATE OF FLORIDA,)
STATE OF GEORGIA,)
STATE OF IDAHO,) Case No. 1:24-cv-00089-DMT-CRH
STATE OF KANSAS,)
COMMONWEALTH OF KENTUCKY,)
STATE OF LOUISIANA,)
STATE OF MISSOURI,)
STATE OF MONTANA,)
STATE OF NEBRASKA,)
STATE OF SOUTH CAROLINA,)
STATE OF SOUTH DAKOTA,)
STATE OF TENNESSEE,)
STATE OF TEXAS,)
STATE OF UTAH,)
STATE OF VIRGINIA,)
STATE OF WEST VIRGINIA, and)
STATE OF WYOMING,)
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)
Plaintiffs,)
v.)
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)
COUNCIL ON ENVIRONMENTAL)
QUALITY, and BRENDA MALLORY, in)
her official capacity as Chair,)
)
)
Defendants.)

DECLARATION OF ANDREA VIDAURRE

I, **Andrea Vidaurre**, declare as follows:

1. I am the co-founder and Policy Lead for People’s Collective for Environmental Justice (“PCEJ”), an incorporated association based in San Bernardino, California. I have

worked in this position since PCEJ was founded in August 2020. I am also a member of PCEJ and have been since August 2020.

2. PCEJ aims to fight against pollution and environmental racism by building community power. PCEJ works to build for the health, well-being, and self-reliance of the Inland Empire, which has some of the worst air pollution in the nation. Roughly 40% of the nation's shipped goods move through the Inland Empire, primarily via two of the world's busiest ports at Long Beach and Los Angeles, and contains a billion square feet of warehouses and half a million diesel trucks. The region's 32,000 warehouses are sited primarily nearby low-income communities and communities of color.

3. I have worked on environmental justice issues for the past six years, including issues of air quality and land use. As Policy Lead at PCEJ, I track and analyze local, regional, state, and federal policies related to air quality. I provide policy recommendations to ensure that these policies better fit the lived experiences of communities in the Inland Empire.

4. Living in an area of high air pollution impacts the physical health of PCEJ members. For example, there are hundreds to thousands of trucks going to and from warehouses in my community, which impact PCEJ members who live near warehouses. They suffer health harms from the pollution from these warehouse operations, including higher rates of asthma, occupational allergies, nosebleeds, headaches, and other chronic diseases.

5. It is common for children under the age of one to develop allergies because of the air pollution levels around their homes. PCEJ members have also had family members die prematurely because of the environment they live in and the cumulative impacts of many sources of pollution.

6. Pollution also negatively impacts the mental health of PCEJ members. The number of warehouses in the South Coast, particularly the Inland Empire, has destabilized and displaced many communities. PCEJ members are frontline to warehouse pollution and bear the emotional toll of knowing that their homes – where they wish to retire or raise children – are in an industrial zone.

7. Having lived in the South Coast my whole life, I have also experienced negative short- and long-term health effects because of the poor air quality in the region. I check the air quality every single day before deciding whether or not to go outside, or even leave my windows open. Air pollution is a direct threat to me and other PCEJ members. Many people in our communities may not know the negative impacts of breathing unhealthy air and will go outside unprotected. For those who do understand the impacts, it is mentally draining to think about the causes of this horrible air pollution and the disregard that politicians and industry have for our lives.

8. Our work organizing the community to fight pollution and highlight environmental justice harms has yielded significant results. For example, the California Air Resources Board adopted stringent new rules cutting down pollution from trucks and locomotives.

9. In 2024, for my efforts to fight pollution and environmental racism in Southern California, I was awarded the Goldman Prize, which recognizes grassroots environmental activists and leaders. The Goldman Prize is sometimes called the “Green Nobel.” A video explaining why I was chosen for this award is available here: <https://pc4ej.org/>.

10. My organization and I engage in processes under NEPA and its state counterpart, the California Environmental Quality Act (“CEQA”). These processes provide us with an extra

layer of accountability, transparency, and process that we need to be able to engage when decisions impacts our community. This is especially true because we live in an area that suffers from the cumulative impacts of many individual decisions: my office is surrounded by four major freeways, all of which move cargo, and around 100 warehouses and an intermodal railyard. Without these processes, it would be impossible to know about decisions which will make air pollution worse.

11. A good example was the work I did opposing a major expansion of the San Bernardino airport, which primarily deals with freight for the warehouses in my community. The NEPA process was very poorly executed. We found out about it almost by accident, as the notification was printed in the back of a small newspaper. The project would add massive quantities of new air pollution to our already overburdened community. But the Federal Agency Administration (“FAA”) refused to consider those impacts or how our community already suffers from such extensive pollution.

12. We brought a lawsuit challenging that decision but it was not successful. One judge dissented. She saw the problem. She said, “I do not say this lightly, but it must be said. This case reeks of environmental racism, defined as “the creation, construction, and enforcement of environmental laws that have a disproportionate and disparate impact upon a particular race.” San Bernardino County, California, is one of the most polluted corridors in the entire United States. Not so coincidentally, the location within San Bernardino County that is the site of the approved project in this case is populated overwhelmingly by people of color: 73% Latinx and 13% African-American. Asthma rates in the community are among the highest 2% in California and more than 95% of the community lives below the poverty level. Environmental racism is

real.” *Center for Community Action and Environmental Justice v. Federal Aviation Administration*, 18 F.4th 592, 614 (9th Cir. 2021).

13. The dissenting judge correctly observed that this project would never be sited in a wealthy community. “Does anyone doubt that this Environmental Analysis would not see the light of day if this project were sited anywhere near the wealthy enclave where the multibillionaire owner of Amazon resides? Certainly not.”

14. The new regulations, adopted in 2024, require agencies to do a better job of considering these kind of impacts in NEPA reviews. This is very important to me, my organization, and my community. We have few measures to hold people accountable for the harm they impose on our health. Under CEQA, we typically ask agencies to consider things like race and income in their decisionmaking, and they usually do so when we ask. This is important because historically our communities have been under attack from polluting industries. If we can expose this, we may be able to begin cleaning up the air and protect people’s health.

15. Failure to consider how race and poverty interact with government and business decisions is the root of the problem, its why we are in the position we are in. That’s why we support the regulations which call attention to environmental justice concerns and communities in NEPA reviews. Removing these provisions would harm me, my organization, and my community.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 24 day of June, 2024 at San Bernardino.



Andrea Vidaurre

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DECLARATION OF CAROLINE COX

I, **Caroline Cox**, declare and state as follows:

1. I am a supporter of the Center for Environmental Health (“CEH”) and was a staff member until November 30, 2020. CEH is a California non-profit organization founded in 1996

with its principal place of business in Oakland, California. CEH has approximately 25 staff members, and an email list of more than 50,000 supporters who regularly receive information and action alerts. CEH works on the regional and national level.

2. I worked for CEH for 14 years, with the primary focus of my work being providing scientific support for CEH's work to reduce exposures to toxic chemicals. I have a Masters Degree in entomology from Oregon State University and have been working on public health issues since 1990, first with pesticides and then with toxic chemicals more generally. I have been a staff scientist at two non-profit environmental health organizations. I currently am retired and live in Eugene, Oregon. I regularly hike on new trails that I have never visited, mostly on national forest land in western Oregon, and I plan to continue this tradition as long as I am physically able. The spectacular beauty of these areas is something that the National Environmental Policy Act (NEPA) has helped to preserve by providing public information about project impacts and alternatives. I hope NEPA will continue to serve the public and help preserve these areas so that I can share them with my grandchildren.

3. I began this work because of an experience I had as a brand-new homeowner, planting my first garden on my own property. When my spring peas were only about a foot high, a municipal truck drove down the alley spraying herbicides and left my peas deformed. I realized that widespread use of toxic chemicals was harming both human and environmental health and that there was a crucial need for development and implementation of safer, more sustainable solutions. NEPA requires federal agencies to inform the public about the harms of and alternatives to toxic chemicals, leading to reduced use.

4. CEH protects people from toxic chemicals by working with communities, consumers, workers, government, and the private sector to demand and support business

practices that are safe for public health and the environment. For CEH, people and their health and well-being are the ultimate concern. I believe that air, water, food, and consumer products should be free of dangerous and untested chemicals.

5. CEH works collaboratively with environmental justice organizations and low-income communities to address the disproportionate toll that toxic chemicals take on their neighborhoods. Historically, CEH's legal action has spurred hundreds of major retailers to remove lead and other toxic chemicals from child and adult jewelry, fashion accessories including those marketed toward low-income buyers, candies, toys, lunchboxes, personal care products, and more. CEH has also taken legal action to force polluting industries to reduce, or otherwise mitigate, hazardous air emissions from low-income communities and communities of color.

6. One of CEH's core values is that people need information in order to both protect themselves and their families and also to advocate for businesses and the government to enact health protective policies. This is the type of public information and public participation that NEPA requires.

7. CEH supporters and staff members have used NEPA's standards and requirements to bring about on-the-ground protections. My work has been focused on toxics for decades. In the 1980s, I was part of a group that used NEPA litigation to force dramatic changes in the use of herbicides for growing crop trees in the Pacific Northwest. Forcing the U.S. Forest Service and U.S. Bureau of Land Management to fully comply with NEPA resulted in changed Forest Service practices, as NEPA's requirements to review alternatives and fully engage the public brought the agency new information and perspectives regarding their herbicide spraying

program. The net result was that herbicide use decreased dramatically because the NEPA process was so successful in addressing issues that I and other people on the ground cared about.

8. CEH submitted comments on the NEPA Proposed Rule in March 2020 in coordination with other environmental justice and public health organizations. Those comments were critical of the proposed rule because CEH felt it would hurt the ability of communities we work with to know what projects were planned and it would harm the ability of the public to meaningfully explain to decision makers how their communities would be impacted by agency proposals.

9. CEH submitted comments on the CEQ NEPA Phase 2 Proposed Rule in September 2023 in coordination with other environmental justice and public health organizations. Those comments commended CEQ for prioritizing meaningful public engagement with environmental justice communities in its NEPA regulations and made suggestions to strengthen the rule. CEH joined Earthjustice and other environmental justice and public health organizations in a letter to Congress opposing S.J. Res. 55 Congressional Review Act Resolution that would undo the Biden CEQ NEPA regulations. In 2023, CEH joined a large coalition of environmental justice and public health organizations in opposition to Senator Manchin's proposed "permitting reforms" that proposed to restrict public participation in NEPA reviews for certain energy projects. The communities CEH serves and I are harmed by the 2020 changes in the NEPA regulations that create less public transparency, fail to foster full public participation, curtail review of alternatives, and fail to review the indirect and cumulative impacts of proposed projects. That is why the 2024 updates to the NEPA regulations are so important. They brought back the parts of NEPA that allows for people like me to be able to continue participating in these processes and directs agencies to consider important issues like

environmental justice and climate change in their environmental analysis. The core value of NEPA (requiring the federal government to use all practicable means to create and maintain conditions under which man and nature can exist in productive harmony) is one that is deeply important to me. The new regulations provide crucial support for this core value.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 21st day of June, 2024 at Eugene, Oregon.

A handwritten signature in cursive script that reads "Caroline Cox".

Caroline Cox

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DECLARATION OF DANE SCHUMACHER

I, Dane Schumacher, declare that if called as a witness in this action I would competently testify of my own personal knowledge, as follows:

1. I am a resident of Omega township in southwest Carroll County, Arkansas, about one mile from the border of Madison County, Arkansas.

2. I am a member of Food & Water Watch (FWW). I joined FWW because water is an extremely important part of my life, and for a time, has been essential to my livelihood. The health of the White River watershed and its sub-watersheds is particularly important to me, and I value organizations like FWW that work to protect water quality—especially because of the karst geology in the region that makes the White River particularly susceptible to degradation.

3. I know that FWW is also an organization dedicated to holding industrial factory farms accountable for their water pollution and other harmful impacts in rural communities, and that FWW works to strengthen government oversight of these operations. I know that FWW has expertise in this area of work, and I rely on FWW and its website for research and other materials related to factory farming and water pollution.

4. I moved to Arkansas in 1996. After pursuing a career as a legal and research assistant and volunteering with the Peace Corps, I became interested in sustainable agriculture and decided to buy land to farm. The property on which my home sits is 90 acres, about 2 acres of which is devoted to a small farm/garden where we grow crops like garlic and blueberries and raise chickens. From 1998 until several years ago selling produce at farmers' markets was my primary livelihood; I only do it part-time now.

5. My property sits on Dry Fork Creek in the Kings River watershed, which is a sub-watershed of the White River. In early 2000, I learned from an instream biologist for the Kings River Watershed Partnership that Dry Fork Creek was one of the cleanest waterways in

Arkansas. I irrigate my land from the creek, including the produce that I grow for myself and my family. I also use the creek and Kings River for swimming and kayaking.

6. Protecting water quality and quantity in my regional watersheds is important to me because we live downstream from various activities that could adversely affect our water quality, and we are directly impacted by how the water is used, protected, or contaminated upstream from us. What happens upstream is also important because of the karst geology and drainage tiles in our region; the tile drains bring contaminants as well as water directly into the stream, and anything upstream will come downstream.

7. The valley where my farm is located is home to several small-scale sustainable farms. My property is located across the creek from one of the oldest organic farms in the state of Arkansas. I care about these farms because of what they bring to our state and community, and because they care for the land and water that we all rely on. I understand that all of us in the same watershed are connected. For this reason, I strongly believe in protecting and monitoring the health of streams, creeks, and all surface waters.

8. I know there are chicken concentrated animal feeding operations (CAFOs) upstream from me. It's very important to me to be able to know what these operations are doing so I can take action to protect myself from pollution coming downstream and downwind. It is also important to me that they know that I'm downstream from them and their actions are impacting me. For example, I sometimes smell the CAFO waste even though I do not always know which facilities are applying CAFO waste or exactly where.

9. In addition, although I continue to kayak and swim in several waterways near me, my enjoyment of these activities is diminished by my concern over the possibility of pollution from the CAFOs in the watershed. I find that I am on alert when I am on the water, and am

sometimes uneasy because I do not always know exactly what the state of the water quality is. Concern over CAFO pollution has also led me to change where I recreate; there are some waterways that I will no longer kayak on because I am concerned about water pollution from CAFOs in the area.

10. Because there are several large poultry processing plants in the area, Carroll County and our surrounding area is ground zero for expansion of the vertically integrated poultry CAFO industry, meaning CAFOs that operate under contract with the nearby processing companies. Because integrator companies gain efficiencies by having their CAFO producers near their slaughterhouses and other infrastructure, we are truly inundated with chicken houses in my county, and cannot even keep track of how many chicken houses there are in the areas upstream that could affect me and the waterways I rely on. I do know that within the past couple of years, yet another CAFO constructed about 2 miles upstream from me as the crow flies.

11. I am aware of the U.S. Department of Agriculture's Farm Service Agency's (FSA) role in financing CAFOs, because I followed the lawsuit over FSA's inadequate environmental review of the C&H hog CAFO in Arkansas' Buffalo River watershed. One of the main issues in that case was the FSA's failure to provide public notice and comment of its National Environmental Policy Act (NEPA) environmental review of the CAFO.

12. If there were public notice of a NEPA review of a new CAFO in my watershed, I would absolutely comment on it and share it with others in my community and watershed. I am very engaged in government actions and public processes related to water quality, and have participated in state public comment periods for impaired waterway designations for creeks and a proposed rulemaking to lower the dissolved oxygen standard for Arkansas waterways. In the past, my NEPA comments and those of others have resulted in better projects with more

environmental mitigation and pollution controls, although CAFOs remain highly polluting and noxious.

13. I was very concerned when the 2020 Council on Environmental Quality (CEQ) NEPA regulations exempted CAFO financing actions from NEPA, and provided a declaration for FWW in its legal challenge to that regulatory rollback. I worried, and continue to worry, that lack of environmental review and public comment would result in unmitigated CAFO construction and operation, and thus degrade the water quality upon which I depend for my livelihood and personal use and enjoyment.

14. When there is no NEPA review, I generally only learn of new CAFOs when I happen to see one being constructed. Most chicken operations in the area are considered “dry waste” operations, which are not required to get the permit that liquid waste operations must follow, and therefore do not go through a public notice and comment process. It is hard to find out when one of these dry waste operations is being proposed, and it is very difficult to publicly oppose new and expanded CAFOs as a result.

15. I have previously relied on NEPA processes to learn of new projects that are federally permitted or funded, and seek to participate in such processes to ensure that my concerns about downstream and nearby pollution are addressed. FSA financing is often the sole federal trigger for NEPA for these kinds of projects. Several years ago, I participated in a NEPA process considering FSA funding for land purchase and construction of a large turkey CAFO¹ near my home; my comments helped persuade the agency that the site was ill-suited for such a

¹ See https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/State-Offices/Arkansas/env-docs/draft_ea_davidson_madisonco_20191121.pdf.

project, and the project applicant withdrew the application for the site, thereby preventing a likely additional source of pollution in the waters near my home.

16. Due to NEPA's importance in informing me and my community about proposed CAFOs, its public participation opportunities, and its role in mitigating some of the worst CAFO environmental impacts on my local waterways and environment, I am very supportive of CEQ's new Phase 2 NEPA rule because it removes the CAFO financing exemption from the 2020 rule. This means that FSA can continue to conduct NEPA reviews when it finances CAFOs, which helps ensure that I will be aware of these projects and have an opportunity to comment on them in an effort to protect my and my community's health.

17. I am supportive of FWW's intervention in this challenge to the Phase 2 rule, because if the Phase 2 rule is struck down and the 2020 rule goes back into effect, CEQ will deem FSA CAFO financing actions not subject to NEPA. This would leave me and my community members in the dark about proposed CAFOs and eliminate a critical opportunity to influence CAFO financing actions and environmental mitigation measures.

18. I do not think it makes sense for FSA to use my tax dollars to finance new and expanded CAFOs, particularly in areas like Carroll and Madison Counties that are already inundated with them. FSA should be using public financing to finance organic and sustainable farms that do not harm waterways or communities like mine, rather than integrated contract CAFOs that concentrate in certain communities and watersheds simply to serve the financial goals of the integrator corporations.

19. But I have every reason to believe that FSA is going to continue financing CAFOs in my area, including through loan guarantees. A requirement that the agency conduct an Environmental Assessment and a public notice and comment process when it does so has at least

provided me and my community members with the opportunity to weigh in on ways that the proposal could have a lesser environmental impact, or to propose alternatives to the CAFO altogether. I will be significantly harmed if the court in this case vacates the Phase 2 rule and reinstates the 2020 rule that did not require FSA to conduct NEPA reviews for its CAFO financing actions. If the court upholds the Phase 2 rule, ensuring NEPA review for CAFO financing actions, I will take advantage of these opportunities to provide comment in the hopes that it would inform and positively influence the agency's decision making process.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13 day of June, 2024 in Omega Township, Arkansas.


Dane Schumacher

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DECLARATION OF DAVID LAMFROM

I, David Lamfrom, declare as follows:

1. The facts set forth in this declaration are based upon my personal knowledge. As to those matters that reflect an opinion, they reflect my personal and professional opinion on the matter. If called upon to testify, I could and would do so competently.

2. I have worked for the National Parks Conservation Association (“NPCA”) since 2008. I first became a member of NPCA in 2010. I last renewed my membership on January 1, 2024. I reside in Knoxville, Tennessee.

3. I am currently the Vice President of Regional Programs for NPCA. In this capacity, I lead a staff of 70 other professionals all over the country who work to protect the resources, stories, and legacy of our national parks. I am a part of NPCA’s Executive Team which supports our organization’s prioritization of work and decision-making functions. I also lead the Diversity, Equity, and Inclusion work for NPCA. This work starts internally but also involves creating authentic long-term partnerships with communities that have deep relationships with places that are now national parks and ensuring equitable access to national park sites. I have previously held several other positions at NPCA, including Southeast Regional Director and Director of the California Desert and Wildlife Program.

4. As a longtime NPCA staff member, I have personal knowledge of NPCA’s mission and activities. NPCA is a nonpartisan, non-profit organization headquartered in Washington, D.C., whose mission is to provide an independent voice for protecting and enhancing America’s National Park System for present and future generations. For over a hundred years, NPCA has worked to protect places of unparalleled natural wonder, historical significance, and cultural value. NPCA has more than 1.6 million members and supporters nationwide.

5. I have traveled many times to the national park units for both personal and professional reasons. I enjoy hiking, photography, watching wildlife, and learning about ecology, and natural and cultural history in park units throughout the country, including Mojave National Preserve, Everglades National Park, Great Smoky Mountains National Park, Yellowstone National Park, National Park of American Samoa, and Katmai National Park and Preserve, to name a few. I have visited well over 100 national park units in my life and career. I have organized many dozens of park visits for members, allies, and decision-makers to educate them about the values the park was established to preserve, the threats to those values, and how people can help protect a particular park and its natural and historic setting for future generations.

6. NPCA's regional teams tackle many park-related issues. We regularly advocate for protecting natural, cultural, and historic places from proposed and existing harmful and/or incompatible uses and impacts that would degrade, or already degrade, their visual, ecological, historical, and cultural values. For instance, we contest ill-considered developments in and near park sites, work to clear the air and water of pollution that harms parks and people, advocate for wildlife corridors between protected spaces, and fight for the protection of parks against consumptive and damaging uses. Our regional staff also work closely with communities that intersect with national park units due to being gateway communities, having interest in being involved in park planning issues, advocating for their protection, or having cultural affinity or connection to the national park units themselves. NPCA's regional team works on campaigns by communicating with decision-makers at the local, regional, state, and national levels, building community around specific key issues national park units face, and working to raise awareness of key issues to make sure communities and decision-makers are involved in these important and

timely issues. Many of the issues we engage on go through the National Environmental Policy Act (“NEPA”) process.

7. I am familiar with NEPA and the regulations to implement that law. NPCA staff regularly review and analyze NEPA documents and submit detailed, technical comments on proposed actions that may impact national park sites across the country. These federal proposals include, but are not limited to, permit applications to construct pipelines, electric transmission lines, highways, and industrial facilities, and general management plans that guide National Park Service (“NPS”) management. Many of these proposals undergo NEPA processes and that constitutes one of our primary venues for participation and for the participation of our members, allies, coalitions, and communities we work with. We seek to participate in such processes to ensure that our concerns about impacts on federal lands are considered. I have been involved in hundreds of NEPA process components, whether it be drafting comments, supervising the commenting process, reviewing and editing our regional teams’ comments, attending public meetings, delivering public comment, consulting with community members, educating the community about NEPA and how to best participate, or educating agency leadership. NPCA has hosted several NEPA workshops to help educate community members on how the process works and how to be effective in their participation.

8. NEPA is integral to the work of NPCA because it ensures we are aware of proposed projects that may impact park sites and allows us to express concerns about the potential negative impacts of a proposal or our support for an important proposal. It is imperative that agencies fully analyze all the effects of their proposed actions so that the public understands the risks beforehand and the agency can make a well-informed decision. Not including certain types of impacts in a NEPA analysis, would result in additional threats to the areas that I regularly visit for recreational

and professional purposes. It would also discourage the American public from being involved in important decisions regarding national parks and public lands for whom they are stakeholders.

9. NPCA communicates extensively with its members and supporters, as well as the general public, about threats to park sites and positive opportunities by issuing press releases, publishing its quarterly magazine, hosting its regular podcast “The Secret Life of Parks,” and sending email and action alerts. NPCA frequently encourages its members to submit public comments on NEPA documents that will impact national park sites. These comments often address federal agencies not properly analyzing the impacts of proposed actions including both climate change and/or how the proposal would disproportionately affect marginalized communities.

10. NPCA as an organization is focused on how climate change is and will continue to threaten national park sites. It has and will continue to cause harm to irreplaceable wildlife habitat, increase flooding and drought conditions, escalate sea level rise, and increase the severity and quantity of natural disasters, like fires and hurricanes. These natural disasters and increasing temperatures will also make visitation harder in many circumstances. For instance, wildfires burned through Yosemite’s sequoia groves and floods in Yellowstone left communities and visitors without power and drinking water. Given the broad impacts of climate change, it is essential that the government consider both the reasonably foreseeable effects of proposed projects on climate change and the effects of climate change on the proposed action and their alternatives. NPCA also cares greatly about how NPS will manage its resources effectively amid the changes caused by climate change. I regularly advise regional staff members to consider climate impacts when analyzing a proposal by the government.

11. When analyzing a proposal that may impact a national park site, we also strive to always consider the potential environmental justice impacts. NPCA as an organization recognizes

that the modern environmental movement and public lands system were built on a foundation of the harmful displacement of Indigenous people. NPCA's work with national parks also is directly related to stories of the Civil Rights Era and movement as well as many other significant stories of social justice that are fundamental to our national identity and which have been identified as worthy of being held and interpreted by NPS. We always strive to acknowledge past injustices, listen to underrepresented and marginalized voices, and work toward reconciliation. I always stress to my regional staff members to consider how a proposal may impact marginalized groups and to include, when relevant, that in our comments to government agencies. National park units are sited throughout the country and are closely connected to adjacent communities as well as communities that have cultural connections to the lands NPS currently manages. It is imperative that we hear from those communities when we consider actions that would propose significant impacts so that we can carefully analyze them and make decisions that represent the public interest.

12. Throughout my years in conservation and preservation advocacy, my staff and I have been involved in countless NEPA processes. Below I describe just a few of them.

13. Under my supervision, NPCA's Alaska regional office has been working for years to oppose the Ambler Mining District Industrial Access Road. The organization opposes this 211-mile industrial mining access road because it would have devastated a vast wilderness landscape that is home to 66 Alaska Native communities, and disrupted caribou migration, the subsistence lifestyles of rural Alaskans, and the integrity of Gates of the Arctic National Park and Preserve. In 2023, along with our coalition partners, NPCA commented on the supplemental draft environmental impact statement ("SEIS") for the proposed Ambler Mining District Industrial Access Road. The comments discuss in detail how Bureau of Land Management (BLM) failed to fully consider the direct and cumulative climate impacts, as well as the impacts of climate change

on the road and connected mines. The comments also stress that BLM must do a better job of analyzing how the project may lead to additional significant adverse effects on environmental justice communities. Specifically, our comments discuss how “large-scale mining projects located in remote, isolated communities are correlated with impacts such as high poverty and unemployment rates, poorer health, lower education attainment, and long-term out-migration. As minority and low-income status is the norm in the region proposed for the Ambler Road, such adverse environmental justice impacts are likely to be severe and to reverberate throughout the region.” We advocated for a detailed analysis of the likelihood, magnitude, and duration of all such likely environmental justice impacts. In addition to the organizational comments, NPCA encouraged our members to submit comments that outlined how the road would negatively impact over 20 million acres of national parklands and 66 Alaska Native Tribes. On April 19, 2024, the Department of the Interior (“DOI”) issued the Final Supplemental Environmental Impact Statement for the Ambler Road proposal, identifying the No Action Alternative as its preferred alternative and rejecting the project. In doing so, DOI acknowledged that any of the action alternatives “would significantly and irrevocably impact resources, including those supporting important subsistence uses, in ways that cannot be adequately mitigated.”¹ I was thrilled that DOI truly considered the impact the proposal would have on tribal and other local communities and, in part, rejected the proposal due to those negative impacts.

14. I have drafted comments that address renewable energy projects and the development of overarching frameworks that create public land policies governing renewable

¹ Press Release, Dep’t of Interior, Biden-Harris Administration Takes Critical Action to Protect Alaska Native Subsistence, Lands and Wildlife (Apr. 19, 2015), <https://www.doi.gov/pressreleases/biden-harris-administration-takes-critical-action-protect-alaska-native-subsistence>.

energy. One primary intention of these renewable energy projects and frameworks is to promote clean energy development that reduces climate change by limiting fossil-fuel generated electricity. It is imperative that climate change be analyzed when industrial-scale projects are being contemplated, particularly when they have the stated purpose of supporting a clean-energy transition. It is also important that the climate and social justice impacts of industrial scale projects occur even when projects propose benefits that include climate. Examples of these NEPA processes include the development of BLM's Desert Renewable Energy Conservation Plan, BLM's Western Solar Programmatic Plan, the Caithness Soda Mountain Solar Project, the Silurian Valley Solar and Wind Project, the Desert Sunlight Solar Project, the Ivanpah Solar Project, the Stateline Solar Project, the Eagle Crest Pumped Energy Project, and the Crescent Peak Wind Energy Project.

15. Under my supervision, NPCA's Sun Coast Office has been working to lessen the impacts of off-road vehicle usage in Big Cypress National Preserve. In 2020, NPCA submitted comments on the DEIS for the Preserve Backcountry Access Plan ("BAP"), which strongly urged NPS to rescind the DEIS and re-issue a new and more comprehensive DEIS. Our comments explained how NPS failed to include climate change and sea-level rise in its baseline and impact analyses of the BAP. This analysis is necessary because sea-level rise is an increasing concern in South Florida and needs to be evaluated in all planning decisions in the region.

16. Overall, NEPA has given NPCA the opportunity to participate in decision-making impacting federal lands and park resources. In the years to come, NPCA plans to continue to regularly gain information on federal projects and permits in and around national park sites and share our knowledge of the potential impacts. The recent revisions to the NEPA regulations properly affirm that federal agencies should be doing full analyses of all the reasonably foreseeable

risks and harmful impacts of proposed projects. NPCA has a clear interest in ensuring that agencies continue to evaluate and consider the climate and environmental justice impacts of a proposal before deciding whether to go forward with it. First, it helps us organizationally understand the potential risks, which can help us decide our position on a given proposal. Second, it ensures that the federal government is making fully informed decisions about proposals that may impact park sites that NPCA has been working to protect for over a century. Without the opportunity to voice particular concerns and advocate for these interests through the NEPA process, I will experience professional, environmental, aesthetic, and recreational harms.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 17th day of June, 2024.



David Lamfrom

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
BISMARCK DIVISION

STATE OF IOWA,)
STATE OF NORTH DAKOTA,)
STATE OF ALASKA,)
STATE OF ARKANSAS,)
STATE OF FLORIDA,)
STATE OF GEORGIA,)
STATE OF IDAHO,) Case No. 1:24-cv-00089-DMT-CRH
STATE OF KANSAS,)
COMMONWEALTH OF KENTUCKY,)
STATE OF LOUISIANA,)
STATE OF MISSOURI,)
STATE OF MONTANA,)
STATE OF NEBRASKA,)
STATE OF SOUTH CAROLINA,)
STATE OF SOUTH DAKOTA,)
STATE OF TENNESSEE,)
STATE OF TEXAS,)
STATE OF UTAH,)
STATE OF VIRGINIA,)
STATE OF WEST VIRGINIA, and)
STATE OF WYOMING,)
)
)
Plaintiffs,)
v.)
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)
COUNCIL ON ENVIRONMENTAL)
QUALITY, and BRENDA MALLORY, in)
her official capacity as Chair,)
)
)
Defendants.)

DECLARATION OF DONNA CHAVIS

I, **Donna Chavis**, state as follows:

1. I make this declaration of my own personal knowledge. If called to testify as a witness, I could and would testify competently regarding its contents.

2. I currently reside in Pembroke, North Carolina, where I was born, and have been a resident for 73 years. I am a member of the Lumbee Tribe of North Carolina, and my active role in supporting the community and tribe has earned me the title of Elder member. In our tradition, the role of the Elder is more than age-related. It also relates to the type of role one has played in the community. I have dedicated more than 45 years of my life to advocating in my community to achieve environmental, economic, social, and educational equity and justice. I consider this mission a core of my identity.

3. I am a legal member as well as a staff member of Friends of the Earth. I began working for the organization in 2018 as a contract consultant. In April 2019, I was hired full-time as the Senior Fossil Fuel Campaigner. After 5 years as a full-time staff member, my role is Program Manager in the Climate and Energy Justice Program. In this role, I work with a team primarily in North Carolina to support efforts to maintain a high quality of environmental integrity, including opposition methane infrastructure attempting to site in the state. I also support work toward securing clean and green alternative energy development for communities in the state. Over the course of the five years my work has grown to include some in the states of South Carolina and Virginia.

4. In or around 2016, I became a founding member of the RedTailed Hawk Collective, which we established specifically to provide a forum and coalition for indigenous peoples in the state of North Carolina to oppose the Atlantic Coast Pipeline. The Collective has since expanded to oppose the expansion and development of “dirty” businesses and infrastructure projects across the State, such as the Active Energy Renewable Power (AERP) facility and, more recently, the MVP Southgate. The collective utilizes a number of administrative processes to ensure that indigenous people have a seat at the table for decisions

and policies affecting their community, including but not limited to, government-to-government consultations, Title VI of the Civil Rights Act of 1964, and the National Environmental Policy Act (NEPA).

5. In 2019, I attended a formal NEPA training sponsored by Emory University Turner Environmental Law Clinic with former White House Council for Environmental Quality General Counsel Dinah Bear as a trainer. In this training, I learned extensively about NEPA's mandates and processes, methods to challenge inadequate processes, as well as the various opportunities that NEPA guarantees for public input and involvement. In this training, it became clear to me that NEPA was the greatest and most meaningful tool to provide citizens a voice, role, and agency regarding what happens in their communities. NEPA also provides a basic model for states' environmental review and protection laws.

6. I rely heavily on NEPA announcements, reviews, and public processes to remain informed and involved in federal decisions affecting the communities I work with in both my professional and personal capacity. NEPA is vital tool for keeping abreast of government proposals and informing the public of their right to access and involvement at each stage of the process. If requirements for citizen input are followed, NEPA can also be an effective tool to resolve disputes without the need for litigation, including reaching alternative plans and uses for proposed projects. For instance, in the case of the MVP Southgate Pipeline, potentially impacted communities were informed about plans for the MVP Pipeline and the NC connection known as MVP Southgate Pipeline. They became actively engaged through public hearings and written comments. In August, 2020, the NC Department of Environmental Quality denied the Water Quality Certification for MVP Southgate Pipeline. In the denial the state noted: "Due to uncertainty surrounding the completion of the MVP Mainline project, the Division has

determined that work on the Southgate extension could lead to unnecessary water quality impacts and disturbance of the environment in North Carolina.” Engagement by impacted communities related to the MVP Mainline project and the MVP Southgate Pipeline played a major role in the denial of this critical permit. This engagement has continued with a change in the scope of the MVP Southgate being decreased in its most recent permit application.

Organizing continues to have the Southgate Pipeline canceled.

7. Efforts to undermine citizen access to information and the ability to achieve significant consideration by the government of environmental harms of projects is deeply troubling and will significantly impact my personal and professional life. In 2020, the Trump Administration implemented changes to the NEPA implementing regulations that removed or made inaccessible many of the tools I utilized for citizen access and involvement. For example, the new expedited timeline for the permitting process does not allow for as much due diligence or meaningful deliberation by all agencies involved. For decades, I have been operating under the citizens’ rights and processes under the prior NEPA framework and was forced to start anew to familiarize myself with, and educate others on these new (and less generous) avenues for stakeholder engagement and access.

8. I was deeply concerned that the elimination or curtailment of NEPA reviews and processes would streamline the development of fossil fuel infrastructure in North Carolina. This would result in additional threats to the community I live in as well as the communities I advocate for and work with.. Communities that would have been statistically most impacted by the completion of the Atlantic Coast Pipeline (ACP) were predominantly Indigenous. Since the ACP was canceled, there has been a Liquefied Natural Gas facility completed in Robeson County, NC which has a 42% Indigenous population. In 2021, this facility was able to be

completed with very little input from impacted communities. In fact, even before the permit request was submitted, Piedmont Natural Gas had clear-cut and logged the trees in such a way that destroyed archaeological evidence of native inhabitation. There was no archaeological survey performed on the property. NEPA review and process could have helped avoid this historical travesty.

9. In 2019, I utilized the NEPA process in my opposition to the construction of the Atlantic Coast Pipeline. I specifically used NEPA's public engagement and analysis process to engage in siting and permitting decisions regarding the Pipeline. NEPA allowed me and my coalition and community partners to voice our opposition to the Pipeline and engage in conversations about the pipeline's impact on communities and the surrounding environment.. Through use of NEPA, I was able to make the case with indigenous communities about their right to know about developments that were taking place on their lands. Through attendance and participation in Tribal Council meetings information was shared and the lack of consultation pointed out. Without the inclusion of environmental justice principles and the value of indigenous knowledge to the overall health of the environment, communities most impacted would not have had the incentive to become as greatly involved as they did. They have knowledge of the value of forests in areas of great wetlands to stave off flooding and degradation of soil in general. Through hundreds of years of existence in territories that have had weather challenges, they see the shift to climate challenges that are far more destructive. Their historic knowledge is critical in reversing the damage that has already occurred. With the loss of forest, we are already experiencing floods at levels never seen in the past. Superstorms Matthew (2016) and Florence (2018) left natural and physical damage that has not been repaired to date. Many people remain in homes that have mold and other dangers because they have nowhere else to go.

10. Currently, I am engaged in several additional strategies to utilize the NEPA process shortly to engage in the siting and development of proposed methane infrastructure. I rely on NEPA processes to learn of new projects that are federally permitted or funded, and I seek to participate in such processes to ensure that my and my partner communities' concerns are addressed.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 25 day of June, 2024 at Pembroke, NC.



Donna Chavis

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
BISMARCK DIVISION

STATE OF IOWA,)
STATE OF NORTH DAKOTA,)
STATE OF ALASKA,)
STATE OF ARKANSAS,)
STATE OF FLORIDA,)
STATE OF GEORGIA,)
STATE OF IDAHO,) Case No. 1:24-cv-00089-DMT-CRH
STATE OF KANSAS,)
COMMONWEALTH OF KENTUCKY,)
STATE OF LOUISIANA,)
STATE OF MISSOURI,)
STATE OF MONTANA,)
STATE OF NEBRASKA,)
STATE OF SOUTH CAROLINA,)
STATE OF SOUTH DAKOTA,)
STATE OF TENNESSEE,)
STATE OF TEXAS,)
STATE OF UTAH,)
STATE OF VIRGINIA,)
STATE OF WEST VIRGINIA, and)
STATE OF WYOMING,)
)
)
Plaintiffs,)
v.)
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)
COUNCIL ON ENVIRONMENTAL)
QUALITY, and BRENDA MALLORY, in)
her official capacity as Chair,)
)
)
Defendants.)

DECLARATION OF GUSTAV WERNER BEKKER

I, **Gustav Werner Bekker** state as follows:

1. I make this declaration of my own personal knowledge. If called to testify as a witness, I could and would testify competently regarding its contents.

2. My name is Gus Bekker, and I reside in Mountain Home, ID.

3. I work as a sales representative for numerous outdoor industry companies, a ski instructor, and a Naturalist. My work gives me the opportunity to travel to the five Pacific Northwest states including Alaska. The nature of my work allows me to visit and spend time in a plethora of public lands from National Parks to state and county public lands.

4. I am the founder of El Sendero Backcountry Ski and Snowshoe Club, a non-profit organization that advocates for non-motorized winter recreation on the Okanogan-Wenatchee National Forest (OWNF). I am also on the board of the Alpine Lakes Protection Society, an organization that was integral in the formation of the Alpine Lakes Wilderness. I am a Winter Wildlands Alliance (WWA) member and have worked with and supported Winter Wildlands Alliance's work on issues related to public lands and winter outdoor recreation since 2002. El Sendero is an all-volunteer organization, and we support WWA efforts both nationally and locally on behalf of winter non-motorized recreation.

5. I am a lifelong outdoor recreationist and have spent decades skiing, hiking, kayaking, climbing, and camping on public lands in the Pacific Northwest and across the country. I am particularly passionate about skiing and enjoy both backcountry and resort skiing on the Okanogan-Wenatchee National Forest. Skiing is important to me because it provides the opportunity to experience the mountains in winter. I am particularly drawn to the quiet and solitude of backcountry skiing. I helped found El Sendero Backcountry Ski and Snowshoe Club in 2004 in order to introduce others in my community to backcountry skiing and snowshoeing and to help people become advocates to protect the places where we ski.

6. I am a strong advocate for protecting Wilderness and opportunities for non-motorized recreation on public lands, especially on the Okanogan-Wenatchee National Forest.

My advocacy stems from the experiences I have had as an outdoor recreationist. I have experienced how federal agency decisions can directly and indirectly change a place and how this affects my experiences within that place.

7. I have also experienced how a lack of federal agency decisions can impact my experiences. For example, as a backcountry skier I have been displaced from places where I used to enjoy skiing because of motorized recreation – not because the Forest Service decided to designate a place for snowmobile use, but because the agency has repeatedly failed to address this issue. Because the Forest Service has failed to make a decision about where snowmobiles can travel on public lands, winter motorized use has increased in areas not really suitable for snowmobile use.

8. I have long advocated for the Forest Service to conduct winter travel management planning in order to designate some areas of the Okanogan-Wenatchee National Forest for snowmobile use and manage other areas of the forest for non-motorized winter recreation and conservation. In fact, I spent years advocating for the Forest Service to adopt an Over-Snow Vehicle Rule that requires winter travel planning because I want the Okanogan-Wenatchee National Forest to go through this process. Winter travel management is a Forest Service decision-making process, and I look forward to having an opportunity to present information and data to the Forest Service to support my position that certain areas of the forest should not be designated for winter motorized use. Winter travel management is one of the few opportunities that backcountry skiers have to secure protections for places where we ski, to ensure they remain free of motorized recreation.

9. Another threat facing backcountry skiing on the Okanogan-Wenatchee National Forest is the potential expansion of Mission Ridge ski area. Mission Ridge is my hometown hill,

where I have skied for many years and even worked as a ski instructor. It is a place that I love, but I am worried about the resort's plans to develop a 4,000-bed resort village. The ski area has proposed to develop a new resort community on private land adjacent to the National Forest and has requested that the Forest Service grant them a new right-of-way across Forest Service land. This new road right-of-way would bring several indirect impacts, including increased wildfire risk, reduction of backcountry skiing terrain, threats to wildlife, and crowding of popular backcountry recreation areas in the forest. I, and other El Sendero Backcountry Ski and Snowshoe Club members, submitted comments to the Forest Service opposing the right-of-way request and providing information to support our concerns.

10. This right-of-way proposal is just the latest example of how I have participated in federal agency decision-making over the past twenty years. I have also engaged in Forest Service processes related to trail and road development, timber sales, mining proposals and motorized recreation.

11. I've attended and participated in meetings, including collaborative meetings, submitted public comment letters, and helped El Sendero members to comment concerning Forest Service proposals many different times. For example, on behalf of El Sendero Backcountry Ski and Snowshoe Club, I submitted detailed scoping comments regarding Mission Ridge's right-of-way request to the Okanogan-Wenatchee National Forest. These comments were submitted during a comment period required by the National Environmental Policy Act (NEPA). I commented on issues related to public safety, wildlife conservation, and non-motorized recreation opportunities and experiences in the nearby backcountry. Some of these concerns are indirect and/or cumulative effects from the proposed ski area development, which

are the types of effects that the Council on Environmental Quality's 2020 NEPA rule exempts from agency consideration.

12. I believe that building a dead-end road through a narrow canyon to facilitate development of a 4,000-bed resort community is a threat to public safety and public resources. To ensure this does not happen, I plan to continue to participate in future meetings and comment periods regarding this project. I am also looking forward to participating in Okanogan-Wenatchee forest planning and winter travel planning when those opportunities arise, to advocate for protecting my favorite backcountry ski spots so that they remain non-motorized for perpetuity.

13. After 20 years of advocacy, I know I don't always get exactly what I want out of the NEPA process, and I know federal agency decisions can take a long time and the process can be deeply contentious, but I also know that public participation in federal decision-making is invaluable. NEPA gives me, and everybody, a voice in how our public lands are managed. Transparency and science-based decision-making ensure that even if I disagree with a decision, I know it's not arbitrary and that my input was considered. As a public landowner, having a say in how my lands are managed is extremely important to me.

14. I am worried that the Council on Environmental Quality's 2020 NEPA regulations will prevent me from engaging in Forest Service decision-making processes, or helping members of El Sendero to participate in these processes. As the road right-of-way proposal shows, federal projects are not always directly related to backcountry recreation yet can have significant consequences for my interests. Elimination of indirect and cumulative effects analysis and barriers to public participation would mean that I would be unable to participate in decisions affecting backcountry skiing on the Okanogan-Wenatchee National Forest, my

concerns would be dismissed as unrelated to the project at hand, or my participation may not “count” if the responsible official deems my comments lacking in technicality or specificity. In all cases, it is likely that the Forest Service would make decisions that reduce or negatively impact my use and enjoyment of National Forest lands. My voice as a public landowner and citizen would be taken away from me.

15. I’m also concerned that the 2020 regulations would allow the Forest Service to bypass public involvement in travel management decisions, by relying on a previously conducted, peripherally-related NEPA analysis (such as forest planning) to inform its decisions through a process known as “functional equivalent” or “determination of NEPA adequacy.” Neither process allows someone like me to comment on the actual decision being made, in this case, how the land is managed for winter recreation, because the Forest Service will be able to rely on prior analysis and process. Having advocated for the very existence of the Over-Snow Vehicle Rule, it would be deeply disappointing to be unable to engage in winter travel planning when the Okanogan-Wenatchee National Forest finally undertakes this process, because I do not believe that the forest planning process adequately addressed winter recreation.

16. Finally, I worry that CEQ’s 2020 regulations will cause federal agencies to make decisions that contribute to climate change. As a backcountry skier and somebody who lives in a high desert city whose water supply is dependent upon the mountain snowpack, I am very concerned about climate change. In my lifetime, I have seen winters become shorter, warmer, and drier and these changes directly, and negatively, impact my life. Not only is the ski season becoming shorter, but wildfires are also becoming more common and more intense, and I worry about the future water supply in the community where I live. If federal agencies do not consider how their decisions might impact the climate, we needlessly ignore important information that

affects how we as a nation address this historic problem. We cannot address climate change by pretending it does not exist or pretending that our actions do not impact the future. Climate change directly impacts my use as a winter recreationist as well as the viability and future of the natural resources on the OWNF, a forest highly susceptible to any changes in climate and particularly the winter snowpack.

17. NEPA is integral to public lands management. Federal agencies may be the stewards of these lands, but the public has no desire to be an absentee landlord. Like many others, I want to know what proposals the Forest Service and other agencies are considering for the lands I recreate on, and I want to know how these proposals might affect my use of these lands or natural resources we all share, like water and air. It is important to me that I am informed of these proposals and have an opportunity to meaningfully engage in agency decision-making. Reinstating the 2020 CEQ's NEPA regulations will reduce or eliminate these opportunities, impeding my ability to protect places, experiences, and resources that I value.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 17 day of June, 2024 at MOUNTAIN HOME, IDAHO.


Gustav Werner Bekker

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
BISMARCK DIVISION

STATE OF IOWA,)
STATE OF NORTH DAKOTA,)
STATE OF ALASKA,)
STATE OF ARKANSAS,)
STATE OF FLORIDA,)
STATE OF GEORGIA,)
STATE OF IDAHO,) Case No. 1:24-cv-00089-DMT-CRH
STATE OF KANSAS,)
COMMONWEALTH OF KENTUCKY,)
STATE OF LOUISIANA,)
STATE OF MISSOURI,)
STATE OF MONTANA,)
STATE OF NEBRASKA,)
STATE OF SOUTH CAROLINA,)
STATE OF SOUTH DAKOTA,)
STATE OF TENNESSEE,)
STATE OF TEXAS,)
STATE OF UTAH,)
STATE OF VIRGINIA,)
STATE OF WEST VIRGINIA, and)
STATE OF WYOMING,)
)
Plaintiffs,)
v.)
)
COUNCIL ON ENVIRONMENTAL)
QUALITY, and BRENDA MALLORY, in)
her official capacity as Chair,)
)
Defendants.)

DECLARATION OF IRENE BURGA

I, IRENE BURGA, declare and state as follows:

1. I am the Climate Justice and Clean Air Program Director for GreenLatinos. I have worked for GreenLatinos in this capacity for almost 3 years. I have more than a decade of experience in designing and implementing clean air and climate strategies that improve the quality of life for communities on the front lines of poor air quality and climate change. I have also been a member of GreenLatinos since 2016.

2. GreenLatinos was formed in 2008 originally as the National Latino Coalition on Climate Change (NLCCC) and has been formally known as GreenLatinos since 2013, serving as a national 501(c)(3) non-profit organization incorporated in Washington, D.C. that convenes a broad coalition of Latino environmental, natural resources, and conservation advocates. Our mission is to convene a broad coalition of Latino leaders committed to addressing national, regional and local environmental, natural resources and conservation issues that significantly affect the health and welfare of the Latino community in the United States.

3. GreenLatinos is an active community of over 14,000 Latines and allies across the U.S. and territories, united to ensure that environmental justice is embedded across all levels of governmental policies. GreenLatinos provides an inclusive table at which its members establish collaborative partnerships and networks to improve the environment; protect and promote conservation of land and other natural resources; amplify the voices of minority, low-income and tribal communities; and train, mentor, and promote the current and future generations of Latino environmental leaders for the benefit of the Latino community and beyond. GreenLatinos develops and advocates for policies and programs to advance this mission. We currently have five priority areas that we are working on: climate justice and clean air, public lands, oceans, water equity, sustainable communities, and urban greening.

4. NEPA is one of the key processes that we and our members rely on to protect Latino workers and communities. NEPA is the federal government’s “look before you leap” law, ensuring that federal decisions are made with full awareness of the environmental and health consequences of the decision. Because NEPA itself is general, CEQ’s implementing regulations are key to ensuring that the intent of the law is carried out. Since its establishment over 50 years ago, NEPA has been the nation’s bedrock environmental law, requiring review and oversight for any major federal action. It is a tool used to integrate the voice of the people into federal decision making.

5. GreenLatinos has carefully followed CEQ’s process to update its implementing rules. In 2023, GreenLatinos provided extensive comments alongside WE ACT for Environmental Justice (“WE ACT”), along with numerous allied organizations, addressing the CEQ’s proposed revisions to the NEPA Implementing Regulations Phase II (Docket ID No. CEQ-2023-0003). The comment letter emphasizes the need to prioritize environmental justice (EJ) and climate change considerations. It advocates for explicit definitions of EJ communities and cumulative impacts, enhanced public engagement with improved language access and cultural competence, thorough environmental assessments despite page limits, and stronger climate risk assessments. The letter underscores the importance of centering EJ communities in NEPA processes to address historical and ongoing environmental burdens and ensure equitable policy solutions.

6. The scientific record and lived experience demonstrate that a strong NEPA process makes projects more resilient, less likely to face litigation, and ultimately allows them to move faster all while safeguarding affected communities. Environmental justice communities historically and currently bear the burden of climate and environmental injustice. Historic

permitting and siting practices have marginalized front and fence-line voices, created sacrificial zones, and excluded environmental justice communities from environmental benefits while burdening them with environmental harms. Discriminatory practices, such as segregation, redlining, and unjust industrial zoning policies cause Black, Brown, Indigenous, and/or low-income communities to house a disproportionate amount of pollution infrastructure.

7. The 2024 amendments to CEQ regulations for the first time include a definition of environmental justice. The inclusion of this definition is welcome and long overdue. Since NEPA's enactment in 1970 and subsequent amendments and implementing regulations over the years, an explicit recognition of environmental justice communities has not existed, despite overwhelming science and data indicating the distinct experience, suffering, and interests of communities of color and/or low-income communities across the country. Environmental justice advocates have historically called for a recognition of communities overburdened with pollution and environmental infrastructure noting that for federal policies, there is value in providing a baseline definition of environmental justice community that can serve as a floor and as a guardrail to ensure that the most affected geographic areas are covered under the definition.

8. The direct mention in the regulations of climate change, in the context of environmental justice, is also significant to us. Since NEPA was passed in 1970, anthropogenic climate change has accelerated at an unprecedented pace, with far-reaching and potentially irreversible consequences. And Black, Brown, Indigenous and/or low-income communities are at the forefront of the climate crisis and they are the least able to prepare for, and recover from, the impacts which include heat waves, poor air quality, and flooding. For example, Black and African American individuals are 40% more likely to currently live in areas with the highest projected increases in extreme temperature related deaths. Hispanic and Latin American

individuals are 43% more likely to currently live in areas with the highest projected reductions in labor hours due to extreme temperatures.

9. I understand that the plaintiffs in this case seek to remove these provisions and restore the prior version of the rules. This outcome would directly harm me and the communities and individuals my organization represents. As I've stated, considering environmental justice and climate justice is essential to meeting NEPA's goals and essential for implementing durable projects and federal programs. Their exclusion from NEPA regulations for decades resulted in significant controversy, litigation, and harm.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct, to the best of my knowledge, information, and belief.

Executed this 15 day of June, 2024, in Washington, D.C.



Irene Burga

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
BISMARCK DIVISION

STATE OF IOWA,)
STATE OF NORTH DAKOTA,)
STATE OF ALASKA,)
STATE OF ARKANSAS,)
STATE OF FLORIDA,)
STATE OF GEORGIA,)
STATE OF IDAHO,) Case No. 1:24-cv-00089-DMT-CRH
STATE OF KANSAS,)
COMMONWEALTH OF KENTUCKY,)
STATE OF LOUISIANA,)
STATE OF MISSOURI,)
STATE OF MONTANA,)
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STATE OF TENNESSEE,)
STATE OF TEXAS,)
STATE OF UTAH,)
STATE OF VIRGINIA,)
STATE OF WEST VIRGINIA, and)
STATE OF WYOMING,)
)
Plaintiffs,)
v.)
)
COUNCIL ON ENVIRONMENTAL)
QUALITY, and BRENDA MALLORY, in)
her official capacity as Chair,)
)
Defendants.)

DECLARATION OF JOSE VARGAS

I, JOSE VARGAS, hereby declare as follows:

1. I am the Executive Director of the Labor Council for Latin American Advancement (“LCLAA”). I have served as LCLAA’s Executive Director for approximately 5 years. In this capacity, I am familiar with all aspects of LCLAA’s mission, purpose, and activities.
2. Before becoming the Executive Director of LCLAA, I dedicated 34 years to teaching in the NYC public school system. My background spans both education and labor, holding a Master's degree in Labor Studies from Cornell University and a Master's degree in Special Education from The City University of New York, in addition to a Bachelor's degree in Science. During my tenure, I also served as the Bronx Borough Representative, leading the 342 schools in the Bronx County. My extensive education and work experience drive my commitment to advocating for those without a voice and fighting against the marginalization of my community.
3. LCLAA is a 501(c)(3) membership organization representing the interests of approximately 2 million Latino workers in the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), The Change to Win Federation, Independent Unions and all its membership. LCLAA’s headquarters is in Washington D.C., and it has more than 50 chapters across the country. As part of its mission, LCLAA focuses on protecting its members from occupational and environmental health and safety threats and advocating for stronger governmental safeguards against workplace hazards.
4. It is well documented that Hispanic and foreign-born workers, many of whom have limited English proficiency, are disproportionately overrepresented in certain trades, such as construction and agriculture, with a high risk of exposure to environmental toxins and hazards. LCLAA regularly seeks to advocate for these workers in federal and state

environmental processes, including processes under the National Environmental Policy Act (“NEPA”).

5. We recognize that our country is in dire need of job-creating infrastructure investment, and we strongly support that investment. As the U.S. government begins the largest infrastructure build-out since the New Deal to transition our economy to clean energy, we know that these investments should be structured in ways that create good-paying union jobs while adhering to strong environmental and health standards. This can only happen through a robust and thorough NEPA process for federally funded and permitted projects.
6. NEPA provides Latino communities and laborers a voice in some of the most consequential government decisions, impacting where we work, how we work, the rights and safeguards we have on the job, and even the health and well-being of our families. 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 more vulnerable to rushed or ill-planned decisions.
7. 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

voice in how these projects are developed, and if implemented properly, NEPA can provide it. Moreover, NEPA is one of the only legislative tools our communities have to fight for their lives and livelihoods.

8. 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 workplaces. We also use it to improve projects with our trade and local expertise. We at the Labor Council for Latin American Advancement (LCLAA) strongly support the National Environmental Policy Act (NEPA) and adamantly oppose any rollbacks that may impede its effectiveness. The NEPA process consists of vital mechanisms that provide transparency and an open dialogue to critical infrastructure projects. NEPA's public disclosure mandate provides Latino workers and families with up-to-date announcements of projects impacting their communities, and it is imperative that these families continue to be a part of the dialogue. Overall, we use NEPA to make projects better, to make jobs better, and to keep our communities safe.
9. Although NEPA has historically been used to address environmental priorities, it can also be used to address related but independent issues that impact labor, immigrant, and human rights. For example, when a power plant is being developed, we comment during the NEPA process to address concerns around workers' health and safety. Similarly, when an immigration detention center is planned, we can elevate the issue of detainee health and safety. NEPA is an environmental protections statute, and it is also a civic engagement one that we rely on.

10. Under the previous Administration in 2020, we vehemently opposed CEQ's rulemaking that significantly undermined the ability of our members to meaningfully engage in federal decision-making. The 2020 CEQ rules significantly weakened the scope of NEPA, make public input more difficult, and insulated arbitrary agency decisions from oversight. In finalizing the rule challenged in this lawsuit, the current Administration addressed many of our concerns with the previous rule, and took additional measures to actually improve how the federal government engages communities and reviews the environmental justice and climate impacts of its decisions. We engaged deeply in CEQ's rulemaking process because we know that meaningful engagement and robust review are a predicate to a permitting process that is both efficient and responsible.
11. We especially support provisions in the revised rules that seek to direct attention to environmental justice communities and concerns. For decades, lower income and minority communities bore the brunt of pollution and environmental hazards in the United States, and still do. The 2024 rule is a first step in seeking to reverse this longstanding pattern. In this lawsuit, the plaintiffs seek to strip this provision from NEPA's implementing rules. In my experience, ignoring environmental justice issues will mean more environmental and health harm to low income and minority communities, more controversial decisions, and slower implementation of federal actions overall. Conversely, listening to the concerns of people who have historically borne the worst impacts of pollution will lead to stronger decisions and faster implementation.
12. In short, NEPA is the bridge, not the barrier, to constructing the strong, resilient infrastructure we need to address urgent issues while protecting communities in the process. No one cares more about getting projects on the ground completed than the labor

movement. In our view, the 2024 rules are a major step forward in better federal decisions and more effective and durable implementation.

I declare under the penalty of perjury that the foregoing is true and correct, to the best of my knowledge, information, and belief.

Dated this 20th day of June, 2024.

A handwritten signature in black ink that reads "Jose Vargas". The signature is written in a cursive style with a large, looped initial "J".

Jose Vargas

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
BISMARCK DIVISION

STATE OF IOWA,)
STATE OF NORTH DAKOTA,)
STATE OF ALASKA,)
STATE OF ARKANSAS,)
STATE OF FLORIDA,)
STATE OF GEORGIA,)
STATE OF IDAHO,) Case No. 1:24-cv-00089-DMT-CRH
STATE OF KANSAS,)
COMMONWEALTH OF KENTUCKY,)
STATE OF LOUISIANA,)
STATE OF MISSOURI,)
STATE OF MONTANA,)
STATE OF NEBRASKA,)
STATE OF SOUTH CAROLINA,)
STATE OF SOUTH DAKOTA,)
STATE OF TENNESSEE,)
STATE OF TEXAS,)
STATE OF UTAH,)
STATE OF VIRGINIA,)
STATE OF WEST VIRGINIA, and)
STATE OF WYOMING,)
)
)
Plaintiffs,)
v.)
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)
COUNCIL ON ENVIRONMENTAL)
QUALITY, and BRENDA MALLORY, in)
her official capacity as Chair,)
)
)
Defendants.)

DECLARATION OF LANDON NEWELL

I, **LANDON NEWELL**, declare as follows:

1. I have personal knowledge of the statements in this Declaration and I am competent to testify to these matters in a judicial forum. If called upon to do so, I could and would testify regarding the following.

2. I have been a full-time staff attorney for the Southern Utah Wilderness Alliance (SUWA) since 2013. SUWA is a nonprofit environmental membership organization dedicated to the preservation of outstanding wilderness found throughout Utah, and the management of wilderness-quality lands in their natural state for the benefit of all Americans. SUWA promotes local and national recognition of the region's unique character through research and public education, and supports administrative and legislative initiatives to permanently protect Utah's wild places. SUWA has approximately 12,000 members in all fifty states and maintains offices in Utah and Washington, D.C. SUWA members use and enjoy federal public lands throughout Utah for a variety of purposes, including scientific study, recreation, wildlife viewing, aesthetic appreciation, viewing cultural and historical artifacts, and financial livelihood.

3. I am also an active member of SUWA. I live in Salt Lake City and frequently camp, sightsee, hike, fish, bird, and visit Native American cultural sites on U.S. Forest Service- and Bureau of Land Management (BLM)-managed lands in Utah. Some of my favorite places include Dinosaur National Monument, which I visited in summer of 2023 when I rafted the Green River, and Nine Mile and Desolation Canyons, which I most recently visited in November and December 2023 to hike, sightsee, and view cultural sites. These public lands are part of the Colorado Plateau in Utah—an area expected to become significantly hotter and drier over the coming years, largely because of climate change and drought. I plan to return to areas on the Colorado Plateau, including Nine Mile and Desolation Canyons as often as possible but certainly within the next year.

4. As a staff attorney for SUWA, my work involves reviewing and engaging on energy development proposals involving BLM-managed lands. I regularly submit detailed comments on these proposals, as well as file administrative appeals and federal court litigation

regarding BLM's failure to comply with the National Environmental Policy Act's (NEPA) "hard look" mandate, among other alleged violations.

5. For instance, much of my work focuses on BLM's failure to fully consider, analyze, and disclose the impacts of oil and gas leasing and development on greenhouse gas emissions, climate change, and water availability in the Colorado River ecosystem. On behalf of SUWA, I have successfully challenged the sale of hundreds of oil and gas leases in areas proposed for wilderness designation, or other areas proposed for heightened land management protection. These wins have contributed to cleaner air and a more stable climate.

6. The Council on Environmental Quality's (CEQ) 2024 NEPA regulations support my and SUWA's objectives of ensuring BLM takes a hard look at greenhouse gas emissions and climate change impacts from fossil fuel development. The 2024 regulations prioritize climate change in part by encouraging the development of at least one alternative that reduces climate change effects and, where applicable, requiring analysis of climate change-related effects, including quantification of greenhouse gas emissions. *See* 40 C.F.R. §§ 1500.2(e), 1502.16(a)(6) (July 1, 2024).

7. Conversely, if the CEQ's 2024 regulations were to be vacated and the 2020 NEPA regulations reinstated, SUWA would face significant harm because the 2020 regulations eliminate requirements that SUWA has successfully relied on to challenge oil and gas leasing decisions, wins that protected natural resources that I and SUWA's members value. Among other things, and in contrast to the 2024 regulations, the 2020 regulations do not require federal agencies like BLM to analyze reasonable alternatives that minimize adverse effects on important resources such as climate, air quality, and water availability. Under the 2020 regulations, BLM's range of alternatives was merely limited to "a reasonable number of alternatives" with no

requirement that any of the alternatives be more environmentally beneficial than the proposed action or no action alternatives. 40 C.F.R. 1502.14(f) (2020). Consequently, under the 2020 regulations, BLM's required environmental impacts analysis for alternatives to each lease sale or drilling permit approval, which authorize water consumption, greenhouse gas emissions, and exacerbate climate change, is much more limited and does not foster informed decision making.

8. My and SUWA's interest in protecting wilderness-quality lands on the Colorado Plateau is threatened by the environmental degradation brought on by climate change, including drought, soils aridification, loss of native vegetation, and decisions by federal agencies like BLM to approve fossil fuel energy development without fully considering and disclosing climate impacts. These harms to SUWA and myself are mitigated by the CEQ's 2024 regulations. However, an unfavorable court decision vacating the 2024 regulations and reinstating the 2020 regulations would exacerbate these harms to SUWA and myself.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 17 day of June, 2024 at Salt Lake City, UT.



Landon Newell

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
BISMARCK DIVISION

STATE OF IOWA,)
STATE OF NORTH DAKOTA,)
STATE OF ALASKA,)
STATE OF ARKANSAS,)
STATE OF FLORIDA,)
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STATE OF KANSAS,)
COMMONWEALTH OF KENTUCKY,)
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STATE OF TENNESSEE,)
STATE OF TEXAS,)
STATE OF UTAH,)
STATE OF VIRGINIA,)
STATE OF WEST VIRGINIA, and)
STATE OF WYOMING,)
)
Plaintiffs,)
v.)
)
COUNCIL ON ENVIRONMENTAL)
QUALITY, and BRENDA MALLORY, in)
her official capacity as Chair,)
)
Defendants.)

DECLARATION OF LISA DEVILLE

I, Lisa DeVille, declare as follows:

1. I am an enrolled member of the Mandan, Hidatsa, Arikara Nation, also known as the Three Affiliated Tribes, in North Dakota. I am a co-creator and current Vice President of Fort Berthold Protectors of Water and Earth Rights (Fort Berthold POWER), which is a member organization of the Dakota Resource Council, which in turn is a member organization of the Western Organization of Resource Councils. I am also a board member of the Western Organization of Resource Councils.

2. Fort Berthold POWER was formed in 2015 to counteract the devastating environmental effects of the implementation of federal hydraulic fracturing projects on the federal trust lands of allottees and the tribal government. The federal project oil and gas wells are primarily in the Mandaree, Four Bears, and Shell Creek communities and underneath the Missouri River which transverses the reservation and is the only available source of drinking water for all communities on the reservation and many off-reservation communities.

3. I live with my husband, five children, and eight grandchildren. We have lived our whole lives in Mandaree, North Dakota, the most extracted community on the Fort Berthold Reservation. Mandaree and the Fort Berthold Reservation are special to me because this where I was raised and where I choose to raise my family. My family and my ancestors are buried here along the shores of Lake Sakakawea. This is the only land that we have left that is our own. We were relocated several times in our history as a people. When my ancestors were intentionally infected with small pox, we were forced to move from our ancestral lands along the Missouri River. And we were forced to move a second time when much of Fort Berthold Reservation was flooded to build Garrison Dam as part of the Pick Sloan project.

4. I have Masters Degrees in Management and Business Administration, and I also have a degree in environmental science. I am trained in using Geographic Information System (GIS) technology and have used that training to map oil and gas wells on the Fort Berthold Reservation.

5. We are connected to the Earth. We are taught in the story of our creation that we are created from the Earth. We are taught that the Earth is our Mother, so we must protect her.

6. We've been living with oil and gas development for over a decade, and we did not know that there would be so much environmental destruction with fracking. There are thousands of oil and gas wells and other equipment on the Fort Berthold Reservation.

7. For the past 15 years, I have witnessed the increase of oil and gas industrialization along with the environmental impacts. We are very much affected by the light pollution from flares. Every direction you look there are gas flares that sound like a roaring jet plane that rumbles the ground like a train passing by. I can feel the earth rumble at nighttime when everything is quiet. At night the sky is lit up like it is still day. Our land once was lush with natural grasses, wildlife, June berries, and plum trees. Our way of life has been changed because of the interruption by the oil industry.

8. In August of 2017, my husband Walter and I got ill from respiratory infections. We first went to Indian Health Service where we received medication but did not get any better for several weeks. We then went to the McKenzie County Clinic, where a physician told us that we had the same symptoms as oil field workers who had come to the clinic—she called it the “Bakken Cough.” Walter was given a steroid shot, but I took medication again. It took about 8 weeks for Walter and I to fully heal from the infection. Asthma and respiratory infections are on

the rise on the Fort Berthold Reservation. I am very concerned about the air pollution from oil and gas near my home, because I worry that it will impact my health and my family's health.

9. We can constantly smell hydrocarbons in the air, a pungent smell of rotten eggs of sulfur. Air pollution is visible in all directions on the Reservation.

10. Native communities have very few opportunities to voice our concerns about major federal projects such as drilling, highways, pipelines rights-of-way, and industrial waste sites in our backyard. NEPA provides one of the few places we have for public input. In 2020, when the previous administration proposed changes to NEPA to weaken public input, I submitted comments on the proposed NEPA regulatory changes. I strongly opposed these changes because gutting the 40-year-old NEPA regulations would result in less public comment, companies writing their own environmental reviews, and bulldozing burial sites. I gave oral comments on the proposed NEPA regulations at a hearing held in Denver, Colorado on February 11, 2020.

11. For tribal communities like Fort Berthold, which bear the brunt of health problems such as heart disease and asthma from the poorly planned federal projects, NEPA isn't just an environmental protection law, it is a critical tool for ensuring our voice. We cannot afford to lose its protections. Any law like NEPA that provides broad opportunities for public participation in government decisions that affect the environment and local communities should be embraced and strengthened. Tribal communities need to protect NEPA. That is why I support the inclusion in the updated regulations calling for consideration of indigenous knowledge in NEPA reviews, as well as special attention to environmental justice communities and perspectives.

12. I understand and support the requirements of the original NEPA regulations to provide for informed consent of tribal land and mineral owners in federal proposed projects. We have relied on NEPA to inform our community about federal oil and gas fracking actions. Federal extractive projects are often proposed and targeted on trust lands held by tribal members or adjacent to tribal members lands, but just as often federal lead agencies fail to inform tribal members of the anticipated environmental impacts of these projects and fail to provide public participation for tribal members. NEPA's public information and participation requirements are vital to my community. The 2020 amendments to the regulations significantly weakened these requirements, while the 2024 amendments restored them to their original intent and strengthened them in certain respects.

13. Under the 2020 regulations, which weakened requirements to consider indirect and cumulative effects, I was concerned that environmental reviews would fail to account for all the impacts of oil and gas development. I was also concerned that limited comment periods would make it increasingly difficult for me and other tribal members to fully comment. NEPA is the main law which gives us protection from the widespread negative impacts of energy development, because NEPA gives communities like ours on Fort Berthold a voice in the decision-making process surrounding energy development and helps us protect significant historical and cultural sites, burial sites, endangered species, and water. The 2024 regulations removed many of these concerning provisions and restored them to the way that they were before. If the 2020 version of the regulations were restored through this lawsuit, my concerns would resume.

14. I went back to school for environmental science to better understand by studies, research, analysis, and process of environmental justice. My husband and I have been part of

many studies and research on Fort Berthold oil and gas and have actively written and attended public comment periods on oil and gas development, Clean Water Act protections, and NEPA regulatory changes.

15. I am very familiar with the concept of environmental justice. I previously served on EPA's National Environmental Justice Advisory Committee (NEJAC). The NEJAC is a Federal Advisory Committee formed in 1993 to provide advice and recommendations to the EPA Administrator and her or his staff about broad, cross-cutting issues related to environmental justice, from all stakeholders involved in the environmental justice dialogue. The NEJAC also provides a valuable forum for discussions about integrating environmental justice with other EPA priorities and initiatives. In my view, it is very important to consider environmental justice perspectives in NEPA reviews.

16. I understand that the impacts of the oil and gas development on Fort Berthold disproportionately harm indigenous people, many of whom are low-income, which is a classic environmental justice problem. I have reviewed studies that show that four percent of Native American people in North Dakota who live on tribal lands live within ½ mile of an oil or gas well, compared to 2% of the total state population of North Dakota. This is an environmental justice crisis because, in addition to the people who are disproportionately exposed to pollution from oil and gas being indigenous, Native American people in North Dakota also tend to be low income. 28% of North Dakota's Native American population lives below the poverty line, compared to just 11% of the state population as a whole.

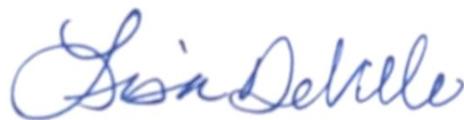
17. The NEJAC Advisory Council sent EPA a letter, dated August 14, 2019, calling on EPA to "strengthen the validity and integrity of environmental justice analysis and considerations in the NEPA process," and providing a bullet list of specifics, including "[s]tress

to the Council on Environmental Quality (CEQ) the importance of increasing the health and well-being of communities by consistently integrating environmental justice and health analyses and considerations in NEPA reviews.” The 2020 NEPA regulatory changes went in the opposite direction and instead undermined environmental justice analysis under NEPA. The 2024 regulatory changes, in contrast, did more to integrate environmental justice perspectives in the NEPA process, as our letter recommended.

18. We choose to live on our ancestral lands, and that means I live with oil and gas. I see the health and environmental impacts every day. I live here, and will continue to live here, so I have no choice but to deal with federal decisions that control the impacts of oil and gas development. I do not plan to move; this is the only land we have left.

Pursuant to 28 U.S.C. § 1746, I declare, under penalty of perjury, that the foregoing is true and correct.

Executed this 14 day of June, 2024 in Mandaree, North Dakota.



Lisa DeVille

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
BISMARCK DIVISION

STATE OF IOWA,)
STATE OF NORTH DAKOTA,)
STATE OF ALASKA,)
STATE OF ARKANSAS,)
STATE OF FLORIDA,)
STATE OF GEORGIA,)
STATE OF IDAHO,) Case No. 1:24-cv-00089-DMT-CRH
STATE OF KANSAS,)
COMMONWEALTH OF KENTUCKY,)
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STATE OF UTAH,)
STATE OF VIRGINIA,)
STATE OF WEST VIRGINIA, and)
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v.)
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COUNCIL ON ENVIRONMENTAL)
QUALITY, and BRENDA MALLORY, in)
her official capacity as Chair,)
)
)
Defendants.)

DECLARATION OF MELODIE MEYER

I, **Melodie Meyer**, hereby declare:

1. My name is Melodie Meyer. I am a member of my Tribe, the Pueblo of Laguna.

From a young age, I have been involved in traditional practices, learning the ways of my

ancestors and the wisdom passed down through generations. My family and I have always been engaged in traditional activities that sustain our community and preserve our cultural heritage.

2. My life and my work as a Conservation Attorney revolves around land, wildlife, natural resources, and indigenous cultural practices that provide for deeper understanding and connection to the natural world. I have worked with various organizations, including the Yurok Tribe and the Environmental Protection Information Center, to build healthy relationships between government agencies, private industries, and tribes that uplift and incorporate Indigenous perspectives. I regularly comment on federal projects, and have in the past provided legal support during tribal consultations with the federal government. In my personal life I share and actively learn knowledge about Laguna traditional practices, such as gathering, language, and ceremony, with my family and tribal community. This type of knowledge sharing is vital for keeping indigenous cultural heritage alive and ensuring the well-being of our environment.

3. Tribal governments and communities possess unique perspectives and knowledge that are crucial to integrate into the environmental review process. I believe that the U.S. government can learn significantly from tribal governments and that tribes have much to offer by sharing Indigenous knowledge for the public's benefit. For instance, cultural burning in the Pacific Northwest is a traditional ecological practice that has been used by tribes since time immemorial. In my Tribe, we use traditional dry farming techniques and other systems of managing water in drought-prone environments. If federal agencies do not consider this type of Indigenous knowledge, they miss out on opportunities to manage resources more sustainably. Recognizing and integrating tribal management practices and knowledge can lead to mutual benefits for both federal and tribal governments.

4. I believe it is essential to give significant weight to Indigenous knowledge in environmental decision-making. Indigenous people have a profound and extensive understanding of their lands, gained through generations of lived experience. The wisdom of the elders in our communities is invaluable. As a member of my Tribe, I understand the importance of sharing this knowledge, particularly because our survival has always depended on collective wisdom and effort. It's heartbreaking to think about cultural practices or knowledge, including language and knowledge about traditional plant medicine, that was lost by not sharing it or not being allowed to share it. Both of my grandparents attended boarding school where they were punished for speaking their native language and had a difficult time passing traditions down to their children. As an adult, working within my community allows me to access this rich reservoir of knowledge, especially from those who are more experienced. Sharing knowledge within and outside our community not only strengthens us but also ensures that valuable insights are preserved and utilized.

5. Indigenous knowledge is fundamental in managing public lands and executing federal projects. I graduated from University of California Los Angeles School of Law in 2020 with specializations in Environmental Law and Critical Race Theory, and in this short amount of time I have worked as an attorney I have witnessed the positive impact of integrating Indigenous practices. This includes co-management projects such as the intergovernmental cooperative agreement signed in 2022 between the Bureau of Land Management, the U.S. Forest Service, and an inter-tribal commission for the Bears Ears National Monument. There was also a memorandum of understanding signed in 2024 between Redwood National and State Parks and the Yurok Tribe to transfer 'O Rew, a 125-acre property that will be co-managed as a visitor center. I also celebrated the removal of several dams along the Klamath River, both as an

environmentalist and as an indigenous woman. Tribes have been ever diligent in demanding management practices that enhance wildlife habitat and environmental health.

6. Addressing environmental justice during environmental reviews is also crucial. Throughout the colonization of what is now the United States, Indigenous knowledge has often been disregarded or even criminalized. Pueblo of Laguna members faced prohibitions and penalties for practicing traditional activities, such as gathering and hunting on our ancestral lands. The impacts of such restrictions have been devastating for our people and culture. Recent positive developments, including the recognition of tribal gathering rights and co-management opportunities represent significant environmental justice victories. These successes allow indigenous culture and tribal governments to thrive.

7. I have commented on federal projects where I have advocated for the consideration of Indigenous knowledge and environmental justice concerns. These considerations make projects better for the public as a whole, and prevent the federal government from perpetrating further injustice against tribes. For example, I remember attending my first federal agency public meeting as a college student where the discussion was reopening a uranium mine near Mount Taylor, a mountain sacred to the Pueblo of Laguna and other tribes in New Mexico. As tribal members we advocated that this mine would cause poor environmental quality for the entire community, both indigenous and non-indigenous. We testified to the fact that there was a large open-pit uranium mine on the Laguna Reservation, leased by the Department of Interior, that was still causing negative environmental and health impacts today despite being out of operation since the 1940s. My grandfather worked in the mine and his health is not as good as it should be today, and there are many deaths of people who worked or lived near the mine that are not properly attributed to the mine. Without this type of environmental

justice consideration, and with more consideration and attention given to these issues, we could have better environmental advocacy for more communities.

8. I have been the Conservation Attorney for the Environmental Protection Information Center (EPIC) since January 2024 and I am also a member of EPIC. I volunteered to complete this declaration because I care deeply about forests, rivers, and wildlife and support EPIC's efforts to protect them from various threats. I also appreciate that EPIC respects Indigenous knowledge and considers the environmental justice implications of environmental advocacy. I believe that EPIC should participate in this case because EPIC understands the importance of considering indigenous knowledge in environmental review and is an advocate for indigenous led environmental protection.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 20 day of June, 2024 at Eureka, California.


Melodie Meyer

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
BISMARCK DIVISION

STATE OF IOWA,)
STATE OF NORTH DAKOTA,)
STATE OF ALASKA,)
STATE OF ARKANSAS,)
STATE OF FLORIDA,)
STATE OF GEORGIA,)
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COUNCIL ON ENVIRONMENTAL)
QUALITY, and BRENDA MALLORY, in)
her official capacity as Chair,)
)
)
Defendants.)

DECLARATION OF MITCH JONES

I, **Mitch Jones**, declare and state as follows:

1. I am the Managing Director of Policy & Litigation at Food & Water Watch (“FWW”). I have worked for FWW since 2008 and have held several positions within the Water,

Fish, Common Resources, Climate & Energy, and Policy departments of FWW. I have been a Managing Director since December 2021 and have held my current position since January 2023. Given my past and present duties, I am intimately familiar with FWW's mission, membership, activities, and operations.

2. FWW is a national non-profit membership organization headquartered in Washington, D.C., with approximately 1.4 million members nationwide. It was founded in 2005 to ensure access to clean drinking water, safe and sustainable food, and a livable climate. FWW uses grassroots organizing, policy advocacy, research, communications, and litigation to further this mission.

3. The National Environmental Policy Act ("NEPA") is a bedrock environmental law that, if implemented as intended, promotes informed decision-making and ensures that federal agencies are aware of the environmental consequences of their actions before they make decisions. NEPA also aims to provide transparency to the public about the environmental impacts of federal agency actions.

4. The NEPA process incorporates opportunities for public participation. FWW often uses these opportunities to share our knowledge and expertise about the environmental impacts of the fossil fuel industry and factory farms, and to notify federal agencies about any ways in which their NEPA analyses are deficient. Through our participation in NEPA processes, FWW advocates for agencies to make more informed decisions that better protect communities, public health, the environment, and the climate. As such, NEPA is a critical tool that FWW utilizes in pursuit of our mission to ensure access to clean drinking water, safe and sustainable food, and a livable climate.

5. FWW advocates extensively on issues related to the fossil fuel industry. This includes engaging in the NEPA processes for federal actions involving fossil fuel infrastructure projects. For example, FWW has submitted detailed comments to the Federal Energy Regulatory Commission (“FERC”) on fossil gas projects like the East 300 Upgrade Project and the Regional Energy Access Expansion. FWW has further challenged the adequacy of FERC’s NEPA analyses for those projects in court because of the agency’s failure to consider upstream greenhouse gas emissions and the significance of the projects’ impacts on climate change, among other things.

6. FWW also advocates extensively on issues related to industrial agriculture. FWW has specifically worked to ensure that federal agencies comply with NEPA when taking significant actions involving factory farms, also known as concentrated animal feeding operations (“CAFOs”), such as providing federal loans and loan guarantees for CAFO construction and expansion. For example, FWW successfully challenged a U.S. Department of Agriculture Farm Service Agency (“FSA”) rule exempting federal financing for medium-sized CAFOs from NEPA review. By exempting those federal actions from review, the rule eliminated public participation opportunities regarding these CAFOs for rural communities and allowed CAFO financing to move forward without considering environmental impacts like the air and water pollution and climate effects associated with medium CAFOs and CAFO expansions. Most recently, FWW sued the FSA under the Freedom of Information Act, seeking to compel the agency to proactively disclose CAFO NEPA documents to facilitate public participation. FWW intends to continue to review and comment on CAFO NEPA documents in the future.

7. Because NEPA is a critical tool that FWW utilizes in pursuit of our mission, FWW has actively engaged in the CEQ’s rulemaking processes over the past several years. For

example, FWW commented on CEQ’s proposed revisions to its NEPA regulations issued in January 2020 during the Trump administration. *Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act*, 85 Fed. Reg. 1,684 (Jan. 10, 2020). Those regulations—which were quickly finalized despite significant opposition, 85 Fed. Reg. 43,304 (Jul. 16, 2020)—weakened and otherwise limited NEPA’s implementation. FWW is a party to litigation challenging those final regulations. The litigation has been held in abeyance while CEQ promulgated new NEPA regulations during the Biden administration.

8. FWW has additionally commented on CEQ’s new regulations, to which were finalized earlier this year. *National Environmental Policy Act Implementing Regulations Revisions Phase 2*, 88 Fed. Reg. 49,924 (Jul. 31, 2023); 89 Fed. Reg. 35,442 (May 1, 2024). FWW supports many provisions of CEQ’s 2024 regulations, which have been challenged by a coalition of states in this litigation.

9. Because FWW often advocates for federal agencies to consider the full scope of climate impacts in their NEPA reviews, FWW supports the provisions of the 2024 regulations that directly address climate change. In particular, FWW supports the rule’s requirement that agencies must identify and analyze alternatives to avoid or minimize adverse environmental effects, like climate change, 40 C.F.R. § 1500.2(e), and that agencies must identify the environmentally preferable alternative(s) that maximizes environmental benefits, “such as addressing climate-change related effects.” *Id.* § 1502.14(f). FWW also supports the context and intensity factors related to the significance determination, which could bolster agencies’ climate change analyses by directing them to consider global contexts and long-term effects, among other things. *Id.* § 1501.3(d)(1). FWW further supports the inclusion of climate-related changes in the description of the affected environment, *id.* § 1502.15(b); the inclusion of climate-change

related effects in the analysis of environmental consequences, *id.* § 1502.16(a)(6) (including the “quantification of greenhouse gas emissions” where feasible); and the inclusion of climate change-related effects in the definitions of “effects” and “extraordinary circumstances.” *Id.* §§ 1508.1(i)(4), (o).

10. Because of our organizational focus on factory farming, FWW also supports the 2024 regulations’ revised definition of “major federal action” to enable agencies such as the FSA to continue conducting NEPA reviews for CAFO financing actions. *Id.* § 1508.1(w).

11. Because FWW often partners with frontline communities and seeks to align itself with environmental justice organizations, FWW further supports the provisions of 2024 rule that directly address communities with environmental justice concerns. In particular, FWW supports the 2024 rule’s requirements that agencies meaningfully engage with environmental justice communities and identify and analyze alternatives that avoid or minimize adverse environmental effects on them, *id.* § 1500.2(d), (e), and identify the environmentally preferable alternative(s) that maximizes environmental benefits, “such as addressing ... disproportionate and adverse effects on communities with environmental justice concerns.” *Id.* § 1502.14(f). FWW also supports the inclusion of environmental justice in the context and intensity factors related to the significance determination, *id.* §§ 1501.3(d)(1), (2); in the analysis of environmental consequences, *id.* § 1502.16(a)(13); and in the definitions of “effects” and “extraordinary circumstances.” *Id.* §§ 1508.1(i)(4), (o).

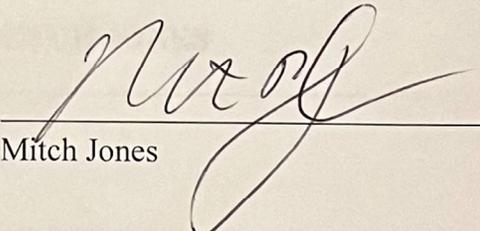
12. In short, the 2024 rule strengthens NEPA review requirements that FWW and our members rely on, enabling us to more effectively engage in federal decision-making, oppose harmful projects, and advance our mission. The 2024 rule changes discussed herein benefit FWW’s mission and programs, as well as me as FWW’s Managing Director of Policy &

Litigation. The coalition of states challenging the 2024 rule seeks to invalidate these provisions, which would harm FWW and me.

13. As an organization that advocates extensively on the climate and environmental impacts of the fossil fuel and factory farm industries, and that often partners with community groups and frontline residents, FWW would be directly and adversely affected if the 2024 regulations are vacated and CEQ's 2020 regulations were reinstated. FWW relies on NEPA to provide an extensive analysis of environmental impacts, ensure transparency and robust public participation, and—importantly—lead to better, more informed, agency decisions. However, the 2020 regulations reduced NEPA to an expedited paperwork exercise, creating a gap between NEPA's environmental values and what would be perfunctory implementation. A return to the 2020 regulations would increase the burden on FWW to advocate for full consideration of climate and environmental impacts, keep FWW and our members in the dark about harmful federal actions, and likely force FWW to engage in even more litigation over deficient NEPA reviews, not to mention the adverse effect on the environment that truncated NEPA reviews under the 2020 regulations would cause.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 18th day of June, 2024 in Baltimore, MD.



Mitch Jones

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
BISMARCK DIVISION

STATE OF IOWA,)
STATE OF NORTH DAKOTA,)
STATE OF ALASKA,)
STATE OF ARKANSAS,)
STATE OF FLORIDA,)
STATE OF GEORGIA,)
STATE OF IDAHO,) Case No. 1:24-cv-00089-DMT-CRH
STATE OF KANSAS,)
COMMONWEALTH OF KENTUCKY,)
STATE OF LOUISIANA,)
STATE OF MISSOURI,)
STATE OF MONTANA,)
STATE OF NEBRASKA,)
STATE OF SOUTH CAROLINA,)
STATE OF SOUTH DAKOTA,)
STATE OF TENNESSEE,)
STATE OF TEXAS,)
STATE OF UTAH,)
STATE OF VIRGINIA,)
STATE OF WEST VIRGINIA, and)
STATE OF WYOMING,)
)
Plaintiffs,)
v.)
)
COUNCIL ON ENVIRONMENTAL)
QUALITY, and BRENDA MALLORY, in)
her official capacity as Chair,)
)
Defendants.)

DECLARATION OF DAVID MONTI

I, David Monti, state as follows:

1. I make this declaration of my own personal knowledge. If called to testify as a witness, I could and would testify competently regarding its contents.
2. I, Captain Dave Monti, am a member of Ocean Conservancy. I reside in Warwick, Rhode Island, and keep my charter boat, the *Virginia Joan*, in Warwick, Rhode Island.
3. I generate a portion of my income as a charter boat captain and guide. I have been fishing for over 50 years and I expect to do so for the foreseeable future. I help my clients target Rhode Island fish species such as striped bass, bluefish, summer flounder (fluke), scup, tautog, black sea bass, cod, and bonito in the Narragansett Bay, Block Island, and Newport areas.
4. I rely on NEPA reviews and public processes to be informed and involved in federal decisions affecting the areas I take my clients fishing in and the habitat that my target fish species need to stay productive. These federal decisions include but are not limited to fishery management actions and permitting decisions regarding offshore wind farms. Elimination or curtailment of NEPA reviews for the siting of offshore wind operations or for fishery management actions would result in additional threats in the waters I take my clients fishing in and the fish species I target for my clients.
5. In 2015, I used NEPA's public engagement and analysis process to engage in siting and permitting decisions regarding the Block Island Wind Farm, the first offshore commercial wind farm in the U.S. NEPA allowed me and my fellow captains to voice our opinions on the wind farm and engage in studies about the farm's impact on fisheries. Similarly, in 2020 and 2021, I used the NEPA process to engage in decisions about the South Fork Wind Farm. The farm is located on Cox Ledge, which consists of rich recreational and commercial

fishing grounds 19 to 24 miles southeast of Point Judith, Rhode Island. The power generated there is sold and brought to Long Island, New York (35 miles away) via submarine cable.

6. Bureau of Ocean Energy Management (BOEM) permitting is the federal trigger for NEPA for these kinds of projects. Because work on the NEPA process for the Block Island and South Fork offshore wind projects began before September 14, 2020, BOEM followed the 1978 CEQ NEPA regulations.

7. Thus far, the wind farms have had no remarkable adverse effects on the environment, fish, mammals, birds, and people. Recreational fishing at the farms has been good, even though fishing pressure by recreational anglers has greatly increased in these areas. Offshore wind farms are now a destination for me and other captains. For example, at the Block Island Wind Farm, there are gillnets set right up to the turbines, commercial fishermen trawl along the side of the wind farm, and recreational anglers fish right up to the pylons. The NEPA analysis and public involvement process allowed federal agencies, the wind farm company, and fishermen like me to work together. The results have been positive. Last year, a seven-year fish abundance trawl survey was completed inside the Block Island Wind Farm compared to two control areas south and east of the Wind Farm. The study identified a greater abundance of Atlantic cod and black sea bass in the wind farm area compared to control areas. Other species were even; if squid, scup or summer flounder were up or down in control areas they were up or down by a corresponding amount in the wind farm area.

8. I and other fishermen worked with Ørsted, the wind farm company, on the South Fork Wind Farm research monitoring plan which includes numerous studies about the farm's effect on fish species that fishermen and the surrounding coastal communities depend on. The aim of the studies was to measure the impacts offshore wind farms could have on fish and

invertebrate species before, during, and after construction. The study was completed in 2020 and was refined and expanded through an iterative process that considered feedback from agencies and stakeholder groups.

9. So far, offshore wind farms have had a positive impact on the abundance of finfish within their boundaries compared to control areas outside the wind farms. Research occurring in the South Fork Wind Farm and surrounding area is a good example of fishermen, government, scientists, and developers working together to safeguard fishing while providing the nation with the renewable energy opportunity it needs.

10. NEPA is the glue that has tied this coordination together. While fishermen were wary of offshore wind farms in the past, we have learned of their benefits via the NEPA process. NEPA has allowed cooperative and inclusive engagement in federal decisions affecting our important fishery resources. The 2024 NEPA rule retains or strengthens the public processes that have benefitted me in the past.

11. In contrast, elimination or scaling down of NEPA reviews for agency actions, as set forth in the 2020 NEPA regulations, would adversely affect my ability to participate in these important studies and resulting decisions that affect my business. Plaintiffs are asking for the 2024 regulations to be struck down, which would mean the 2020 regulations would take their place and my ability to take part in wind farm siting and fishery impacts would be limited. For example, had the NEPA review for these wind farms that have affected my business taken place under the 2020 regulations, fishermen may not have had opportunities to comment on projects, or would have received less information if projects had undergone environmental assessments instead of comprehensive environmental impact statements. Even worse, the permitting agency might have employed the “functional equivalence” option in the 2020 regulations, meaning that

the NEPA process might not have even existed for wind projects. If fishermen were shut out of these processes in the future, I would personally suffer, as would the wind industry and the fishing industry as a whole. A full NEPA process under the new 2024 regulations is especially critical as offshore wind development is expected to increase in the years ahead.

12. Similarly, a full and robust NEPA process as set forth in the 2024 regulations is critically important to my use and enjoyment of our nation's marine fisheries and my engagement in fishery management decisions. The fish I target for my clients are managed by the National Marine Fisheries Service (NMFS), which must ensure that fishery management complies with NEPA. Via the NEPA process as described in the 2024 rulemaking process, I am informed of the direct and indirect environmental effects of fishery management actions, and a reasonable range of alternatives that can accomplish the purpose and need of the proposed action. Elimination or curtailment of rigorous NEPA reviews for the siting of wind farms or for fishery management actions—which could happen if plaintiffs in this case succeed in overturning the 2024 regulations—would result in additional threats to the waters I fish in and the fish species my clients catch, and would likely result in less information about the environmental consequences of management decisions being made publicly available.

13. In the context of federal fishery management, the NEPA process set out by the 2024 regulations provides an important means of ensuring fishery managers consider essential issues that the Magnuson-Stevens Fishery Conservation and Management Act (MSA) does not address. Under the 2024 NEPA regulations, federal fishery managers must consider possible adverse effects of proposed management actions, identify reasonable alternatives, and consider ways to avoid or minimize any adverse effects. The 2024 NEPA rules, like the original 1978 rules, also ensures everyone involved in fisheries—including recreational and commercial

fishermen, charter captains (like myself), seafood processors, restaurant owners, public interest organizations, tribes, local governments, and the public—can weigh in on decisions about management of our shared fishery resources. Finally, NEPA review under the 2024 rules is an important avenue for regional fishery management councils to provide input on non-fishing actions that directly impact fisheries and fish habitat, such as oil and gas development, aquaculture, hydropower and offshore wind.

14. The MSA review process is limited in scope and is designed to maximize the amount of fish that can be sustainably caught. This process is focused on fishery participants but is not focused on the full complement of environmental impacts. The NEPA process (that is, via the 1978 regulations and the new 2024 regulations), by contrast, is comprehensive in scope, interdisciplinary in approach, and designed to facilitate informed agency actions that minimize adverse impacts on the environment, all while also informing the public about the effects of fishery management decisions. These two distinct processes are not functionally equivalent. Attempting to collapse the distinct review requirements of the MSA and NEPA through the functional equivalency provisions of the 2020 rule would severely undermine our national progress in achieving sustainable fishery management.

15. Any scaling back of NEPA processes for fishery management could result in a decline of fishery abundance in the waters where my clients pay me to take them. A decline in fish abundance would directly affect my livelihood as a charter boat captain who relies on the assumption that fish (a publicly owned resource) will be robustly present in the ocean for my clients to catch and enjoy. The outcome sought by the plaintiffs would cause harm to me, my interests, and the environment upon which I depend for my livelihood.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on June 14, 2024, in Warwick, Rhode Island.



Captain David Monti

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
BISMARCK DIVISION

STATE OF IOWA,)
STATE OF NORTH DAKOTA,)
STATE OF ALASKA,)
STATE OF ARKANSAS,)
STATE OF FLORIDA,)
STATE OF GEORGIA,)
STATE OF IDAHO,) Case No. 1:24-cv-00089-DMT-CRH
STATE OF KANSAS,)
COMMONWEALTH OF KENTUCKY,)
STATE OF LOUISIANA,)
STATE OF MISSOURI,)
STATE OF MONTANA,)
STATE OF NEBRASKA,)
STATE OF SOUTH CAROLINA,)
STATE OF SOUTH DAKOTA,)
STATE OF TENNESSEE,)
STATE OF TEXAS,)
STATE OF UTAH,)
STATE OF VIRGINIA,)
STATE OF WEST VIRGINIA, and)
STATE OF WYOMING,)
)
)
Plaintiffs,)
v.)
)
)
COUNCIL ON ENVIRONMENTAL)
QUALITY, and BRENDA MALLORY, in)
her official capacity as Chair,)
)
)
Defendants.)

DECLARATION OF NEAL CLARK

I, **NEAL CLARK**, declare as follows:

1. I have personal knowledge of the statements in this declaration and I am competent to testify to these matters in a judicial forum. If called upon to do so, I could and would testify regarding the following.

2. I am currently a full-time employee of the Southern Utah Wilderness Alliance (SUWA) and have been an active member of SUWA since 2009. I have been employed by SUWA since March 2011, first as a Wildlands Attorney and currently as the organization's Wildlands Director.

3. SUWA is a nonprofit environmental membership organization dedicated to the preservation of outstanding wilderness found throughout Utah, and the management of wilderness-quality lands in their natural state for the benefit of all Americans. SUWA promotes local and national recognition of the region's unique character through research and public education and supports administrative and legislative initiatives to permanently protect Utah's wild places. SUWA has approximately 12,000 members in all fifty states and maintains offices in Utah and Washington, D.C. SUWA members use and enjoy federal public lands throughout Utah for a variety of purposes, including scientific study, recreation, wildlife viewing, aesthetic appreciation, viewing cultural and historic artifacts, and financial livelihood.

4. SUWA staff are well-versed in the Council on Environmental Quality's (CEQ) National Environmental Policy Act (NEPA) regulations, regularly reviewing and analyzing NEPA documents. SUWA staff submit detailed, technical comments on proposed actions that may impact areas proposed for wilderness designation or other federal public lands in Utah. These comments often address how federal agencies analyze greenhouse gas emissions and climate impacts from proposed actions like federal oil and gas lease sales, applications for oil and gas drilling permits, and vegetation management projects.

5. Federal scientists agree that climate change is making the American Southwest, including much of Utah, hotter and drier than other parts of the continental United States. Thus, the consideration and disclosure of project impacts to the warming planet is a particular focus

area in SUWA's NEPA comments and is of particular concern for SUWA members and supporters. To this end, SUWA also frequently encourages its members to review and submit public comments on NEPA documents that will affect lands SUWA promotes for congressional wilderness designation.

6. SUWA staff and members have worked for decades to protect federal public lands in Utah from the impacts of short-sighted and/or poorly understood projects. SUWA has successfully led several lawsuits to achieve compliance with NEPA's "think first, act later" precautionary principle. Each of these successes would not have been possible if the 2020 version of the CEQ's NEPA regulations were in effect at the time these cases were brought.

7. For example, in *Southern Utah Wilderness Alliance v. Norton*, 237 F. Supp. 2d 48 (D.D.C. 2002) SUWA successfully challenged on NEPA grounds a proposed geophysical exploration project on wild federal public lands adjacent to Arches National Park. The project authorized driving vibroseis "thumper" trucks (large overland buggies that use steel plates to vibrate the ground) across 23,000 acres of land. Before prevailing on the merits of the case, SUWA obtained a preliminary injunction based on a NEPA violation—relief that vacating the CEQ's 2024 NEPA regulations and reverting to the 2020 NEPA regulations would likely preclude. Unlike the original 1978 regulations and the new 2024 regulations, the 2020 regulations state that there was no presumption that a NEPA violation forms the basis for injunctive relief or a finding of irreparable harm. *See* 40 C.F.R. § 1500.3(d) (2020). This provision suggests that a plaintiff such as SUWA cannot obtain injunctive relief for a NEPA violation. Yet, without an injunction, the surface-disturbing seismic work in *Southern Utah Wilderness Alliance v. Norton* would have proceeded, harming SUWA's interest in the protection and conservation of the land at issue.

8. Similarly, in *Southern Utah Wilderness Alliance v. Allred*, 1:08-cv-2187-RMU (D.D.C. Jan. 17, 2009), SUWA obtained a temporary restraining order (TRO) halting the Bureau of Land Management's (BLM) sale of seventy-seven oil and gas leases encompassing 163,935 acres of public land in Utah. These included leases in a number of wilderness-quality areas SUWA has long advocated to protect, including the Desolation Canyon stretch of the Green River and lands surrounding Arches National Park, Canyonlands National Park, and Dinosaur National Monument. After SUWA obtained the TRO, the agency withdrew the leases from sale. Again, SUWA obtained the TRO by demonstrating a likelihood to succeed on the merits of its NEPA claim and irreparable harm absent a TRO. By eliminating 40 C.F.R. § 1500.3(d) (2020), the 2024 NEPA regulations reinstate the pre-2020 status quo and make it more likely that a NEPA violation may constitute a finding of irreparable harm such that a TRO is warranted.

9. In my capacity as SUWA's Wildlands Director, I have overseen the drafting and filing of hundreds of technical comments submitted by SUWA on various federal agency NEPA documents. Most recently, in June 2024, SUWA submitted comments on BLM's draft monument management plan for the restored Bears Ears National Monument. These comments were supportive of BLM's preferred alternative, which incorporates Indigenous Knowledge and analyzes, among other issues, environmental justice and climate change impacts. Although the draft Bears Ears monument management plan was released for public comment before the 2024 NEPA regulations take effect, the draft plan serves as an example of how incorporating Indigenous Knowledge, climate change, and environmental justice into a NEPA document furthers NEPA's overarching purpose of ensuring well-rounded and informed decision making by federal agencies.

10. SUWA's ability to protect wilderness-quality lands depends on its ability to fully participate in the NEPA process. Most NEPA documents analyzing impacts to Utah's public lands are environmental assessments. The CEQ's 2024 NEPA regulations provide additional assurances and opportunities for public involvement, especially in the context of environmental assessments. *See, e.g.*, 40 C.F.R. §§ 1501.9, 1501.5(c) (July 1, 2024). These provisions further SUWA's interest and ability to hold federal agencies like the Bureau of Land Management accountable for thoroughly analyzing and disclosing the environmental impacts of their decisions and to make more fully informed, if not environmentally sound, decisions regarding the millions of acres of wilderness-caliber federal public lands in Utah.

11. For instance, pursuant to a January 2017 settlement agreement in *Southern Utah Wilderness Alliance v. U.S. Department of the Interior*, 2:12-cv-257-DAK (D. Utah), BLM is required to complete eleven motorized travel management plans covering more than 6.3 million acres of public lands. Three of those plans have been completed and the NEPA planning process for the remaining eight plans is ongoing or will begin in the near future. For each travel management plan, BLM analyzes the environmental impacts in an environmental assessment. Among other resources, SUWA is highly concerned about motorized vehicle emissions and airborne dust resulting from these new travel plans. Under the CEQ's 2024 regulations, BLM is required to consider and analyze the effects of its travel planning decision on greenhouse gas emissions and climate change, which in turn could degrade native vegetation and wilderness-quality lands that SUWA exists to protect. Additionally, CEQ's 2024 regulations will ensure the public, including SUWA, is meaningfully engaged in this statewide travel management planning process. If CEQ's 2024 regulations were vacated and the 2020 NEPA regulations reinstated, SUWA would be harmed because: 1) BLM would no longer be required to specifically analyze

climate impacts caused by motorized vehicles; and 2) crucial public involvement opportunities would be jeopardized, if not eliminated.

12. I live in Moab, Utah and spend much of my free time exploring BLM, Forest Service, and National Park Service public lands in southern Utah. I particularly enjoy hiking and camping in Bears Ears National Monument, rafting on the Green, Colorado, and San Juan Rivers, and mountain biking on Forest Service and BLM-managed lands surrounding Moab. I engage in these activities on a near-daily basis, year-round, and intend to continue doing so for years to come.

13. The CEQ's 2024 NEPA regulations further my and SUWA's interests in the protection and preservation of these federal public lands. Conversely, my and SUWA's interests will be harmed if the 2024 regulations are vacated and 2020 NEPA regulations are reinstated because by removing public involvement provisions and eliminating the requirement that federal agencies fully consider and disclose climate change impacts, these agencies will make fundamentally uninformed decisions that will result in short- and long-term degradation that threaten the places I recreate in and enjoy.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 18th day of June, 2024 at Moab, UT



Neal Clark

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
BISMARCK DIVISION

STATE OF IOWA,)
STATE OF NORTH DAKOTA,)
STATE OF ALASKA,)
STATE OF ARKANSAS,)
STATE OF FLORIDA,)
STATE OF GEORGIA,)
STATE OF IDAHO,) Case No. 1:24-cv-00089-DMT-CRH
STATE OF KANSAS,)
COMMONWEALTH OF KENTUCKY,)
STATE OF LOUISIANA,)
STATE OF MISSOURI,)
STATE OF MONTANA,)
STATE OF NEBRASKA,)
STATE OF SOUTH CAROLINA,)
STATE OF SOUTH DAKOTA,)
STATE OF TENNESSEE,)
STATE OF TEXAS,)
STATE OF UTAH,)
STATE OF VIRGINIA,)
STATE OF WEST VIRGINIA, and)
STATE OF WYOMING,)
)
)
Plaintiffs,)
v.)
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)
COUNCIL ON ENVIRONMENTAL)
QUALITY, and BRENDA MALLORY, in)
her official capacity as Chair,)
)
)
Defendants.)

DECLARATION OF PAMELA MILLER

I, Pamela Miller, state and declare as follows:

1. I am a resident of Anchorage, Alaska. I hold a Bachelor of Arts in Biology from Wittenberg University in Springfield, Ohio, and a Master of Environmental Science in Aquatic Biology and Environmental Science from Miami University in Oxford, Ohio.

2. I founded Alaska Community Action on Toxics (“ACAT”) in 1997, and have held the position of Executive Director ever since. As Executive Director, I am responsible for the overall vision and management of the organization. I supervise all staff and maintain relations with the Board of Directors. In my personal capacity, I am also a financial supporter of ACAT.

3. ACAT’s main office is located in Anchorage, Alaska. ACAT also has staff and conducts community health research in Gambell and Savoonga, both located on Saint Lawrence Island, Alaska. ACAT has approximately 300 donors, 50 volunteers, and several thousand people who have signed up as interested citizens and activists to receive communications and actions alerts about issues relevant to environmental contamination.

4. I have more than 35 years of experience in research, policy, advocacy, and training programs focused on environmental health, justice, human rights, and marine ecology. Since 2005, I have served as Principal Investigator for community-based environmental health research projects supported by the National Institute of Environmental Health Sciences and focused on the long-term effects of endocrine-disrupting chemicals on the environment and human health. In 2016, I was elected to serve as the co-chair of the International Pollutants Elimination Network, a global network of more than 600 environmental health and justice organizations working in over 124 countries for a toxics-free future. I have personally been involved in writing NEPA comments on military and mining issues, attending public hearings, and engaging in litigation when NEPA has been violated.

5. ACAT's mission is to assure environmental health and justice in Alaska by advocating for environmental and community health. ACAT believes that everyone has a right to clean air, clean water, and toxic-free food. ACAT works to achieve its goals through collaborative research, science, education, organizing, and advocacy. ACAT employs a community-based approach guided by the following core values: community right-to-know, environmental justice, the precautionary principle, elimination of the production and release of toxics, rights and sovereignty of Indigenous peoples, and a culture of caring and wellness.

6. ACAT works primarily with Alaska Native communities who rely on the land, rivers, streams, lakes, wetlands, and ocean for physical, spiritual, and cultural sustenance. Those communities depend on healthy ecosystems, in particular, for hunting, fishing, and food security. ACAT conducts public education programs to educate its constituent members about the environmental and public health risks, including risks and harms from oil development, chemical dispersants used in oil spill response, the proposed Pebble and Donlin Creek Mines, the proposed Ambler Mining District Industrial Access Road, and military training, testing, and bombing/artillery exercises in sensitive ecological areas, such as wetlands, stream and river corridors, and estuaries (e.g. bombing of Eagle River Flats) and other areas of high biological diversity (e.g. high impact training operations undertaken by the Navy in the Gulf of Alaska).

7. ACAT regularly uses the National Environmental Policy Act (NEPA) and its public processes to advocate for issues on behalf of its supporters and communities in Alaska. There are many examples of this, especially for major oil and gas developments, military activities and huge industrial mines that are authorized in some way by federal agencies. We submit comments, attend hearings, and use NEPA analyses in our advocacy. NEPA is an

important tool to help elevate community concerns and adverse impacts in the federal decisionmaking process.

8. We strongly objected to the 2020 revisions to the CEQ NEPA rules, which would govern NEPA for projects that impact us. We believed that the public participation process and measures to ensure environmental justice would be severely compromised under the new rule. Further, analysis of impacts to the environment, public health, and cumulative effects would have been much less rigorous, resulting in significant harm to water and air quality, sensitive habitats, and vulnerable and overburdened communities. That is why we joined the lawsuit challenging the 2020 rule.

9. The 2024 changes to the CEQ rules addressed many of our concerns. They also update and modernize NEPA to integrate key concerns like environmental justice and climate into the NEPA process, which is long overdue.

10. With respect to climate, the arctic region is warming four times faster than the rest of the planet: we are on the front lines of the climate crisis. Communities and villages are literally falling into the sea as the climate warms. Permafrost is melting, putting infrastructure like pipelines and other oil and gas development at risk and creating serious environmental and public health hazards. Methane is being released from the permafrost, which adds to the methane being released from oil and gas development. Additionally, melting permafrost liberates mercury, a very serious public health hazard. To refuse to consider these factors in NEPA reviews would be insanity.

11. Similarly, the revised rules call out the importance of considering indigenous knowledge, which in my experience is crucial to reaching fully considered and well-informed decisions. Historically, NEPA processes have done a poor job considering traditional ecological

knowledge from local people, even where it is the best or even only information available. For instance, we regularly see adverse impacts to subsistence resources and cultural practices arising from industrial development in our region. Indigenous communities rely on the health and safety of traditional foods that are critical for their diet and cultural traditions, including greens and berries harmed by toxic emissions, to fish and fish habitat, and to animals such as moose, caribou, seals, and whales. And their knowledge of these things is often superior to any other. For example, the people in Kivilina noticed changes in the migration of Beluga whales after a major mine and port started operating. Another community witnessed changes in caribou migrations with oil development and as the climate warmed. Still another noticed lesions on fish, and other adverse impacts to local species, after a polluting oil and gas operation opened up. In all of these cases, the expertise of local indigenous people was way ahead of academic science. Of course agencies should consider this kind of expertise when conducting a NEPA review.

12. As to environmental justice, the communities that we work with live adjacent and around many proposed industrial facilities and developments in the Arctic region. These are primarily Alaska Natives and low income communities, and many of them are already suffering from the cumulative impacts of many different projects. In the Arctic, in addition to the pollution and environmental harm caused by individual developments, we also have a legacy of military contamination to contend with, as well as the challenge of a changing climate. Additionally, this region is a hemispheric “sink” for micro-plastics and atmospheric chemical contamination. It is absolutely crucial to consider these cumulative impacts on the least powerful and most overburdened members of society. Historically, NEPA has done a poor job of fully considering this background when projects will add even more pollution to an area or community. Integrating

environmental justice principles and perspectives is crucial to turning around this long-standing problem. Getting rid of a new regulation that calls for doing so would harm my community and make my organization's work even harder. The environmental justice implications of NEPA's regulations are profound, because they impact our rights for public participation and analysis of cumulative effects on already overburdened Indigenous communities, communities of color, and low wealth communities. Preventing such injustices is at the core of ACAT's mission.

13. Personally, I enjoy canoeing, kayaking, seabird and marine mammal observing, in rivers, wetlands, coastal and marine areas of Alaska. I also fish for salmon in Cook Inlet and depend on the health of salmon and other seafood from Cook Inlet, the Gulf of Alaska, and Bering Sea as a vital part of my diet and that of my family.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on June 21, 2024 in Anchorage, Alaska.

A handwritten signature in blue ink that reads "Pamela K. Miller". The signature is written in a cursive style and is positioned above a horizontal line.

PAMELA K. MILLER

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
BISMARCK DIVISION

STATE OF IOWA,)
STATE OF NORTH DAKOTA,)
STATE OF ALASKA,)
STATE OF ARKANSAS,)
STATE OF FLORIDA,)
STATE OF GEORGIA,)
STATE OF IDAHO,) Case No. 1:24-cv-00089-DMT-CRH
STATE OF KANSAS,)
COMMONWEALTH OF KENTUCKY,)
STATE OF LOUISIANA,)
STATE OF MISSOURI,)
STATE OF MONTANA,)
STATE OF NEBRASKA,)
STATE OF SOUTH CAROLINA,)
STATE OF SOUTH DAKOTA,)
STATE OF TENNESSEE,)
STATE OF TEXAS,)
STATE OF UTAH,)
STATE OF VIRGINIA,)
STATE OF WEST VIRGINIA, and)
STATE OF WYOMING,)
)
Plaintiffs,)
v.)
)
COUNCIL ON ENVIRONMENTAL)
QUALITY, and BRENDA MALLORY, in)
her official capacity as Chair,)
)
Defendants.)

DECLARATION OF ROBERT JAMES THOMPSON

I, Robert James Thompson, declare and state as follows:

1. I am Iñupiat and live in Kaktovik, Alaska. Kaktovik is within the Arctic National Wildlife Refuge (Arctic Refuge or Refuge) in far northeastern Alaska. I moved to Kaktovik in 1988, but I have been coming to Kaktovik since the early 1970s. My family is from Wainwright, Alaska, on the North Slope.

2. For over twenty years, I owned and operated my own business, Kaktovik Arctic Adventures and was a licensed and permitted guide. The majority of my business was guiding polar bear viewing trips in the Arctic Refuge. I have also guided photographers and journalists in the Arctic Refuge who have published books about the region. I show them the wildlife and the beauty of the land. I want to show people what could be lost if oil drilling is authorized and to make sure people know that this area is worth our strongest protection.

3. The Iñupiat culture is based on subsistence hunting activities, both on land and in the ocean. I use the Coastal Plain of the Arctic Refuge for subsistence. I hunt caribou every summer and fish in the rivers and lagoons of the Coastal Plain. We also hunt ringed seals. I think that about 95% of the food that we eat comes from the land and oceans nearby.

4. My wife and I are current members of The Wilderness Society, and we have been supporters of the organization since 2001. I am involved with this organization because it helps protect our Indigenous cultures by saving the lands and waters that are essential to our way of life as Indigenous people who have been here for thousands of years. In the summer of 2020, I took The Wilderness Society's then-Alaska State Director and Assistant Alaska State Director into the Arctic Refuge for ten days on the Hulahula River. While in the Refuge, we had place-based dialogues on the need to protect the Refuge. Since that time, I have accompanied

Wilderness Society staff and others interested in protecting this place on 3 additional trips into the Refuge.

5. The Coastal Plain is my home. I have been involved in protecting the Coastal Plain for over twenty years because I do not want to live or hunt or fish in an oil field, and I do not want my children, grandchildren, or great-grandchildren to live in an oil field.

6. To protect the Coastal Plain, I have traveled to Washington, D.C. more than a dozen times to meet with lawmakers. I have also traveled to foreign countries and to several states to tell people about the significance of the Arctic Refuge and what will be lost if it is exploited. And I have participated in various National Environmental Policy Act (NEPA) processes related to the Arctic Refuge, voicing my concerns about the impacts that need to be studied and why the Coastal Plain must be protected. For example, I provided testimony on the draft Environmental Impact Statement (EIS) for the Coastal Plain Oil and Gas Leasing Program in Kaktovik on February 5, 2019 and voiced that not all Iñupiat people want oil and gas. I also submitted written comments on the draft supplemental EIS in September 2023.

7. I understand that the Arctic Refuge was set aside for protection of wildlife and subsistence purposes. My family relies on subsistence activities. There are many species that are in serious decline. The exact cause may be unknown, but climate change is a significant factor in these declines. There used to be four hundred musk ox in the Arctic Refuge, but due to climate change they are now nearly gone. I saw only one on a June 2018 eighty-mile float trip down the Hulahula River, and we did not see any on our trip down the Hulahula River in June-July of 2020. Musk ox have had to move on because the warmer winters cause rain to fall instead of snow, making the food that they eat icy. It's not good for them, so they leave.

8. There are 19 threatened and endangered species on the North Slope. The ivory gulls have declined at an alarming rate; no one knows why. Dall sheep are also in serious peril. When I first came here there were 7,000 Dall sheep. In the last count there were 467. Soon there will be even fewer. I remember about a decade ago seeing pictures of dead caribou. They had died during a rain-on-snow event after ingesting ice shards which wore them down. These events are commonplace now with regular rain in the wintertime. Climate change is not some theory that needs more proof. I've seen it. You can't look at a newspaper these days without seeing reports on the decline of animal populations, including the Western Arctic caribou herd and musk ox. This is a short time span considering these animals have been here for thousands of years. Some of these animals are food. It's our culture – of hunting. If the animals are gone, we can't hunt them. I'll probably never hunt a musk ox again.

9. It's all caused by climate change in one way or another and I don't see it being addressed. Climate impacts were certainly not addressed in the 2019 leasing EIS for the Coastal Plain oil and gas program. The ongoing status of endangered and threatened wildlife must be addressed, including through rigorous and independent monitoring.

10. I support the new Council on Environmental Quality (CEQ) NEPA rules because they are supposed to ensure that agencies consider climate change when making decisions, disclose the amount of climate pollution their proposals will create, and study ways to reduce climate pollution and climate impacts.

11. At a 2019 hearing on the draft EIS in Kaktovik, I asked why the EIS did not evaluate how oil development would impact musk ox and ivory gulls. I was told that BLM would look at impacts later when there are specific drilling proposals. I worried that "later" may never come, which is why I strongly opposed the CEQ's 2020 NEPA rules that would have

weakened analysis of oil company drilling proposals. I am thankful CEQ in 2022 restored the requirement to look at cumulative impacts. Without these and other safeguards in the NEPA process, oil companies will continue to get to do what they want to maximize profits. Climate pollution has global impacts, so agencies must fully evaluate its cumulative impacts, including the effect of pollution created by oil put on the market.

12. NEPA studies should also consider the effects of climate change on wildlife. Our actions and our pollution have impacts all over the world. It's all connected. Pollution created here doesn't just affect this little area where I live. Its effects are regional and even global. Pollution has caused the whole Yukon River to be closed down. 10 billion snow crabs died in the Bering Sea. What happens in one place affects people and the environment in other places.

13. Even in one place, the effects of climate change are far-reaching and interconnected. The glacier that feeds the Hulahula River is expected to be gone in our lifetime. That river takes nutrients to the ocean, which provides food for the fish, which provides food for the seals, which provides food for the polar bears. If one thing collapses, others follow. It seems hopeless at times, but we have to do something. I believe that starts with acknowledging and studying the science, the knowledge of Indigenous peoples, and web of effects that can be expected from any particular action that fuels climate change. I understand that the new NEPA rules will help ensure this happens.

14. I believe that oil exploitation would be fatal for polar bears because the Coastal Plain is one of their main denning areas. Climate change has made it so many more bears come ashore because the sea ice either no longer exists or is too unstable for bears to hunt there. It makes it so they must come to shore because their sea ice habitat is gone. I see it out my window.

It's open water right now in June. Polar bears were a month late getting out of here because of open water. That's our food. That's our culture. That's what we evolved with.

15. Leasing for oil and gas activities will only make fewer areas on land for the bears to go. They are already having difficulty with enough sea ice to survive, and frequently den on land here. Development will take place in areas where they den. The Coastal Plain is the most common onshore polar bear denning site anywhere. The seismic exploration activities will take place in winter and displace them during a critical time when sows den and give birth. Already they are down 56% in the Beaufort population. I do not believe the technology exists to keep polar bears safe from exploration activities because it is impossible to know where they are denning. There will probably be bears that die, and sows that leave their cubs, because of the surface disturbance from seismic exploration.

16. Polar bears are already suffering from the cumulative effects of oil and gas activities. They are having to come up onshore to find a new way to survive. It used to be unusual to see bears onshore; now they are all over the place. Their habitat is going away. I have had several bear incidents. They are coming to town for food and dumpster diving. Sometimes polar bears have to be killed because they are getting too close to people and people feel threatened. Climate change is causing a lack of food. More polar bears are having negative encounters with humans. Having to shoot bears in town puts more strain on the already fragile population. If things keep going the way they are going, scientists have predicted that polar bears will be extinct in Alaska by 2050. Oil and gas activity will further harm these already-stressed bears. That means I might see the last polar bear in my lifetime. This is upsetting to me.

17. It's important to have the bears around, they are part of the Arctic: everything in our culture needs to be here including our relationship with the bears. The 2019 EIS for the

leasing program did not sufficiently consider harms to polar bears because it assumed industry can effectively locate dens to avoid disturbance; but that EIS also didn't consider ways to meaningfully *mitigate* impacts to these species. I think that if BLM had used better science and carefully considered impacts it would not have decided to lease so much of the Coastal Plain in 2020. The new NEPA rules are written to ensure that agencies use good science and that they study ways to reduce impacts. I also support that agencies will need to identify the alternative that best protects the environment and the health of impacted people.

18. The Arctic Refuge is deficient in the studies they're supposed to do on wildlife. Without that information, they can't put into place the protections they're supposed to. They need to do the counts and provide the data. I live here so I see what's going on with the polar bears, musk ox, ivory gulls, caribou, and Dall sheep. I have more information than most biologists because I've lived here and observed the changes for over 50 years. Under the new NEPA rules, the government may consider Indigenous Knowledge in environmental reviews when it is appropriate to do so. Considering Indigenous Knowledge in decision making and NEPA reviews will help agencies make better, more informed decisions, as NEPA intended.

19. Our reserved Indigenous rights and promises by the federal government have been broken. I ask where will I hunt? In an oil field where there is no wildlife? The Alaska National Interest Lands Conservation Act (ANILCA) is supposed to guarantee us our hunting rights, but we can't hunt next to oil pipelines and equipment. Those who want to drill here, including the federal government which would allow it, are circumventing the intent of ANILCA. The new NEPA rules require that the government consider our treaty rights in NEPA processes, which requires full and transparent evaluation of impacts to the resources upon which our ability to exercise our reserved Indigenous rights depends.

20. I don't believe that corporations care about the health of the Eskimos. I see black smoke in my village that comes in from Prudhoe Bay, it's called Arctic Haze. We are already experiencing cumulative impacts from the offshore oil and gas activities as well. I have heard from people that live in Nuiqsut near this pollution that they have had a 600% increase in respiratory health issues. These impacts mostly affect Indigenous people.

21. I am concerned about all the plastic and related pollution that comes from the added garbage from oil development in the Arctic. Where will it go? It will be incinerated, with all the particles from the combustion going up into the atmosphere and then falling back down onto the tundra, into the water, and on our community, which will contaminate our health and the health of our wildlife. I think if oil development polluted the bodies of white people, they wouldn't do it. I want to have a clean environment, for myself and my family and our wildlife. We've been putting up with the pollution and burdens of oil development for too long. They are now finding microplastics in our water and in the body tissue of walrus. The new NEPA rules will require consideration of these effects on our community, our local environment, and our Indigenous reserved rights, and will require that the government study ways to avoid or reduce these adverse effects. It's a matter of fairness, of justice. I appreciate that the new NEPA rules will emphasize the importance of ensuring that government decisions do not worsen conditions for communities that are already struggling with too much pollution and compromised health. I understand that under the new NEPA rules, agencies will need to study and disclose whether and how proposed projects may place extra burdens on these communities and are encouraged to consider mitigation measures that could address any extra burdens. This improvement is long overdue.

22. I believe similar development around Kaktovik will have lasting health effects on our people. More infrastructure that is put in place will create additional pollution that is not good for Native people. The government says the pollution will dissipate into the air, but we live here and know that isn't true. I don't need any more chemicals in my body. I don't want my grandkids to have a shorter lifespan so somebody can make some money. If the Coastal Plain is developed, the corporations and government will not undo the development. Human health needs to be a greater concern when the government looks at impacts and must be fully analyzed under NEPA. Independent monitoring of all impacts must also be required.

23. When I first started coming to Kaktovik in the 1970s, the Coastal Plain was much different than it is today. Our average temperature is five degrees warmer now. We regularly get rain in the wintertime. The Arctic Ocean is opening up and losing its ice earlier. Now, we have dozens of polar bears in our village. Traditionally, we could cut into the permafrost to store our meat. Now it's filling up with meltwater, so we have to use big freezers, which costs us more and uses more energy.

24. There are many signs of climate change here: houses washing away due to severe erosion to coastal communities, decreased snow cover, the ground caving in because of permafrost melting, human bodies (our deceased) coming out of the ground as it melts, storm surges wiping out entire communities of nesting eiders, caribou dying off, and musk ox moving to new territory. These are cumulative impacts from the oil and gas activities that abound on the North Slope.

25. I'm taking personal steps to move myself away from oil consumption. For example, I'm taking initial steps to run my house by wind power. I am also advocating more broadly for transition to renewable energy at the community-level – something the new NEPA

rules are intended to promote – which would benefit the environment and save money. To do our part, for future generations.

26. Originally I wanted to protect the Coastal Plain because I didn't want my hunting grounds to turn into an oil field. Over time it evolved to much more than that. We have to care about the planet. Climate change is going to cause the planet to be uninhabitable, and it's all because of fossil fuels. I won't be here, but my descendants will be. What will they say 100 years from now: why didn't those people do something? I fear for the future of my people and the Coastal Plain if development activities are allowed to go forward. We are not doing enough, but under the new NEPA rules, the government will have to analyze the climate impacts, the health impacts, and the impacts to communities and to wildlife that are most impacted by development.

27. I'm glad that I was able to attend the 2019 hearing on the draft EIS for the leasing program, share my ideas, and find out more, but it's irritating to participate in a hearing where you know the government is not listening and trying to find ways to circumvent what people bring up. That was my experience at the hearing in Kaktovik. The new NEPA rules will help ensure that the government engage with impacted communities early and will make it easier for people like me to participate in the environmental review process.

28. I believe people have a right to know what's going on and share their views. And NEPA guarantees that right. I talked to Indigenous people in Siberia, and they wouldn't know what was going on until tractors came over the field and it was too late. I've seen that in my lifetime, where baseline studies were done with seismic equipment in the ocean with no notice or analysis of the impacts. So, we've progressed somewhat from that. At least now there are meetings, even if they don't always listen to us. Having the right to bring these things up is

important. We need some way to have meaningful involvement because we know this area more than oil company people or the government.

29. The disastrous Willow oil drilling project to the West of where I live will generate immense climate pollution and exacerbate all the climate-related impacts I have described here. The BLM initially proposed five drill pads for Willow, but then cut it back to three to appease people. They give us “choices,” but not “none of the above.” I understand that the new NEPA rules will help by clarifying that agencies should evaluate and disclose the environmental consequences of a project as measured against a baseline of “no action” and that the environmentally preferable alternative may be the “no action” alternative.

30. For years I have seen the oil companies, Native corporations, and pro-drilling entities intimidate and silence opposition. Some people in Kaktovik said they wanted to sign a petition in opposition to oil development, but they’re scared it would impact their jobs. Most of the jobs are oil related. If you are a teacher in the school, you know your money for the school and your job comes from oil. The Arctic Slope Regional Corporation wants to develop their oil and make millions, so they put the pressure on just about everybody. Word gets out that if you oppose, you’re fired. I have personal experience with this. I was not hired for a job I was qualified for because of my opposition to oil. In around 1988-1989, I applied for a job with the North Slope Borough to a position for housing maintenance, and they hired a less qualified person for the job. Although I was qualified for the job, I believe I was not hired just because I opposed oil development. I also tried to get scientific information into the school but couldn’t because they teach oil curriculum. The school receives a lot of money from the oil development through taxes paid to the North Slope Borough. I don’t think anybody ought to be stifling information to the benefit of the oil companies or corporations.

31. There needs to be transparency in the process of deciding what happens to the Coastal Plain and across the North Slope – especially after the Willow project was approved – and to the future of our climate. The people that will be impacted by the oil and gas activities need to know what is going on and be able to attend meetings so we can tell officials what is happening to our home. As Indigenous people, we have been pushed around and it's time that stopped: it's not right and doesn't feel good to put this burden on our culture. The government only has the “drill baby drill” mentality, which is not healthy for our animals or people. The Coastal Plain is a small area, but it's so important for the Indigenous people. It should be off-limits to oil and gas and protected. NEPA is one of the ways that guarantees we have a say. The federal government literally bulldozed the traditional homes in Kaktovik in order to build a runway for the Distant Early Warning System (DEW line). They did that without any warning or input from the people; there was no method for people to be heard. I am hopeful that the new NEPA rules will make sure something like that never happens again.

32. I am supporting the new CEQ NEPA rules because they will improve my ability to protect the Coastal Plain from oil development. I am very concerned about the health of my community and our access to subsistence resources if oil development takes place and we don't have a say in it. The Coastal Plain is my home. I am in it every day. I will not stop fighting to keep my home.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 20 day of June, 2024, at Kaktovik, Alaska.

Robert J. Thompson
Robert James Thompson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
BISMARCK DIVISION

STATE OF IOWA,)
STATE OF NORTH DAKOTA,)
STATE OF ALASKA,)
STATE OF ARKANSAS,)
STATE OF FLORIDA,)
STATE OF GEORGIA,)
STATE OF IDAHO,) Case No. 1:24-cv-00089-DMT-CRH
STATE OF KANSAS,)
COMMONWEALTH OF KENTUCKY,)
STATE OF LOUISIANA,)
STATE OF MISSOURI,)
STATE OF MONTANA,)
STATE OF NEBRASKA,)
STATE OF SOUTH CAROLINA,)
STATE OF SOUTH DAKOTA,)
STATE OF TENNESSEE,)
STATE OF TEXAS,)
STATE OF UTAH,)
STATE OF VIRGINIA,)
STATE OF WEST VIRGINIA, and)
STATE OF WYOMING,)
)
Plaintiffs,)
v.)
)
COUNCIL ON ENVIRONMENTAL)
QUALITY, and BRENDA MALLORY, in)
her official capacity as Chair,)
)
Defendants.)

DECLARATION OF TAYLOR MCKINNON

DECLARATION OF TAYLOR MCKINNON

I, Taylor McKinnon, declare as follows:

1. I make this declaration of my own personal knowledge. If called to testify as a witness, I could and would testify competently regarding its contents.

2. I have been a member of and have worked for the Center for Biological Diversity since 2007, where I am the Southwest director. The Center for Biological Diversity (“the Center”) is a national membership organization founded in 1989 and dedicated to the protection and recovery of endangered species and their habitats, including river ecosystems and imperiled fish and other species throughout North America. The Center is headquartered in Tucson, Arizona and has 1.7 million members and online activists as of June 2024.

3. Before working for the Center, I worked at Grand Canyon Trust (“the Trust”), beginning in 1999. The Trust is a regional membership organization that is dedicated to protecting and restoring the Colorado Plateau—its spectacular landscapes, flowing rivers, clean air, diversity of plants and animals, and areas of beauty and solitude.

4. I regularly use and enjoy public lands; and I have since I was a child. I grew up and still live in Flagstaff amidst national forests and parks that I regularly visit. Activities that I regularly engage in on public lands include hiking, cycling, camping, fishing, photographing, snowboarding, birding, nature and wildlife observation and vehicle touring. My love of the natural world and public lands inspired me to own and operate a river rafting business in southern Utah earlier in my career. My use and enjoyment of public lands brings joy to my life.

5. Since a child, I have engaged a practice of natural history, which is the intentional, focused attentiveness and receptivity to the more-than-human world. This practice has yielded a deep appreciation for the natural world, including its biological diversity and

aesthetics; it was the focus of my college studies in environmental studies, field ecology, and natural history; it is the primary focus of my hobby, photography; and it led me to a career working to protect and preserve nature.

6. As Southwest director for the Center, in my earlier capacities at Grand Canyon Trust, and as a result of my deep personal interests in the natural world, for more than two decades I have worked to protect public lands and waters. This includes regularly participating in processes set forth under the National Environmental Policy Act (NEPA) for federal proposed actions to harm federal public lands and species and ecosystems therein. I am familiar with NEPA, the 1978 regulations to implement that law, and the regulations adopted in July 2020 that fundamentally revise the 1978 rules. I have participated in dozens of NEPA processes evaluating uranium mining, recreational projects, logging, off-road vehicles, fire management, livestock grazing, fossil fuel development, land use management plans, pipelines, rights-of-way, and many other proposed actions.

7. I have found NEPA's procedural safeguards embodied the 1978 regulations to be crucial to improving projects and reducing the unnecessary environmental impacts, because in my experience NEPA review typically reveals diverse perspectives and impact-reduction solutions that otherwise would not be identified by the action agency. NEPA review often reveals issues and direct, indirect, cumulative, and synergistic effects of proposed federal actions. Good NEPA review reveals inconsistencies between federal projects and governing plans, laws, and regulations that would otherwise go undetected, avoiding resulting environmental harm by disclosing harm ahead of implementation and devising mitigation measure to address those harms. The 2024 regulations will restore some of the important provisions of the 1978 regulations that CEQ's 2020 amendments weakened, and strengthen them in some regards too.

8. The Center has engaged thousands of NEPA processes, and at any given time is engaged in dozens of NEPA processes for federal actions whose potential effects are relevant to our mission. The public participation, analysis and disclosure requirements of NEPA are critical to ensuring that federal agency decisions factor the public's interests, including mine and those of the Center; that they that are consistent with other laws and policies; and that they rationally rely on the best scientific and technical information available.

9. For example, NEPA was critical to securing the Northern Arizona Mineral Withdrawal, protections that preclude new uranium mining on one million acres of public lands surrounding Grand Canyon National Park. I helped to spearhead the campaign to secure those protections because I have a deep lifelong connection to the lands and waters threatened by new mining. The Department of the Interior's Environmental Impact Statement afforded me, the Center, the Trust, Tribes, other organizations and hundreds of thousands of members of the public to voice support for protections and to provide information elucidating threats to public values that in turn drove a robust analysis of impacts and alternatives. The Department's decision to withdraw these lands and ban new mining claims was supported by NEPA and its procedures. The EIS weighed facts provided by the public and sister agencies; it considered concerns raised by the public; it weighed scientific uncertainty and risk against potential harms. As a result, the Interior Department concluded, rationally, based on facts, that a withdrawal was warranted to avoid irreplaceable harm, including indirect and cumulative impacts, to public values like aquifers, springs, wildlife, cultural sites, and unindustrialized landscapes. That decision, facilitated by NEPA's public participation and procedures for analyzing direct, indirect, and cumulative impacts, and evaluating a range of reasonable alternatives safeguarded my personal

and professional interests in protecting and preserving nature in and around Grand Canyon National Park.

10. In another example, NEPA has been critical to informing motorized vehicle use on the Apache-Sitgreaves National Forest in eastern Arizona. The Apache-Sitgreaves National Forest includes vast tracts of high-value habitats for threatened and endangered species including Mexican spotted owl, Apache trout, New Mexico jumping mouse, and Mexican grey wolf. The Center has a long history of working to protect these species on the Forest, and I frequently visit the Forest with my friends and family to camp, fish, photograph, hike, and to observe flora and fauna.

11. The Forest Service's Public Motorized Travel Management Plan Environmental Impact Statement analyzed motorized vehicle use impacts to natural resources such as soils, streams, and threatened and endangered species, to propose a range of open road networks for the Forest. The Center participated in scoping and provided extensive comments on the Draft Environmental Impact Statement. Recognizing impacts to resource values from status-quo motorized use management, the Final Environmental Impact Statement's preferred alternative, and each of its action alternatives, would limit most motorized travel to designated open routes, and would sharply reduce the number of those routes that remain open. While the Center continues to engage this NEPA process in advance of a forthcoming decision, NEPA's public participation and procedures for analyzing direct, indirect, and cumulative impacts, have resulted in the Apache-Sitgreaves National Forest considering, for the first time, Forest-wide motorized vehicle use in the context of impacts to the values that I and the Center care about, such as the survival and recovery of threatened and endangered species. Here, by yielding a range of action alternatives for motorized vehicle use that improve conditions over status quo for most

threatened and endangered species, NEPA's public participation and procedures for analyzing effects are safeguarding my personal and professional interests in protecting and preserving nature in eastern Arizona's high country.

12. As part of my enjoyment of public lands, I regularly visit Grand Canyon National Park's South Rim and lands of the Kaibab National Forest near the town of Tusayan, Arizona that directly abut the Park. I visit the South Rim area several times each year to hike, sightsee, and take photographs of the Grand Canyon and wildlife in the area. I relish my time within the Park and National Forest lands because of the awesome scenery and wild forests there. I visited the South Rim area most recently in March 2024 and plan to return to photograph storms upon onset of the summer monsoon.

13. I am aware that the Forest Service has received applications from an Italian development corporation named Stilo for rights-of-way for water and natural gas pipelines, electricity, and a paved road to facilitate a massive commercial and residential development on private land surrounded by the Kaibab National Forest less than two miles from the southern boundary of Grand Canyon National Park. Stilo's proposed development would include a rash of indirect and cumulative impacts that include increasing Tusayan's population ten-fold, likely causing depletion of aquifers that are the only source of water for natural springs along Grand Canyon's South Rim, worsening air, noise and light pollution within the Park, and fragmenting habitat for wildlife that use the Park. The project will also likely worsen climate pollution, by inducing tens of thousands of additional motor vehicle trips and an increase in air travel to Tusayan and Flagstaff airports, and inducing an increase in fossil-fuel-generated energy use for the homes and businesses built there. Climate change will also likely impact the project, by, over

time, requiring more water for landscaping, more energy for air conditioning, and the project's development will interact synergistically with stresses on wildlife caused by increased heat.

14. When Stilo submitted a prior version of this application to the Forest Service in 2014, I contributed to analysis and comments opposing Stilo's proposal in response to the Forest Service NEPA scoping process conducted under the 1978 regulations. The Forest Service ultimately rejected Stilo's application based largely on the project's potential indirect and cumulative impacts to the National Park that had been raised by the Center and other members of the public.

15. In September 2020, the Forest Service announced that it had accepted Stilo's application. The Forest Service states that the application will next be "carried forward into an administrative review process to evaluate the application in further detail. The administrative review includes an environmental analysis, as prescribed by the National Environmental Policy Act, with ample opportunity for public engagement and comment." *See* Kaibab National Forest webpage, <https://www.fs.usda.gov/detail/kaibab/home/?cid=FSEPRD660672> (last viewed June 12, 2020). As of June 12, 2024, the Forest Service had not begun scoping this forthcoming analysis.

16. I am aware that the 2020 NEPA regulations eliminated the requirement that federal agencies consider the indirect and cumulative effects of their actions. I am also aware that the 2024 CEQ NEPA regulations explicitly require agencies to disclose the project's "climate change-related effects, including the contribution of a proposed action and its alternatives to climate change, and the reasonably foreseeable effects of climate change on the proposed action and its alternatives," something the 2020 NEPA regulations do not. The 2024 NEPA regulations also direct that agencies disclose "[w]here applicable, climate change-related effects, including,

where feasible, quantification of greenhouse gas emissions, from the proposed action and alternatives and the effects of climate change on the proposed action and alternatives.”

17. If plaintiffs prevail in this litigation, these provisions will be vacated, and it is less likely that the Forest Service will address the project’s climate impacts, or that the agency will quantify the greenhouse gas emissions by alternative. This will leave me and the Center in the dark as to the nature and scale of the project’s climate impacts. Further, if the Forest Service is no longer required by the 2024 NEPA regulations to disclose these climate impacts, a result plaintiffs’ complaint seeks, there is a far greater likelihood that any NEPA document the Forest Service prepares will ignore these impacts, and that the rights-of-way will be approved, Stilo’s mega-development will be built, and that that project will destroy the natural quiet, dark skies, pure springs, and scenery that I enjoy. Such an outcome will make it less likely that I will want to return to the area, and harming me when I do.

18. I am also aware that the 2024 NEPA regulations require agencies to “use high quality information, including ... Indigenous Knowledge.” From my years of work and recreation around the Grand Canyon, including building alliances with Tribal governments, and Indigenous-led non-governmental advocacy groups, I know that Indigenous people, including the Havasupai Tribe, Hopi Tribe, and Navajo have hunted, farmed, lived and/or visited for centuries in the area where Stilo plans its massive resort and shopping complex. By requiring the Forest Service to use Indigenous Knowledge, if available and provided by the Tribes that maintain sovereignty over this information, in any NEPA review of Stilo’s proposed right-of-way, the 2024 NEPA regulations are likely to result in a richer understanding of the resources and values at stake. This will further NEPA’s purposes with a more informed analysis, benefit my and the Center’s understanding of the harms the project will cause, make it less likely that the Forest

Service will choose to degrade those values, and make it more likely that the Forest Service will mitigate any such harm.

19. But if the Forest Service is no longer required by the 2024 NEPA regulations to use Indigenous Knowledge in the agency's analysis, a result plaintiffs' complaint seeks, there is a greater likelihood that the any NEPA document the Forest Service prepares will ignore the history, values, and knowledge that the Havasupai, Hopi, and Navajo have accumulated over millennia, and that the rights-of-way will be approved, Stilo's mega-development will be built in ignorance of this Indigenous Knowledge, and that that project will destroy these and other values that I, too, enjoy. Such an outcome will make it less likely that I will want to return to the area, and harming me when I do so.

Dated: June 18th, 2024



Taylor McKinnon

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
BISMARCK DIVISION

STATE OF IOWA,)
STATE OF NORTH DAKOTA,)
STATE OF ALASKA,)
STATE OF ARKANSAS,)
STATE OF FLORIDA,)
STATE OF GEORGIA,)
STATE OF IDAHO,) Case No. 1:24-cv-00089-DMT-CRH
STATE OF KANSAS,)
COMMONWEALTH OF KENTUCKY,)
STATE OF LOUISIANA,)
STATE OF MISSOURI,)
STATE OF MONTANA,)
STATE OF NEBRASKA,)
STATE OF SOUTH CAROLINA,)
STATE OF SOUTH DAKOTA,)
STATE OF TENNESSEE,)
STATE OF TEXAS,)
STATE OF UTAH,)
STATE OF VIRGINIA,)
STATE OF WEST VIRGINIA, and)
STATE OF WYOMING,)
)
Plaintiffs,)
v.)
)
COUNCIL ON ENVIRONMENTAL)
QUALITY, and BRENDA MALLORY, in)
her official capacity as Chair,)
)
Defendants.)

DECLARATION OF VINCE KANA'I DODGE

I, VINCE KANA'I DODGE, declare under penalty of perjury that:

1. I am a long-time resident of Wai‘anae on the island of O‘ahu and a member of the Board of Directors of Mālama Mākua. Mālama Mākua is a Hawai‘i nonprofit corporation, whose members consist primarily of residents of the Wai‘anae District of O‘ahu. The organization’s goals include restoration of the land, return of the land to appropriate traditional and cultural uses, and protection of the public from adverse impacts associated with military training-related activities at the Mākua Military Reservation (“MMR”), a U.S. military base on O‘ahu. Members of Mālama Mākua include native Hawaiian practitioners, community leaders, and educators who are actively involved in the land-use issues associated with MMR.

2. The U.S. military occupation in Mākua Valley began in 1929. In 1942, after the bombing of Pearl Harbor, the entire Valley was seized so that it could be used for training. The ranch, the farmers, and the homesteaders were all evicted, some of them at gunpoint. People were promised that the Valley would be returned to them within six months of the end of World War II. That is not what happened. From 1942 to 1998, the Valley was heavily bombarded with bombs, napalm, white phosphorus, and every type of projectile and mortar. There was a “dud rate” of about 10%, which resulted in the tens of thousands of unexploded ordinance littered all over the Valley. Ships in Mākua Bay fired into the Valley. Planes dropped all kinds of bombs. There were Beach assaults. Heavy artillery pounded the Valley and helicopters blasted targets. Training took place both day and night and the tracer weapons that the helicopters used at night were responsible for hundreds of fires in the Valley. It was not uncommon in the hot summers for the entire Valley to burn. These fires not only destroyed native flora and fauna in the Valley, but climbed out of the Valley and burnt and destroyed protected areas.

3. The military also used the Valley as a disposal site for outdated munitions and dangerous waste, including radioactive waste and things like mustard gas. Many times, the heavy rains came after the burning of the Valley and this resulted in a tremendous amount of soil being washed downstream into Mākua Bay.

4. Mākua Bay has been the site of a fishing village from time immemorial. Our coastline is one of the richest fishing areas on the island of O'ahu. Families and community have been living on the beach for much of the time that the military has been training in the Valley. In the Wai`anae community, Mākua Beach is a dearly loved beach and I like many others have raised my children and my grandchildren on that beach. The connection between the health of the Valley and the near shore waters is unmistakable. Those waters feed us. And after nearly 6 decades of intense bombardment of the Valley, our community was very concerned about how the contamination from those six decades of bombardment would be affecting us, and especially the most innocent of us, our pregnant mothers and infants.

5. Mālama Mākua was originally organized in 1992 to oppose the Army's permit application to the Environmental Protection Agency to burn and detonate hazardous waste at MMR. Since then, Mālama Mākua and its members have continued actively to monitor the impacts of military activities at MMR. Mālama Mākua and its members are committed to the preservation and perpetuation of native Hawaiian culture, traditional and customary Hawaiian practices, cultural sites and resources in the Mākua region, including at MMR. Mālama Mākua has long been concerned about the destruction of cultural sites at MMR associated with defendants' military training and associated activities.

6. My father, Dr. Fred Dodge, and my mother, Aiko Tanaka, met and married in Tokyo, Japan, where I was born. We moved to the island of O'ahu in 1961 when I was four years

old, and I have lived here ever since. I moved to Wai‘anae in 1979. Between 1980 and 1990, I supported my family as a subsistence fisherman in and around the Mākua area. I have been diving in and around Mākua Bay regularly ever since, both to fish and to gather edible limu (seaweed). With forty years of experience fishing and diving for food, I am very familiar with the marine resources that are found here, especially those that are edible.

7. Since I frequently eat fish, limu, shellfish and other marine resources gathered from Mākua and share those foods with my family and friends, I am concerned about possible contamination of Mākua’s marine resources from military activities at MMR. Accordingly, I have participated actively in review of the United States Army’s study of marine resources at Mākua, often through NEPA processes, doing my best to ensure that the study provides accurate information regarding the health risks of consuming the food I regularly gather there. Among other things, I have provided comments to the Army during opportunities for public input to provide information about marine species that I and other Wai‘anae Coast residents commonly gather at Mākua, so that the Army would know on which species it should focus for collection and testing for contaminants.

8. As part of the NEPA process, we consulted with community members and gave the Army an extensive list of the most commonly caught and eaten fish, including octopus, shellfish, and limu. Some limu can be gathered on the shore after a high tide, some found on the reefs and gathered at low tide, and some you go diving in the water for. Many limu have a harvest season. We gave this information to the Army during the NEPA process, and also offered to help their contractors gather the identified limu. This knowledge comes from community members who have lived in this area for generations and is not commonly known by outsiders.

9. You can imagine our surprise when the study was released and they could not even identify the type of limu that they had gathered and studied. They had gone down to the shoreline and picked up whatever was there and then they justified this by making the statement that this was a traditional gathering practice. It's as if you went to a grocery store, walked in the door and just grabbed the first few things you saw, and called it going shopping. That is not traditional gathering practice. When we gather, we know what we're looking for. We know where and when we are going to look for it. If for some reason, it is not available, we will gratefully take what is available, but we never go to the ocean and just take whatever. We had to take the Army back to federal court to get them to do a decent limu study as part of the NEPA process. The fish, shellfish, and octopus part of the study was woefully inadequate as well. It turned out that the contractors were not allowed to go into the ocean.

10. The federal judge agreed with us, and decreed that they needed to do a better study. As far as I can remember, the final study did include some of the fish and limu that are commonly eaten. In the larger picture, I believe that because of NEPA, we were able to protect other living members of our community, i.e., native fauna and flora, from near total annihilation, by suing the Department of Defense. The result of the lawsuit and the eventual settlement was the protection and propagation of native fauna and flora, reconnection of our people with our `Aina (land), suspension of live fire training for nearly 20 years in Mākua Valley, and the declaration in federal court in November 2023 that the Department of Defense would not now or in the future use Mākua Valley for live fire training. This shift in the last 25 years from intensive bombing and destruction of sacred `Aina to the total cessation of live fire training, will now and in the future have tremendous positive impacts on our community, our island nation, and the world beyond.

11. In 2024, the Biden White House updated the NEPA regulations. The updated regulations explicitly called for greater consideration of environmental justice in the NEPA process. This provision is important to me, my community, and my organization. The Wai`anae community is the site of the two largest landfills on the island of O`ahu, the only major power plant in the US with the exemption to burn high content sulfur fuel, the four thousand acre Naval Ammunition Depot, the four thousand acre Mākua Military Reservation training range, and Space Force tracking facilities. The community is also home to the largest concentration of native Hawaiians in the world. Would any of these destructive health-risking entities be near the affluent neighborhoods of Honolulu? Or in the proximity of downtown Honolulu or Waikiki? Of course not. These communities have the money and expertise to fight these types of developments. And so they are relegated to communities like ours. The population of Wai`anae is over 60,000. The continual exposure to environmental degradation has and will continue to hurt our people. Greater consideration of environmental justice in the NEPA process is critical in shifting the “business as usual” dynamic.

12. Removing the environmental justice language would make it more difficult for communities like mine to be heard in the NEPA process, undermining the goals of NEPA to fully consider the environmental impacts of government decisions.

13. This lawsuit also challenges provisions in the regulations that call for agencies to consider “indigenous knowledge” in NEPA reviews. In my view, consideration of indigenous knowledge is crucial to serving NEPA’s goals. Place-based knowledge carried by the people who have lived in a particular place for many generations is critical to understanding how to best take care of people and all living beings. The world has become small and it is crystal clear that we humans and all other living beings share just one home, Mother Earth or Mama `Aina. We are

and have always been in a reciprocal relationship with Mother Earth and it is crucial that we do our best to take care of our common home.

14. It is my understanding that the 2020 version of the NEPA rules, issued under the Trump administration, limit public participation in the NEPA process and limit the scope and extent of NEPA reviews as compared to long-standing NEPA procedures in place since the 1970s. Reverting to these rules would harm our families and community by limiting our ability to participate meaningfully in NEPA processes that impact our lives and well-being.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 14 day of June, 2024 at Wai‘anae, Hawai‘i.



Vince Kana‘I Dodge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
BISMARCK DIVISION

STATE OF IOWA,)
STATE OF NORTH DAKOTA,)
STATE OF ALASKA,)
STATE OF ARKANSAS,)
STATE OF FLORIDA,)
STATE OF GEORGIA,)
STATE OF IDAHO,) Case No. 1:24-cv-00089-DMT-CRH
STATE OF KANSAS,)
COMMONWEALTH OF KENTUCKY,)
STATE OF LOUISIANA,)
STATE OF MISSOURI,)
STATE OF MONTANA,)
STATE OF NEBRASKA,)
STATE OF SOUTH CAROLINA,)
STATE OF SOUTH DAKOTA,)
STATE OF TENNESSEE,)
STATE OF TEXAS,)
STATE OF UTAH,)
STATE OF VIRGINIA,)
STATE OF WEST VIRGINIA, and)
STATE OF WYOMING,)
)
)
Plaintiffs,)
v.)
)
)
COUNCIL ON ENVIRONMENTAL)
QUALITY, and BRENDA MALLORY, in)
her official capacity as Chair,)
)
)
Defendants.)

DECLARATION OF WILLIAM HOUSTON

I, **William Houston**, make the following declaration under penalty of perjury pursuant to 28 U.S.C. § 1746. This declaration is based on my personal knowledge, information, and belief.

1. I am a current member of the National Wildlife Federation (NWF) Board of Directors, and am a past chair of the Board. I currently live in Kingfield, Maine, and have for the last 35 years.

2. I have both a personal and a professional interest in ensuring that the environmental impacts of federal projects are thoroughly and appropriately examined and that the public, including myself and organizations that I am member of, have ample and meaningful opportunity to participate in the process of evaluating those impacts.

3. I have worked as a Master Maine Guide with thousands of river miles guiding raft, canoe, and kayak trips throughout North American and Europe, and have taught outdoor leadership and skills at Somerset Career and Technical Center, in Skowhegan, Maine for over 25 years. As part of that work, I developed a pioneering two-year course to prepare high-school-age students to work in the natural resources and outdoor recreation industries while instilling in them an appreciation of nature and a conservation ethic.

4. I served as chair of the State of Maine's Whitewater Guides Advisory Board for many years, and I am a life member of the Maine Wilderness Guides Organization.

5. From 1999 to 2001 I worked with the Natural Resources Council of Maine (NRCM), NWF's affiliate and an organization dedicated to protecting the natural resources of Maine, to organize a Guide's Rendezvous—a conference designed to empower guides to take actions to protect Maine's environment. I served on the Board of Directors for NRCM for seven years in the early 2000's , with two years as Board President. In 2002, NRCM recognized my efforts to protect Maine's wild and scenic places by honoring me with an Environmental Achievement Award. NRCM is a nonprofit membership organization protecting, restoring, and conserving Maine's environment and is NWF's affiliate organization in Maine. NRCM has

existed for more than 60 years and works to protect the health of Maine's rivers, lakes, streams, and coastal waters; promote sustainable communities through initiatives that reduce toxic pollution and waste; decrease air and climate-changing pollution through energy efficiency and renewable sources; conserve Maine lands and wildlife habitat, including our treasured North Woods; and defend the federal environmental policies and programs that help protect Maine. It has more than 30,000 supporters statewide and beyond

6. I have taken a great deal of satisfaction in my work over the years protecting the many lakes, rivers, streams, and other water resources that I canoe, raft, fish, and otherwise use and enjoy. I often have engaged as a member of the public in commenting or testifying on federal licenses and permits that impact these resources such as the operation of dams and developments that could alter the flow of or pollute waters or other natural resources, potentially diminishing my enjoyment of the use of these resources.

7. I also own a cabin on Chesuncook Lake, a Maine gem lake near Baxter State Park that is level controlled by the Ripogenus Dam. The Ripogenus Dam on the West Branch of the Penobscot River has been operating since 1916. Chesuncook Lake is the third largest lake in Maine, known for its beauty, wildlife, recreational opportunities, and the chance for solitude and the enjoyment of nature.

8. I spend a great deal of time at my cabin, where I enjoy the recreation and natural beauty the lake and area provide, including the nearby West Branch that exists downstream of the Ripogenus Dam. In particular, I enjoy fishing for landlocked salmon, and watching wildlife, such as loons. There is nothing that connects me to the wilds of Maine like hearing the hauntingly beautiful calls of loons echo through the night. I also spend a lot of time canoeing and

rafting on the lake and river. I intend to continue these activities for the foreseeable future as we plan to spend ample time at our cabin for many years to come.

9. The operation of the Ripogenus Dam has an immense impact on my ability to enjoy and use Chesuncook Lake and the West Branch of the Penobscot River. The dam was historically operated to support paper mills, which resulted in relatively consistent water releases that maintained stable lake levels. These consistent flows provided flow for rafting, and water stability for fisheries and wildlife such as loons, ensuring that loon nesting areas, which are near the shore, have predictable and constant access to the lake and the water.

10. However, since the closure of the last paper mill approximately a decade ago, the dam has been operated to supply power to the grid. As such, the operation of the dam has changed substantially in recent years, with large flow fluctuations and larger and longer water releases. This has resulted in large drawdowns of water from the lake that have resulted in extremely low lake levels and much less consistent flow in the river.

11. These changes in operation have impacted my use of both the river and the lake. Flows in the river are much less consistent, impacting fish habitat and survival. The major drawdowns and extremely low lake levels make access to the lake difficult with boat launches becoming unusable and large expanses of exposed lake bottom, and can expose hazards on the lake. Additionally, low lake levels can effectively destroy loon nesting habitat by causing nesting areas to be too far from the water the loons need to have nearby. These negative impacts reduce the amount and the health of salmon and the populations of loon, making it harder for me to enjoy fishing for salmon and to observe and listen to the loons I love. The major drawdowns are currently allowed under the existing Federal Energy Regulatory Commission's (FERC) license

which has no effective drawdown limit, placing no real drawdown limit on the dam's operator, Great Lakes Hydro America, LLC (GLHA), a subsidiary of Brookfield Renewable.

12. The Ripogenus Dam operating license is scheduled to be renewed in 2026. As part of the re-licensing process, FERC is planning to issue an environmental document under the National Environmental Policy Act (NEPA) which will be used by FERC to help determine whether, and under what conditions, to issue a new license for the dam. This process will be influential in determining how the dam will operate for the next thirty to fifty years. Because the result of this overall licensing process that will be greatly informed by the NEPA process will have significant impact on how the lake and the river are managed, it will directly affect my use of the lake and river. My wife and I have been directly involved in this licensing process for three years and intend to continue to engage the process, including submitting comments at every opportunity such as during the preparation of NEPA documents, to weigh in how we believe the dam should be operated to protect our interests in rafting, wildlife observation and enjoyment including impacts on loons, and impacts on fisheries such as salmon which I frequently fish for and enjoy and continue to do so. The NEPA process will also inform our understanding of how the dam will operate under its renewed license – if that license is issued – and what the impacts of that operation will be.

13. As such and from my long history of involvement in protecting the places I love in Maine and elsewhere, I am familiar with NEPA and the Act's requirement that agencies take a "hard look" at many of their actions and that they solicit and consider public comment during the process of taking a hard look. This hard look often results in an environmental impact statement as well as a detailed examination of the impacts of a major federal action and a consideration of reasonable alternatives to the action.

14. I am aware that on May 1, 2024, the U.S. Council of Environmental Quality issued a final rule that helps restore provisions that were rolled back in 2020 to ensure that NEPA fulfills its role as a statute to inform the public about major federal actions and take a look at serious impacts of a project like climate impacts, impacts to environmental justice communities, and reasonable alternatives including alternatives that might result in a more environmentally beneficial alternative than the proposed alternative.

15. These rules will help ensure that my concerns about the dam are heard and help ensure that important considerations are evaluated when FERC considers the reissuance of the license. For example, by considering climate impacts, the 2024 NEPA regulations will help make it more likely that considerations such as increased drought and flooding events will be evaluated and explained, as will their impact on species like loons and salmon and on recreational and other uses. The influence of climate change on the operation of the dam needs to be considered so that conditions such as increased drought and flooding that will greatly affect lake levels and potentially exacerbate the impact of drawdowns on recreational users and species like salmon and loons are examined as part of the decision-making process on the license renewal. Consideration of these impacts will increase my understanding of any conditions that are imposed as part of the relicensing and also help ensure that my concerns about how climate change impacts in the operation of the dam affect my use and enjoyment of the lake and river will be heard by FERC.

16. If the court overturns the 2024 rules, I will be harmed because it will be unlikely that these important considerations will be evaluated. This will diminish my understanding of the relicensing and not inform me about potential impacts that are very important to my use and

enjoyment of the lake. It will also make it less likely that conditions will be made part of any license that will protect my interests in the use and enjoyment of the lake and river.

17. By contrast, if a court declares the NEPA regulations are valid, I will feel more confident that my voice will be heard in the NEPA process regarding the dam re-licensing, that all important impacts on salmons, loons, recreation, and other wildlife will be evaluated, and that the important impacts of climate change on the relicensing will be considered. I will additionally be more confident that I will have the information needed to understand the impacts of the relicensing and the alternatives considered, and that a consideration of these impacts and alternatives are likely to result in a new license that will be protective of my interests in the lake and the river.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 22nd day of June, 2024 at Kingfield, Maine.


William Houston

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
BISMARCK DIVISION

STATE OF IOWA,)
STATE OF NORTH DAKOTA,)
STATE OF ALASKA,)
STATE OF ARKANSAS,)
STATE OF FLORIDA,)
STATE OF GEORGIA,)
STATE OF IDAHO,) Case No. 1:24-cv-00089-DMT-CRH
STATE OF KANSAS,)
COMMONWEALTH OF KENTUCKY,)
STATE OF LOUISIANA,)
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STATE OF UTAH,)
STATE OF VIRGINIA,)
STATE OF WEST VIRGINIA, and)
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Plaintiffs,)
v.)
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COUNCIL ON ENVIRONMENTAL)
QUALITY, and BRENDA MALLORY, in)
her official capacity as Chair,)
)
Defendants.)

DECLARATION OF THOMAS BUCHELE

I, Thomas Buchele, declare that if called as witness in this action I would competently testify of my own personal knowledge, as follows:

1. I make this Declaration in support of CEQ's recent changes to the federal National Environmental Policy Act (NEPA) regulations. I have used the NEPA process in the past to learn about and make recommendations for proposed permits and projects in my area and their effects on the environment. I plan to use the NEPA process in the future to gain information about federal projects and to secure my environmental, aesthetic, recreational, and commercial interests in protecting the water quality and ecology near my home.

2. I am a member of Center for Food Safety (CFS). I joined CFS because I am concerned about the expansion of highly industrialized food production practices, including the use of pesticides and herbicides in industrial agriculture and shellfish aquaculture, which have harmful effects on public health and the environment and make food less safe for consumers. Specifically, I support CFS's work to protect Washington's coastal areas from the harmful impacts of industrial shellfish operations. I am supportive of the implementation of CEQ's new NEPA regulations so that I can participate in the NEPA process for projects that will affect the environment in my area.

3. CFS is a leader in advocating for better oversight and regulation of the food system, including more transparency and public participation in the regulatory process. As a member of CFS, I regularly receive email updates about the issues that CFS is working on, as well as alerts about opportunities to share public comments or participate in a legal or regulatory action. I also receive information from CFS by mail. When I want to learn more about an issue, such as, for example, threats to Monarch butterflies, I view the informational materials and reports posted on CFS's website. I also regularly talk about the issues that CFS is working on with one of my former students, Amy van Saun, who is a senior attorney at CFS.

4. I participate in the NEPA process in many different ways. First as a member of CFS, I often respond to their alerts or other types of notices about new federal agency actions and give them input about issues I want them to raise on my behalf in the NEPA comments they will be submitting. I usually respond by talking to my former student Amy van Saun. For example, I have done so regarding proposed federal permits regarding shellfish aquaculture in Willapa Bay, Washington, which is a very important issue for me for the reasons explained below. Second as an individual, I have submitted NEPA comments regarding other projects where CFS is less involved, such as the proposals to massively expand Portland, Oregon's interstate highways. I rely on my rights under NEPA and federal agencies' legal requirements under NEPA to protect my interests in stopping or changing these ill-advised projects. Third, as noted in the next paragraph, as a clinical law professor I represent many clients regarding federal agency actions subject to NEPA. I submit comments on behalf of my clients and file lawsuits under the APA and NEPA to protect my clients' NEPA rights.

5. I am a clinical professor with the Earthrise Law Center at Lewis and Clark Law School in Portland, Oregon. I focus on public lands litigation against federal agencies, including lawsuits brought under NEPA and the Endangered Species Act. From my work, I am very familiar with the substantive requirements of both these statutes—and the important role they play in ensuring that federal agencies fully consider the potential impacts of a proposed project before reaching a final decision.

6. I am a resident of Portland, Oregon, and I own a vacation home in Ocean Park, Washington, located on the Long Beach Peninsula. I spend about every third or fourth weekend at my vacation home, which has views of the Pacific Ocean to the west and extensive estuarine and marine wetlands to the east. Every time I visit my vacation home, I take Sandridge Road,

which follows the western shoreline of Willapa Bay, a major estuary along Washington's Pacific Coast, for most of the drive. When I visit my vacation home, I walk on the beach along the Pacific Ocean with my dogs several times a day, weather permitting. I occasionally bike on roads along the Pacific coast. I have also biked on the road running along Willapa Bay in Oysterville, located just north of Ocean Park.

7. One of the important reasons why I purchased a vacation home in this location is the abundance of wildlife and proximity to diverse coastal habitats. I enjoy watching wildlife, and I can observe a rich diversity of wildlife from my vacation home in the Long Beach Peninsula. The abundance of wildlife near my vacation home is largely due to its location between the Pacific Ocean and Willapa Bay, and its proximity to rich and diverse aquatic habitats and food sources. I often observe wildlife while spending time at my home, walking my dogs to the beach, walking on the beach, running errands, biking along the Pacific coast, biking along Willapa Bay, and driving along Washington's southern shoreline. I have seen black bears, elk, deer, coyotes, porcupines, native squirrels, seals, whales, bald eagles (which nest very close to my house), and numerous other species of birds, including terns, pelicans, and the endangered snowy plover. While I usually see wildlife on the western side of the Peninsula, which runs along the Pacific Ocean, I know that many of these species rely on the tidelands and nearshore areas in Willapa Bay for food, cover, shelter, breeding, and spawning.

8. Another important reason why I purchased a vacation home in this location is the availability of high-quality, locally sourced seafood, especially oysters grown in Willapa Bay. I have enjoyed eating oysters since I was a teenager, and it is important to me that I have the ability to buy high-quality, fresh oysters from a local source. When driving between my vacation home and Portland, I regularly make a stop to purchase fresh oysters at a store in Oysterville, just

off Sandridge Road, run primarily by a husband and wife. The store sells oysters harvested from the Bay on the same day, as well as some prepared foods made with harvested oysters and locally caught fish or crab. I buy fresh oysters from this store at least six times a year, and I often get oysters from this store delivered to me on Christmas, which I spend with family in Wisconsin. I enjoy purchasing and eating locally grown oysters when spending time at my vacation home, and I plan to continue purchasing oysters from local sources during future visits to my vacation home.

9. Western snowy plovers are a threatened species with critical habitat near my vacation home in Pacific County. Because snowy plovers are so rare, it is always a thrilling sight to see them on the beach. I also greatly enjoy watching seals, terns, pelicans, and other wildlife feed in intertidal waters near the shoreline. If I am not able to see wildlife when I visit my vacation home and nearby beaches, my enjoyment in my vacation home and the surrounding area will be greatly diminished, and I will be forced to seek other, less convenient places to recreate.

10. As noted above, I rely upon CFS to submit NEPA comments on my behalf regarding and with my input regarding federal agency actions that would adversely impact my interests in the fragile environment and shellfish beds near my Ocean Park vacation home. I know that CFS has used those comments and my standing declarations to pursue NEPA claims to vindicate my interests. I also have used NEPA commenting on behalf of my own clients to protect their interests. Although NEPA is often derided as just a “procedural” statute, those procedures matter and, when followed properly, can result in significant substantive changes to proposed federal actions. Just two years ago a federal agency made significant changes to a proposed action in its final Record of Decision after reviewing my client’s NEPA comments

(which I prepared and submitted on its behalf). Those changes directly addressed and substantially mitigated the harms my client would have suffered if the project had gone forward as initially proposed. It was NEPA that required the agency to solicit and consider my client's comments.

11. The updates to CEQ's NEPA regulations, although not perfect from my perspective (in contrast to the plaintiffs in this litigation I would have preferred even stronger updated CEQ regulations), will allow me to participate in agency decision-making through NEPA on my own behalf, as a member of CFS and on behalf of my own clients and ensure that agencies take a hard look at their actions. With the new regulations, agencies will also have the ability to work with project proponents and communities to mitigate or avoid environmental harms by analyzing common sense alternatives. The new regulations will allow federal agencies to incorporate feedback from members of the community, such as myself, on actions that impact my environmental, aesthetic, recreational, and socioeconomic interests. Without the opportunity to voice particular concerns and advocate for these interests through the NEPA process, I would experience harm in these areas. As such, I support CEQ's updated regulations.

12. The new regulations, which represent the most rigorous NEPA climate reporting requirements to date, take into account the growing environmental consequences from climate change and specifically require consideration in NEPA review. Because of my concerns about the environment in my area, I support CEQ's higher standard in considering short- and long-term adverse and beneficial effects on the environment in NEPA review. My interests in protecting and preserving my environment will be further secured because the new regulations instruct agencies to specifically consider reasonable alternatives that will reduce climate change-related effects. Additionally, CEQ's new regulations restore informed and science-based decision-

making to the NEPA process, which is important to the discussion of the affected environment by describing reasonably foreseeable environmental trends in my area.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 25, 2024, in Portland, Oregon.


Thomas Buchele

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
BISMARCK DIVISION

STATE OF IOWA,)
STATE OF NORTH DAKOTA,)
STATE OF ALASKA,)
STATE OF ARKANSAS,)
STATE OF FLORIDA,)
STATE OF GEORGIA,)
STATE OF IDAHO,) Case No. 1:24-cv-00089-DMT-CRH
STATE OF KANSAS,)
COMMONWEALTH OF KENTUCKY,)
STATE OF LOUISIANA,)
STATE OF MISSOURI,)
STATE OF MONTANA,)
STATE OF NEBRASKA,)
STATE OF SOUTH CAROLINA,)
STATE OF SOUTH DAKOTA,)
STATE OF TENNESSEE,)
STATE OF TEXAS,)
STATE OF UTAH,)
STATE OF VIRGINIA,)
STATE OF WEST VIRGINIA, and)
STATE OF WYOMING,)
)
)
Plaintiffs,)
v.)
)
)
COUNCIL ON ENVIRONMENTAL)
QUALITY, and BRENDA MALLORY, in)
her official capacity as Chair,)
)
)
Defendants.)

DECLARATION OF DONALD M. WALLER

I, Donald M. Waller, declare as follows:

1. My name is Dr. Don Waller. I am providing this declaration in support of the standing of the Environmental Law and Policy Center (ELPC). I am over the age of eighteen

(18) and suffer from no legal incapacity. The following is true to the best of my knowledge, information, and belief. I make this declaration of my own personal knowledge. If called to testify as a witness, I could and would testify competently regarding its contents.

2. Until my retirement in 2019, I was the John T. Curtis Professor of Botany and Environmental Studies at the University of Wisconsin-Madison, where I spent my entire academic career. During my more than forty years at UW-Madison, I served as Chair of the Department of Botany, Chair of Wisconsin Ecology, and Chair of the Conservation Biology Major. I received my Ph.D. in Population Biology from Princeton University in 1978, after which I served as a Post-Doctoral Fellow at Harvard University.

3. Although I have retired from academic teaching, I continue to conduct research and publish scientific studies and papers. My research in conservation biology, ecology, and genetics and evolution has focused on long-term ecological trends, biodiversity, forest management, species declines, and the effects of inbreeding, habitat fragmentation, and climate change, among other issues. I co-authored *Wild Forests: Conservation Biology and Public Policy* (Island Press 1994), and co-edited *The Vanishing Present: Wisconsin's Changing Lands, Waters, and Wildlife* (University of Chicago Press 2008). In addition, over the course of my career I have authored or co-authored more than 200 journal articles, book chapters, and other publications.

4. I am a member of the Environmental Law and Policy Center. I also continue to serve on ELPC's Science Advisory Board and previously served as Chair of this group for several years.

5. I am familiar with and knowledgeable about the National Environmental Policy Act (NEPA). My co-authors and I wrote about how NEPA is implemented to influence natural resource management in our book, "*Wild Forests: Conservation Biology and Public Policy*," and

I taught this topic in my Conservation Biology course. These activities stemmed from my experience where, as a private citizen working with environmental non-profit organizations, I regularly engaged in discussions, negotiations, and lawsuits involving NEPA. NEPA has direct and important impacts on how ecological communities and natural areas are managed on public lands, including those where I conduct research. Some of these areas have been either preserved or seriously degraded as the result of outcomes from NEPA processes.

6. Over the past several decades, I have utilized the rights and procedures afforded under NEPA to participate in public proceedings for assessing and evaluating the environmental impacts of certain proposed projects. I have submitted comments, testified at public hearings, and participated in civil actions to ensure proper implementation of NEPA's requirements for proposed projects affecting communities, locations, and resources in which I have a professional or personal interest.

7. National forests, for example, have played a central role in my career and my life. I know from decades of experience that a robust NEPA process is critical to sustainably managing these forests. I have relied on these forests for professional activities (teaching and research), career advancement (consulting and lecturing on these topics), and personal fulfillment (via a variety of recreational activities that have improved my health, emotional, and spiritual well-being). I, local communities, and society as a whole also rely on the key roles these temperate forests play in providing habitats for native plant and animal species (supporting biodiversity), in fixing and sequestering carbon (the greenhouse gases that contribute to regional and global climate change), in improving water quality (by reducing soil erosion and runoff), and in providing moist, shaded environments that ameliorate the climatic extremes that have become more common and dangerous with recent changes in climate (including droughts and extreme

heat). While I have participated in NEPA proceedings across many contexts, I have particularly focused on the Chequamegon-Nicolet National Forest (CNNF) in northern Wisconsin. I continue to rely on the CNNF for my scientific studies including an on-going project that uses experimental fenced enclosures to evaluate the effects of white-tailed deer on the regeneration of eastern hemlock, Canada yew, northern white cedar, and other woody and herbaceous species. I am also considering engaging in another extensive round of resurveys of dozens of sites in the CNNF and surrounding areas to further assess long-term ecological changes in these forests by comparing the results to similar surveys in the 1950s and early 2000s. These habitats and ecosystems provide a unique laboratory for examining long-term ecological change and conducting natural experiments. It would not be an exaggeration to say that these unique baselines and detailed dissections of the forces driving ecological change in this region, and the CNNF in particular, gives these habitats global significance.

8. Beyond relying on the Chequamegon-Nicolet, Ottawa, and Hiawatha National Forests for scientific research, I also derive great personal joy and meaning from my involvement with the continued health and management of these National Forests. I enjoy hiking and camping in the natural beauty of the forest with my family and wish to see it well-managed far into the future. To that end, over the years, utilizing NEPA, I have submitted comments on the scoping phases and draft Environmental Impact Statements for numerous proposed timber sale projects within Chequamegon, including the Fishel, Fishbone, and Medford Aspen timber sale projects. I have also submitted comments on the Cayuga, McCaslin, Northwest Howell, Hoffman Sailor, Sunken Moose, Long Rail Boulder, and Twentymile timber sales.

9. I was particularly involved in challenging what I believed to be inadequate NEPA determinations made in connection with the Northwest Howell Timber Project from 2003

to 2008, and the Fourmile Vegetation Project in Chequamegon-Nicolet National Forest in 2020. Both projects would have crucial climate impacts that demanded attention and careful analysis. For Northwest Howell, the U.S. Forest Service failed to meaningfully analyze the impact of its logging project on climate change, as well as the impact of a changing climate on the sensitivity and vulnerability of ecosystems subject to habitat fragmentation due to logging and road construction, topics close to my research that concern me almost every day. Similarly, for Fourmile, despite further important advances in climate science over the ensuing decade, the U.S. Forest Service again failed adequately to address climate impacts during the NEPA review process of the project.

10. I am aware that the recently adopted Phase 2 NEPA Rules contain new requirements to specifically analyze the effects of climate change. I have witnessed first-hand a lack of climate analysis for multiple forestry projects subject to NEPA review and how this, in turn, has led to detrimental decisions by governmental authorities. I know that forest management will benefit directly and substantially from the climate-analysis requirements contained in the Phase 2 NEPA Rules. These new rules address something for which I have long advocated: analyzing a proposed project's impacts on climate change as well as the potentially complex and deleterious effects of those climate impacts on increasingly vulnerable ecosystems.

11. I understand that in this lawsuit, certain parties challenge the new climate analysis requirements contained in the Phase 2 NEPA Rules, as well as other elements of those rules. Removing those requirements would dismiss and disregard the broad scientific consensus that exists regarding climate change's growing destructive impacts on forest ecosystems – impacts that I have personally experienced over my lifetime and documented in some detail in my professional career. Removing these requirements from NEPA would directly, concretely, and

significantly harm the forests and ecosystems that I rely on professionally and personally. This would materially and concretely harm me, both as a scientist who studies these ecosystems and as someone who recreates in and enjoys these forests.

12. I understand that the Phase 2 NEPA Rules also introduce several new requirements. One of these requires agencies to identify one or more environmentally preferable alternatives rather than leaving this to (sometimes imperfect) agency discretion. Another stipulates that agencies use high-quality and reliable data to assess anticipated climate-related changes to the environment. A third adds explicit requirements that agencies objectively and rigorously analyze these data. These requirements, not present in the preceding 2020 version of the rule, add key important and beneficial elements to NEPA that were heretofore regularly missed in being implicit rather than explicit. These omissions harmed me as a scientist, as a concerned and informed citizen, and recreational user of national forests.

13. More specifically, as someone who has devoted decades to studying the ecology of this region, I am exceptionally well-positioned to assess the quality of the scientific data and arguments that government agencies have relied on in managing the Chequamegon-Nicolet National Forest. I have worked frequently with local, state, and federal agencies to provide expertise based on research by my team and others to improve management activities and outcomes in the forest. I raised serious issues concerning the reliability of the data and projections used in the Northwest Howell and the Fourmile projects. I have also worked to develop more reliable data, monitoring tools, and other resources to improve management of national forests. Requiring agencies to explicitly identify an environmentally preferable alternative is a major step forward to ensure that agencies consider less ecologically damaging project designs in their forest projects.

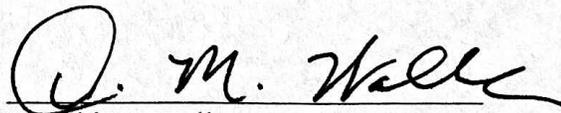
14. Finally, I also understand that the Phase 2 NEPA Rules require agencies to consider and analyze adverse effects on communities with environmental justice concerns, including impacts on the rights of Tribal Nations. These new provisions are important to me. In my experience, unfortunately, state and federal forest and wildlife managers in this region often have not heeded, or solicited, meaningful input on management activities from indigenous Native American individuals and tribes, minimizing their influence. Tribal peoples in this region have accumulated a vast store of traditional ecological knowledge ('TEK') by living within and on these lands and waters and managing their natural resources carefully for millennia. This knowledge is woven into their traditions, culture, and stories as well as their practices (for example, how elders decide when and how to harvest key resources like deer and wild rice). I believe it is appropriate and overdue for agencies to consult with tribal leadership and experts regarding how these lands (on which they retain considerable usufructuary rights under treaties since the 1830s) are managed. Indeed, it is my opinion that asking agencies to consult and collaborate with tribal resource experts regarding land management would not only allow them to better serve these important communities but could also considerably enhance the quality and outcomes of federal forest and wildlife management. This is not an opinion based on readings, impressions, or conjecture. Rather, it is based on decades of personal experience, working on reservations and with tribal partners and other natural resource experts with the Great Lakes Indian and Fisheries and Wildlife Commission. In particular, we present convincing evidence, based on several criteria, that the quality and sustainability of ecological conditions present on the larger reservations in northern Wisconsin exceed those on adjacent state and federal public forestlands, often to a considerable degree. Waller, D. M., and N. J. Reo. 2018. First stewards: ecological outcomes of forest and wildlife stewardship by indigenous peoples of Wisconsin,

USA. *Ecology and Society* 23(1):45. This conclusion led to our recommendation that public forestland managers seek out opportunities to study, and in some cases emulate, management on tribal lands.

15. In sum, I continue to pursue both professional activities, including active research, and personal activities in the Chequamegon-Nicolet National Forest and nearby national forests in the upper Midwest. The management of these national forests remains important to my work and my life, meaning I retain a keen interest in NEPA, including the Phase 2 Rules. I plan to continue to exercise rights afforded to me under NEPA and participate in NEPA proceedings into the future. The improvements introduced by the Phase 2 Rules will be essential to my ongoing and future participation in planning and management of the Chequamegon-Nicolet National Forest.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 25th day of June, 2024, at Madison, WI.


Donald M. Waller