

1 KRISTEN L. BOYLES (CSBA #158450)  
JAN E. HASSELMAN (WSBA # 29107)  
2 *[Pro Hac Vice Application Pending]*  
EARTHJUSTICE  
3 810 Third Avenue, Suite 610  
Seattle, WA 98104  
4 (206) 343-7340  
kboyles@earthjustice.org  
5 jhasselman@earthjustice.org

6 SUSAN JANE M. BROWN (OSBA #054607)  
*[Pro Hac Vice Application Pending]*  
7 WESTERN ENVIRONMENTAL LAW CENTER  
4107 NE Couch St.  
8 Portland, OR. 97232  
(503) 914-1323  
9 brown@westernlaw.org

10 GREGORY C. LOARIE (CSBA #215859)  
EARTHJUSTICE  
11 50 California Street, Suite 500  
San Francisco, CA 94111  
12 (415) 217-2000  
gloarie@earthjustice.org

13 *Attorneys for Plaintiffs*  
14  
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16 UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

17 ALASKA COMMUNITY ACTION ON  
18 TOXICS, AMERICAN ALPINE CLUB,  
CALIFORNIA WILDERNESS COALITION,  
19 CENTER FOR BIOLOGICAL DIVERSITY,  
CENTER FOR ENVIRONMENTAL  
20 HEALTH, CENTER FOR FOOD SAFETY,  
ENVIRONMENT AMERICA,  
21 ENVIRONMENTAL DEFENSE FUND,  
ENVIRONMENTAL PROTECTION  
22 INFORMATION CENTER, FOOD AND  
WATER WATCH, FRIENDS OF THE  
23 EARTH, NATIONAL PARKS  
CONSERVATION ASSOCIATION,  
24 NATIONAL WILDLIFE FEDERATION,

Case No. \_\_\_\_\_

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

(National Environmental Policy Act, 42  
U.S.C. § 4321 *et seq.*; Administrative  
Procedure Act, 5 U.S.C. § 551 *et seq.*)

25 COMPLAINT FOR DECLARATORY  
26 AND INJUNCTIVE RELIEF - 1 -

*Earthjustice*  
810 Third Avenue, Suite 610  
Seattle, WA 98104-1711  
(206) 343-7340

1 OCEAN CONSERVANCY, RIO GRANDE  
2 INTERNATIONAL STUDY CENTER,  
3 SOUTHERN UTAH WILDERNESS  
4 ALLIANCE, WE ACT FOR  
5 ENVIRONMENTAL JUSTICE, WESTERN  
6 WATERSHEDS PROJECT, THE  
7 WILDERNESS SOCIETY, and WINTER  
8 WILDLANDS ALLIANCE,

9 Plaintiffs,

10 v.

11 COUNCIL ON ENVIRONMENTAL  
12 QUALITY, and MARY NEUMAYR, in her  
13 official capacity as Chair of the Council on  
14 Environmental Quality,

15 Defendants.

## 16 INTRODUCTION

17 1. The National Environmental Policy Act of 1970 (“NEPA”), 42 U.S.C. § 4331 *et*  
18 *seq.*, often called the “Magna Carta” of American environmental law, embodies our Nation’s  
19 environmental conscience. In enacting NEPA, Congress issued a sweeping declaration of values  
20 and a call to action, centering the protection of human health and the environment in all federal  
21 agency decisions. The statute affirms the government’s role to “fulfill the responsibilities of  
22 each generation as trustee of the environment for succeeding generations.” *Id.* § 4331(b)(1). To  
23 implement these goals, NEPA institutes a national policy of “look before you leap” by requiring  
24 all federal agencies to carefully analyze and disclose to the public the potential environmental  
25 impacts of, and feasible alternatives to, federal agency actions. *Id.* § 4332(c). It is, in short, the  
26 people’s environmental law.

2. Since 1978, regulations promulgated by the Council on Environmental Quality  
27 (“CEQ”), an agency created by NEPA within the executive office of the President, have guided

1 every federal agency’s implementation of NEPA. *See* 40 C.F.R. Part 1500 (1978). CEQ’s  
2 regulations codified early judicial precedent interpreting the meaning and reach of NEPA’s  
3 obligations, and they provided the basis for a substantial body of judicial precedent spanning  
4 over four decades. CEQ’s regulations also formed the foundation for more specific regulations  
5 enacted by federal “action” agencies—from the U.S. Forest Service to the Federal Energy  
6 Regulatory Commission—to implement their particular missions. Over the decades, the 1978  
7 CEQ regulations have stood the test of the time, with only minor amendments.

8         3.         That long history of continuity with respect to CEQ’s interpretation of NEPA has  
9 come to an abrupt halt under the current administration. The current administration explicitly  
10 admitted that it placed the interests of pipelines, fossil fuel energy production, and road building  
11 over that of environmental and public health. Over the vociferous objections of states, members  
12 of Congress, myriad conservation, environmental justice, and public health organizations, and  
13 the general public, on July 16, 2020 CEQ issued a final rule (“Final Rule”) rewriting the entirety  
14 of its 1978 regulations. *Update to the Regulations Implementing the Procedural Provisions of*  
15 *the National Environmental Policy Act; Final Rule*, 85 Fed. Reg. 43,304 (July 16, 2020) (to be  
16 codified at 40 C.F.R. Part 1500). More than an update, the Final Rule upends virtually every  
17 aspect of NEPA and its longstanding practice, contradicts decades of court interpretations of  
18 NEPA’s mandates, and undercuts the reliance placed on NEPA by the public, decision-makers,  
19 and project proponents. The Final Rule limits the scope of actions to which NEPA applies,  
20 eviscerates the thorough environmental analysis that lies at the heart of the statute, reduces the  
21 ability of the public to participate in federal agency decision-making, and seeks to limit judicial  
22 review of agency NEPA compliance. All told, the Final Rule frustrates Congress’s manifest  
23 intent in enacting NEPA and threatens human health and the environment.

1           4.       Plaintiffs in this action are a diverse coalition of national and regional  
2 environmental justice, outdoor recreation, public health, and conservation organizations that rely  
3 on NEPA to protect their varied interests in human health and the environment. Plaintiffs  
4 challenge the Final Rule for three broad reasons. First, CEQ failed to consider and disclose the  
5 significant environmental impacts from the Final Rule in an environmental assessment (“EA”) or  
6 environmental impact statement (“EIS”), in violation of NEPA itself. Second, the Final Rule is  
7 arbitrary and capricious in a number of ways, as CEQ failed to explain its decision in light of the  
8 evidence in the record, including public comments, failed to review the impacts of the rule on the  
9 advancement of environmental justice, failed to consider the relevant factors when altering  
10 longstanding practice, and changed longstanding agency interpretations and practice without  
11 adequate explanation or justification. Finally, in many ways, the Rule is inconsistent with the  
12 text, structure, and intent of NEPA itself and violates the Administrative Procedure Act (“APA”).

13           5.       Plaintiffs seek an order declaring the Final Rule unlawful and vacating the Final  
14 Rule, reinstating the NEPA regulations previously in force.

#### 15    JURISDICTION AND VENUE

16           6.       This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and 28  
17 U.S.C. § 1346 (United States as defendant). The Court may issue a declaratory judgment and  
18 further relief under 28 U.S.C. §§ 2201-02. This action is brought pursuant to the APA, 5 U.S.C.  
19 § 551 *et seq.*<sup>1</sup>

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22           <sup>1</sup> Pursuant to 16 U.S.C. § 1540(g), a subset of Plaintiffs plan to provide 60 days’ notice of legal  
23 violation to CEQ for failure to consult on the Final Rule in violation of Endangered Species Act  
24 Section 7. If CEQ fails to provide a satisfactory response, Plaintiffs will take appropriate steps to  
25 amend this complaint to include these claims at the conclusion of the 60-day period.

1           7.       Venue is properly vested in this Court under 28 U.S.C. § 1391(e), as a number of  
2 Plaintiffs reside in this district, Plaintiffs have members and offices in this District, and many of  
3 the consequences of the defendants' violations of the law giving rise to the claims occurred or  
4 will occur in this district.

#### 5   INTRADISTRICT ASSIGNMENT

6           8.       This case is properly assigned to the San Francisco Division or the Oakland  
7 Division under Civil L.R. 3-2(c) because several of the Plaintiffs and/or their members are  
8 located in counties within those districts.

#### 9   PARTIES

10          A.       Plaintiffs

11                1.       *Descriptions, Interests, and Injury of Each Plaintiff Organization*

12          9.       Plaintiff Alaska Community Action on Toxics ("ACAT") is a 501(c)(3) non-profit  
13 with its main office in Anchorage, Alaska. ACAT also has staff and conducts community health  
14 research in Gambell and Savoonga, both located on Saint Lawrence Island, Alaska. ACAT  
15 believes everyone has a right to clean air, clean water, and toxic-free food. Driven by a core  
16 belief in environmental health and justice, ACAT empowers communities to eliminate exposure  
17 to toxics through collaborative research, shared science, education, organizing, and advocacy.  
18 ACAT employs a community-based approach guided by the following core values: community  
19 right-to-know, environmental justice, the precautionary principle, elimination of the production  
20 and release of toxics, rights and sovereignty of Indigenous peoples, and a culture of caring and  
21 wellness. ACAT has approximately 300 donors, 50 volunteers, and several thousand people who  
22 have signed up as interested citizens and activists to receive communications and actions alerts  
23 about issues relevant to environmental contamination by toxic chemicals.

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

11           11.     ACAT regularly uses NEPA and its public processes to advocate for issues on  
12 behalf of its supporters and communities in Alaska. ACAT has most recently submitted scoping  
13 comments in response to the 2020 U.S. Department of Defense, Department of the Air Force  
14 Notice of Intent to prepare an Environmental Impact Statement under the National  
15 Environmental Policy Act for the proposed action of year-round mortar and artillery live fire  
16 training on Eagle River Flats, an ecologically and culturally important estuary north of  
17 Anchorage on the Joint Bases Elmendorf AFB-Fort Richardson. ACAT also prepared comments  
18 for the scoping process and on the Draft Environmental Impact Statements for the proposed  
19 Donlin Creek Mine and Ambler Mining District Industrial Access Road. In 2019, ACAT  
20 prepared and submitted comments on the Draft Environmental Impact Statement for the  
21 proposed Pebble Mine.

22           12.     As a science-based organization with over 20 years of experience working on  
23 toxic contamination, ACAT has worked with many Alaskan communities faced with and  
24

1 concerned about pollution from mines and oil exploitation and the effects on the environment,  
2 traditional wild foods, and people's health. ACAT staff, supporters, and the communities ACAT  
3 works with are harmed by the Final Rule because they eliminate the vital protections that have  
4 been in place for decades. The environmental justice implications of the Final Rule are  
5 profound, and preventing such injustices is at the core of ACAT's mission.

6 13. Staff member Patti Saunders is ACAT's Development Director, having previously  
7 worked as an attorney and commercial fisherman in Prince William Sound, Southeast Alaska,  
8 and Bristol Bay. Ms. Saunders has previously submitted public comments to government  
9 agencies during NEPA review processes and will do so again in the future when proposed  
10 projects threatened the environmental and public health of Alaska. As a commercial fisherman  
11 who fished in Bristol Bay for a season and who has friends who have (and in some cases  
12 continue to) fish there, she is keenly aware of the Bristol Bay watershed's importance as a world-  
13 class fishery that has both economic and cultural value for Alaskans. It is a virtually pristine,  
14 intact ecosystem that has supported Alaska Natives for thousands of years. It also provides  
15 recreational opportunities for Alaskans and non-Alaskans: fishing, birding, wildlife viewing,  
16 nature photography, hiking, kayaking, and canoeing. Ms. Saunders enjoys these types of  
17 recreational opportunities, including birdwatching, in the Bristol Bay watershed. She has  
18 definite plans to return to the Bristol Bay region to enjoy all it has to offer an outdoor enthusiast  
19 in the next two to four years.

20 14. Pamela Miller has served as ACAT's Executive Director since 1997. Ms. Miller  
21 has more than 35 years of experience in research, policy, advocacy, and training programs  
22 focused on environmental health, justice, human rights, and marine ecology. Since 2005, she has  
23 served as Principal Investigator for community-based environmental health research projects  
24

1 supported by the National Institute of Environmental Health Sciences and focused on the long-  
2 term effects of endocrine-disrupting chemicals on the environment and human health. In 2016,  
3 Ms. Miller was elected to serve as the co-chair of the International Pollutants Elimination  
4 Network, a global network of more than 500 environmental health and justice organizations  
5 working in over 100 countries for a toxics-free future. Ms. Miller has personally been involved  
6 in writing NEPA comments, attending public hearings, and engaging in litigation when NEPA  
7 has been violated. Ms. Miller has been the primary person working on chemical dispersant  
8 issues for ACAT since 2002. The use of dispersant chemicals in the event of an offshore oil spill  
9 would greatly impact the health and cultural well-being of ACAT's supporters, including its  
10 Board Members.

11 15. Harriet Penayah, a Yupik Elder from the Native Village of Savoonga on Saint  
12 Lawrence Island in the Bering Sea, is an ACAT board member. Ms. Penayah and her family rely  
13 on the harvest of marine fish and marine mammals for spiritual, physical, and cultural  
14 sustenance. A significant part of the Penayah family diet comes from the ocean, including fish  
15 like salmon, cod, and halibut, as well as marine mammals like ringed seal, bearded seal, walrus,  
16 and bowhead whale. St. Lawrence Island is located in the northern Bering Sea and within the  
17 Norton Sound region on the Alaska Outer Continental Shelf. The Norton Sound area  
18 experienced oil and gas development in the 1980s. It is also proposed for oil and gas leasing  
19 under the federal Bureau of Ocean Energy Management's Draft Proposed Program for 2019-  
20 2024. Oil development in the Bering Sea and use of chemical dispersants in response to an oil  
21 spill in the Norton Sound region would impact Ms. Penayah and her family's food security by  
22 polluting the marine ecosystems on which they depend for food. It would also disrupt the  
23 migratory patterns of important marine mammals, such as the bowhead whale. Marine animals  
24



1 form the basis of Harriet’s diet and cultural traditions. If chemical dispersants impacted the  
2 safety of these food sources, Ms. Penayah and her family would not be able to replace these  
3 sources with food purchased from a grocery store, due to the deep cultural importance that these  
4 animals hold for Ms. Penayah and her family. ACAT engages in the NEPA process, including  
5 preparation of public comments and participation in hearings concerning oil and gas  
6 development in the Bering, Chukchi, and Beaufort Seas, in order to protect the health of marine  
7 ecosystems and Alaska Native communities that rely on traditional foods from the sea.

8 16. Plaintiff American Alpine Club (“AAC”) is a 501(c)(3) non-profit organization  
9 based in Golden, Colorado with over 25,000 members nationally and 3,491 members in  
10 California. Founded in 1902 to support the research and exploration of mountainous regions, the  
11 AAC remains committed to supporting the climbing and human-powered outdoor recreation  
12 communities over a century later. At the core of AAC’s policy efforts are critical issues facing  
13 climbers and outdoor recreationists nationally, such as keeping public lands pristine, wild, and  
14 open to human-powered recreation. One of the key tools that enable the AAC to effectively  
15 advocate for these issues on behalf of its membership and the climbing community broadly is the  
16 public process afforded by NEPA. NEPA mandates informed decision-making, based on sound  
17 science, and requires that, to the fullest extent possible, all agencies of the federal government  
18 take a hard look at environmental consequences prior to issuing a decision. NEPA declares a  
19 broad national commitment to protecting and promoting environmental quality under the CEQ  
20 regulations, which are influential in shaping agency implementation of the statute.

21 17. The Final Rule is extremely detrimental to the outdoor community’s interests and  
22 adversely affects the AAC and its membership. The changes will hamstring AAC’s members’  
23 ability to effectively participate in public comment periods, maintain accountability and  
24

1 transparency in public lands decision-making, and advocate for solutions to climate change,  
2 among other issues. For these reasons, the AAC has promoted the disbandment of this proposal  
3 at every stage of the CEQ rulemaking process, from having provided public testimony at the  
4 CEQ hearing in Denver, Colorado to submitting technical comments on the proposed rulemaking  
5 alongside their partners at the Outdoor Alliance, a coalition dedicated to protecting public lands  
6 and waters for human powered recreation.

7 18. A key concern among AAC members are the effects of a changing climate on its  
8 communities, climbing areas, and ecosystems. Mountain regions are warming at roughly twice  
9 the pace of the global average, and AAC members are bearing witness to these changes directly.  
10 As climbers, skiers, and mountaineers, AAC members are intimately familiar with the mountain  
11 landscapes of the United States. Many of AAC's members also rely on a predictable climate to  
12 sustain their livelihoods. Whether as a mountain guide, a gear shop owner, or a retail employee,  
13 a reliable climate in many United States mountain towns equates to a reliable tourism and  
14 outdoor recreation economy. In 2018, the annual climbing industry contribution to the United  
15 States Gross Domestic Product ("GDP") was \$12.5 billion, where the outdoor recreation  
16 economy as a whole generated 7.6 million jobs and accounted for more than 2.2% of the  
17 country's GDP, according to the Bureau of Economic Analysis.

18 19. AAC membership has historically engaged in federal agency land use planning,  
19 such as in U.S. Forest Service forest planning or Bureau of Land Management ("BLM") resource  
20 management plan development, where members could influence the outcome of energy  
21 development, mining, or logging projects through extensive public engagement, expert testimony  
22 and scientifically informed environmental reviews. In addition, NEPA's cumulative and indirect  
23 effects analysis has benefited AAC members by requiring that the federal government consider  
24

1 the impact of their decision-making on the climate and factor this into the creation of reasonable  
2 plan alternatives.

3 20. This is particularly troubling in areas with complex management issues such as  
4 Bears Ears National Monument, where following a Presidential Proclamation which reduced the  
5 original monument designation in size by 85%, thousands of acres of land in southeastern Utah  
6 including many important rock-climbing areas as well as Native American sacred and cultural  
7 sites, were opened to oil and gas development. The AAC and its partners relied on NEPA to  
8 inform the BLM resource management planning process for the Indian Creek and Shash Jaa units  
9 on issues of recreation and natural resource management.

10 21. Dr. Len Necefer, a member of the AAC since 2017, resides in Tucson, Arizona  
11 where he is a Professor of American Indian Studies at the Udall Center for Public Policy at the  
12 University of Arizona as well as the CEO of Colorado based company, Natives Outdoors. Dr.  
13 Necefer is a member of the Navajo Nation and his research focuses on the intersection of  
14 indigenous peoples and natural resource management. An avid climber and backcountry skier,  
15 Dr. Necefer currently serves as a board member for the AAC and volunteers his time on the  
16 AAC Policy Committee, which advises AAC staff on recreation management and natural  
17 resource policy issues. Dr. Necefer has relied heavily on the NEPA process to voice concern  
18 over impacts caused by energy development on climbing and cultural resources in resource  
19 management planning. Dr. Necefer worked with the Bears Ears Inter-Tribal Coalition to  
20 orchestrate collaborative comments for the BLM during their resource planning process for the  
21 Indian Creek and Shash Jaa units in Bears Ears National Monument. Not only does Dr. Necefer  
22 visit Bears Ears National Monument to enjoy the world-renowned rock climbing in Indian Creek,  
23 an area with hundreds of documented climbing routes, but also the area is a sacred site for the  
24

1 Navajo Nation and contains numerous cultural resources. Dr. Necefer has firm and definite  
2 plans to visit and climb in these areas in the future. Dr. Necefer utilizes NEPA to provide  
3 management guidance on several areas like Bears Ears, where sacred ancestral lands overlap  
4 with well-documented recreation areas.

5 22. Dr. Necefer has also worked extensively on the Oak Flat land exchange in the  
6 Coconino National Forest where Resolution Copper plans to open a large-scale copper mine.  
7 The proposed mine will span two miles wide and over 1,000 feet deep, destroying hundreds of  
8 rock climbs as well as vast stands of Emory oak, medicinal plants, and ceremonial sites  
9 important to the San Carlos Apache tribe. This mine, if approved in the pending EIS, will mark  
10 the biggest loss of climbing area access in history.

11 23. Dr. Necefer's ability to enjoy the future of Oak Flat, and Bears Ears National  
12 Monument has hinged in part on his ability to voice concern for their management throughout  
13 the NEPA process. Dr. Necefer's interest in protecting climbing areas and important cultural  
14 sites will be harmed by the CEQ's narrowing of NEPA's scope of review, as well as the reduced  
15 public participation and allowing a private corporation, like Resolution Copper, who has a vested  
16 interest in its project, to draft its own EIS. Dr. Necefer has concrete plans to return to Bears Ears  
17 National Monument as well as areas closer to home, such as the Coronado National Forest, and  
18 hopes to continue participating in the management of the climbing resources of these areas. As a  
19 professor and small business owner, the CEQ's shortened timeline for submitting comments will  
20 make it near impossible for him to provide adequately substantive comments, resulting in his  
21 important opinions being overlooked. Finally, as a member of the Navajo Nation, Dr. Necefer  
22 fears that his community will be overlooked in future energy development projects by the

1 abbreviated NEPA process and that adequate consultation with tribes and the appropriate  
2 fulfillment of the government's trust responsibility agreement will not be met.

3         24. Byron Harvison is an attorney who resides in Park City, Utah, who has been a  
4 member of the AAC for more than 15 years. Mr. Harvison is a long-time volunteer for the AAC,  
5 serving as the AAC Salt Lake Chapter Chair, and also volunteers with the Salt Lake Climbers  
6 Alliance. An avid rock and ice climber, Mr. Harvison has worked extensively on recreation and  
7 public lands policy issues through the NEPA process in Utah. Throughout his long climbing  
8 career, Mr. Harvison has climbed all over the Western United States, and frequents federally  
9 managed public lands often to recreate. Mr. Harvison has concrete plans to continue to climb in  
10 Utah and elsewhere in the west in the future. Currently, Mr. Harvison and other climbers in the  
11 Salt Lake region are volunteering their time to work on the Uinta-Wasatch Cache National Forest  
12 Plan revision, with the intent of influencing a specific climbing management plan through public  
13 comment afforded by NEPA.

14         25. Additionally, Mr. Harvison and a team of other AAC members, staff, and local  
15 Salt Lake climbers, have been working to challenge the Little Cottonwood Canyon ("LCC") EIS  
16 alternatives. Mr. Harvison has climbed here in the past and has definite plans to return to the  
17 area in the future to climb here again. A proposed gondola and road widening project would  
18 have several direct and indirect impacts on the climbing resources of the LCC, an area that is a  
19 critically important resource to the climbers of Salt Lake. Mr. Harvison and other climbers who  
20 visit LCC to recreate in the future will be greatly impacted by several of the proposed  
21 alternatives which could severely alter the state of climbing in the canyon. LCC is a highly  
22 congested roadway that generates large amounts of air pollution, especially during the winter  
23 months. If climate change and air quality implications are not thoroughly considered in the  
24

1 NEPA process, Mr. Harvison, other Utah residents, and climbers everywhere will be negatively  
2 affected. The Final Rule’s removal of the indirect and cumulative effects analysis requirement  
3 will result in a failure to account for the visual and auditory effects of projects such as this and  
4 limited comment periods will make it increasingly difficult for volunteers like Mr. Harvison to  
5 offer informed public comment. Additional restrictions on Mr. Harvison’s ability to provide  
6 comment on federal land management decisions will result in negative consequences to his  
7 recreational experience in the Wasatch-Cache National Forest and on other National Forest units  
8 across the country.

9         26. Plaintiff California Wilderness Coalition (“CalWild”) is a non-profit organization  
10 incorporated under the laws of the State of California with its central office in Oakland,  
11 California, and field offices in Sacramento, Redding, Fresno, and Los Angeles, California.  
12 CalWild, on behalf of its 632 members, works in a variety of ways to protect and restore the  
13 state’s wildest natural landscapes and watersheds on federal public lands. These important wild  
14 places provide clean air and water, refuges for wildlife, mitigation against the effects of climate  
15 change, and outstanding opportunities for recreation and spiritual renewal for people. CalWild is  
16 the only statewide organization dedicated solely to protecting and restoring the wild places and  
17 native biodiversity of California’s public lands. CalWild is dedicated to achieving  
18 Congressionally-designated protections (e.g., wilderness, national monument), as well as  
19 administrative protections by state or federal agencies, for California’s wild public lands.  
20 CalWild pursues these objectives through legislative campaigns, grass-roots organizing, and  
21 public education (such as publishing monthly news journals, blogs, and white papers) concerning  
22 conservation issues, and, when necessary, legal action. CalWild regularly send action alerts to  
23 members and subscribers to inform them about when and how to comment on specific proposed  
24

1 projects and plans, such as BLM planning or National Monument review. In addition, CalWild  
2 regularly participates in and submits comments itself on proposed federal agency land and/or  
3 resource management plans and site-specific project proposals (e.g., logging, mining,  
4 geothermal, renewable energy), primarily related to public lands managed by BLM and United  
5 States Forest Service.

6 27. For decades, CalWild has relied on NEPA to effectively advocate for these issues  
7 on behalf of its membership. Beyond NEPA's public information and participation  
8 requirements, NEPA requires informed decision-making, based on sound science, and requires  
9 that, to the fullest extent possible, all agencies of the federal government take a hard look at  
10 environmental consequences prior to issuing a decision. NEPA declares a broad national  
11 commitment to protecting and promoting environmental quality, a goal CalWild embraces.  
12 CalWild joined a comment letter of conservation, health, and justice organizations and  
13 businesses opposing the proposed NEPA rules.

14 28. CalWild members, including Pamela Nelson of Warner Springs, California, have  
15 long-standing, particularized interests in public lands and wildlife that NEPA helps to protect.  
16 Ms. Nelson has been a CalWild member for at least 15 years, and she has used NEPA to keep  
17 informed about and comment on projects and planning near her home and in areas where she  
18 regularly recreates and has definite plans to continue visiting into the future, in particular the San  
19 Bernardino and Cleveland National Forests, where Ms. Nelson regularly enjoys hiking,  
20 exploring, and bird and wildlife watching. In the last seven years, Ms. Nelson has participated in  
21 NEPA planning and commenting processes for forest plan amendments to the Inyo, Sequoia, and  
22 Sierra National Forest Plans. She has also submitted NEPA comments on the California Desert  
23 Conservation Plan and San Gabriel Mountains National Monument Land Management Plan.

1           29.     CalWild member Maureen Forney, a resident of both San Leandro, California, in  
2 Alameda County, and Bear Valley, California in Alpine County, frequently visits national  
3 forests, national parks, and lands managed by the BLM, where she engages in and will continue  
4 to engage in many activities including hiking, running, mountain biking, snowshoeing, cross-  
5 country skiing, bouldering, kayaking, swimming, camping, animal tracking, sightseeing, and  
6 wildlife watching, particularly in the Stanislaus National Forest where one of her homes is  
7 located. Ms. Forney has also submitted written and oral NEPA comments to federal agencies  
8 about how she wants to see public lands managed, and she will be harmed if her ability to  
9 continue to do so is limited.

10           30.     Plaintiff Center for Biological Diversity (“the Center”) is a nonprofit organization  
11 dedicated to the preservation and restoration of biodiversity, native species, and ecosystems.  
12 Founded in Tucson, Arizona with offices throughout the country, including in Oakland and Los  
13 Angeles, California, the Center works through science, law, and creative media to secure a future  
14 for all species, great or small, hovering on the brink of extinction. The Center has more than 1.6  
15 million supporters, including more than 74,000 members from all across the United States, with  
16 approximately 17,214 in California. The Center and its members have longstanding recreational,  
17 aesthetic, scientific, professional, and other concrete interests in conserving native species  
18 throughout the country and routinely advocate for native species conservation and protection.  
19 Center attorneys, scientists, organizers, and advocates routinely participate in commenting at all  
20 phases of NEPA processes before numerous federal agencies, including the U.S. Forest Service,  
21 BLM, the Bureau of Reclamation, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife  
22 Service, and many others. The Center also employs numerous media and outreach staff to  
23  
24



1 inform the Center’s members about, and encourage and assist members in participating in,  
2 NEPA reviews. The Center submitted detailed comments on the proposed NEPA rule.

3 31. For example, the Center is currently challenging a BLM decision to approve  
4 rights-of-way for powerlines, natural gas, water, and petroleum product in Utah that will  
5 facilitate the construction of the first commercial scale facility to process a rock known as “oil  
6 shale” into a petroleum product. The oil shale plant will produce 50,000 barrels of shale oil per  
7 day, produce significant amounts of air and climate pollution, and will require up to 10,000 acre-  
8 feet of water per year for thirty years from the Green River, home to four endangered fish. The  
9 Center and other groups have challenged BLM’s rights-of-way because the agency’s NEPA  
10 analysis failed to consider the cumulative and indirect impacts of the federal rights-of-way,  
11 including the air and climate pollution and water depletion impacts of the oil shale production  
12 facility. Because the Final Rule eliminates the consideration of cumulative effects and does not  
13 even mandate the consideration of indirect effects, it will make it difficult if not impossible for  
14 the Center to engage in this kind of advocacy in the future, resulting in an imminent increase in  
15 harm to wildlife, public lands and waters, and the shared climate.

16 32. The Center communicates extensively with its members and supporters, as well as  
17 the general public, about threats to imperiled species, the protection of public lands, and the  
18 ongoing and future damage from the global climate crisis by issuing press releases and  
19 statements, publishing online news through its publication “The Revelator,” holding webinars,  
20 and sending emails and action alerts. The Center’s members participate in and rely on the NEPA  
21 review processes, and will be harmed by the Final Rule. For example, the Final Rule’s explicit  
22 elimination of cumulative impacts review will significantly impede the ability of the Center and  
23 its members to obtain and disseminate adequate information about, and ensure government  
24

1 consideration of, the climate change impacts of projects such as oil and gas development plans,  
2 rights-of-way for oil shale development, federal coal leasing, and federal auto fleet standards that  
3 will contribute to cumulatively significant and devastating greenhouse gas emissions. In  
4 addition to impeding the Center's ability to obtain such essential information as part of the  
5 NEPA process, the Final Rule also necessitates that the Center expend its limited organizational  
6 resources in an effort to obtain and compile such information from other sources.

7 33. The Center has individual members, including but not limited to Ileene Anderson  
8 of California and Taylor McKinnon of Arizona, who regularly visit, study, work, photograph, or  
9 recreate on lands where NEPA has been and will be used in reviewing federal projects. Each of  
10 the members has specific intentions to continue to interact with these areas frequently and on an  
11 ongoing basis. Center members and staff derive recreational, spiritual, professional, scientific,  
12 educational, and aesthetic benefits from their interactions with these parts of the natural world.

13 34. Ileene Anderson is a botanist, a Center member since 1998, and a staff member at  
14 the Center since 2005. Ms. Anderson is also a frequent user of the federal lands in the California  
15 Desert, where she hikes, photographs, searches for rare plants, watches birds and other wildlife,  
16 and enjoys the solace that wildlands can provide. Among the places she has visited on numerous  
17 occasions are federal lands on and adjacent to Conglomerate Mesa (on the doorstep of Death  
18 Valley National Park). There, she has camped, hiked, and botanized the area at least three times  
19 in the last five years including her most recent visit to the area earlier in 2020. This area near  
20 Owens Lake, California, is renowned for its dense western Joshua tree forests, rare plants, unique  
21 cultural resources and pristine landscape, positioned between wilderness areas on BLM, Forest  
22 Service, and National Park Service managed lands (Malpais Mesa, Inyo Mountains, and Death  
23 Valley). Ms. Anderson plans to return to Conglomerate Mesa in 2020 and beyond once the  
24

1 Covid-19 restrictions are relaxed to enjoy the outstanding scenic beauty of this area and look for  
2 plants and wildlife.

3 35. Over the past 25 years, Ms. Anderson has participated in many NEPA processes  
4 evaluating mining, off-road vehicles, grazing, energy projects, land use management plans,  
5 habitat conservation plans, railroads, pipelines, highways, land exchanges, and many others. Ms.  
6 Anderson also wrote sections of NEPA documents for federal agencies when she was employed  
7 as a consulting biologist. She has found NEPA's procedural safeguards to be crucial to  
8 improving projects and reducing the unnecessary impacts, because in her experience, NEPA  
9 review typically reveals diverse perspectives and impact-reduction solutions that otherwise  
10 would not be identified by the agency acting alone.

11 36. The Final Rule harms Ms. Anderson, including by impairing her ability to  
12 evaluate and comment on the indirect and cumulative impacts of projects like a pending proposal  
13 to undertake exploratory drilling for gold on the Conglomerate Mesa, and the harms the project  
14 poses to off-site resources, including the landscapes and visitor experiences from and within  
15 Death Valley National Park and the adjacent wilderness areas, the damage from indirect impacts  
16 of off-road vehicle use, cumulative impacts of this proposal together with the 2018 approved  
17 exploration plan, and the reasonably foreseeable construction of a large gold mine.

18 37. Taylor McKinnon is a former owner of a Utah river rafting business, amateur  
19 photographer, a Center member since 2007, and is now employed as the Center's Senior Public  
20 Lands Campaigner. Mr. McKinnon grew up and still lives in Flagstaff, Arizona, amidst national  
21 forests and parks that he continues to visit. As he has since he was young, Mr. McKinnon now  
22 regularly uses and enjoys federal and other public lands for hiking, cycling, camping, fishing,  
23 photography, snowboarding, birding, nature and wildlife observation and vehicle touring.

1 Among the lands that he has regularly visited for some of these activities in the last several years  
2 (most recently in 2018) is the sage brush and sandstone high desert of the remote Book Cliffs  
3 along the Utah-Colorado border, where BLM approved rights-of-way for the nation's first  
4 commercial scale oil shale plant. Mr. McKinnon has also regularly participated in NEPA  
5 processes on numerous federal agency proposals over the last decade involving lands where he  
6 recreates, including lands at issue in the Utah oil shale plant.

7 38. As part of his enjoyment of public lands, Mr. McKinnon regularly visits (and  
8 plans to return this year to) Grand Canyon National Park and the Forest Service lands near the  
9 town of Tusayan, Arizona. He visits the South Rim area several times each year to hike, sight  
10 see, and take photographs of the Grand Canyon and wildlife in the area. The Forest Service last  
11 year received applications from an Italian development corporation named Stilo for rights-of-  
12 way across National Forest lands near the Grand Canyon's South Rim for water and natural gas  
13 pipelines, electricity, and a paved road to facilitate a massive commercial and residential  
14 development on private land. Stilo's proposed development, located within two miles of the  
15 southern boundary of Grand Canyon National Park, would increase Tusayan's population ten-  
16 fold, likely cause depletion of aquifers that are the only source of water for natural springs along  
17 Grand Canyon's South Rim, worsen air, noise and light pollution within the Park, and fragment  
18 habitat for wildlife that use the Park. When Stilo submitted a prior version of this application to  
19 the Forest Service in 2014, Mr. McKinnon on the Center's behalf submitted comments and  
20 helped lead a major public campaign opposing Stilo's proposal as part of the agency's NEPA  
21 scoping process. The Forest Service ultimately rejected Stilo's application based largely on the  
22 indirect and cumulative impacts to the National Park that Mr. McKinnon and others had raised.  
23 The Final Rule's complete elimination of cumulative impacts as a consideration in NEPA

1 analyses and its elimination of the mandate that agencies consider and disclose indirect effects  
2 would mean NEPA reviews of Stilo’s 2019 application – which the Forest Service is likely to  
3 initiate this year – need not address impacts to Grand Canyon National Park at all, increasing the  
4 likelihood that Stilo’s development will impair the Park resources that Mr. McKinnon enjoys.

5 39. Plaintiff Center for Environmental Health (“CEH”) is a California non-profit  
6 organization founded in 1996 with its principal place of business in Oakland, California. CEH  
7 has approximately 22 staff members, and an email list of 25,000 supporters who regularly  
8 receive information and action alerts. CEH works on the regional and national level.

9 40. CEH protects people from toxic chemicals by working with communities,  
10 consumers, workers, government, and the private sector to demand and support business  
11 practices that are safe for public health and the environment. For CEH, people and their health  
12 and well-being are the ultimate concern. Air, water, food, and consumer products should be free  
13 of dangerous and untested chemicals.

14 41. CEH works collaboratively with environmental justice organizations and low-  
15 income communities to address the disproportionate toll that toxic chemicals take on their  
16 neighborhoods. Historically, CEH’s legal action has spurred hundreds of major retailers to  
17 remove lead and other toxic chemicals from child and adult jewelry, fashion accessories  
18 including those marketed toward low income buyers, candies, toys, lunchboxes, personal care  
19 products, and more. CEH has also taken legal action (primarily using California’s Safe Drinking  
20 Water and Toxic Enforcement Act, Proposition 65) to force polluting industries to reduce, or  
21 otherwise mitigate, hazardous air emissions from low-income communities and communities of  
22 color.

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

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

10          44.     CEH supporters and staff members have used NEPA’s standards and  
11 requirements to bring about on-the-ground protections. For example, CEH Senior Scientist  
12 Caroline Cox’s work has been focused on toxics for decades. In the 1980s, Ms. Cox was part of  
13 a group that used NEPA litigation to force dramatic changes in the use of herbicides for growing  
14 timber in the Pacific Northwest. Forcing the U.S. Forest Service and BLM to fully comply with  
15 NEPA resulted in changed Forest Service practices, as NEPA’s requirements to review  
16 alternatives and fully engage the public brought the agency new information and perspectives.  
17 The net result was that herbicide use decreased dramatically because the NEPA process was so  
18 successful in addressing issues that people on the ground cared about.

19          45.     CEH is harmed by the changes in the NEPA regulations that create less public  
20 transparency, fail to foster full public participation, curtail review of alternatives, and fail to  
21 review the indirect and cumulative impacts of proposed projects.

22          46.     Plaintiff Center for Food Safety (“CFS”) is a national public interest nonprofit  
23 organization dedicated to empowering people, supporting farmers, and protecting the planet from  
24

1 the harms of industrial agriculture. CFS's program areas encompass all aspects of food and  
2 agriculture production, from pesticides and commodity crops to livestock production to ocean  
3 and coastal aquaculture to the climate impacts of agriculture. In each area CFS strives to ensure  
4 responsible government oversight and advocates for a more sustainable, regenerative food future.  
5 CFS has over 970,000 members across the country, and offices in San Francisco, CA; Portland,  
6 OR; and Washington, D.C. CFS and its members are being, and will be, adversely affected by  
7 the Final Rule.

8 47. Since its inception in 1997, CFS has incorporated NEPA review in all its program  
9 areas, and acts as a watchdog to ensure agencies fulfill NEPA's requirements to allow for  
10 reasoned decision-making and informed public participation. CFS has multiple full-time staff  
11 members (policy, scientific, outreach, and legal) devoted to overseeing federal agencies' NEPA  
12 review regarding the regulation of food and agriculture.

13 48. To fulfill its mission, CFS disseminates to government agencies, members of  
14 Congress, and the general public a wide array of educational and informational program  
15 materials often addressing major federal actions requiring NEPA review. CFS also sends out  
16 action alerts to its True Food Network. These alerts generate public involvement, education, and  
17 engagement with governmental officials, including during NEPA public comment periods on  
18 federal projects affecting the sustainable food systems CFS promotes. Collectively, the  
19 dissemination of this material has made CFS an information clearinghouse for public  
20 involvement in NEPA processes in the realm of sustainable food and agriculture.

21 49. In addition to information and public education, when necessary, CFS engages in  
22 public interest litigation challenging industrial food production and agricultural practices that  
23 harm public health and the environment and/or impact farmers, its members, and the public  
24

1 interest. CFS has a long history of watchdogging federal agencies' NEPA compliance, in order  
2 to ensure agencies responsibly and rigorously analyze, among other things, the reasonably  
3 foreseeable impacts of their actions, consider a full range of reasonable alternatives, and  
4 thoroughly analyze cumulative and intertwined socioeconomic impacts.

5 50. In March 2020, CFS submitted public comments on the Proposed Rule and was a  
6 signatory to three additional joint comment letters. The Final Rule injures CFS as an  
7 organization and its members individually. CFS and thousands of its members frequently  
8 participate in NEPA public comment periods. Through shortening comment periods,  
9 significantly reducing available information on cumulative and indirect impacts, and exempting  
10 more federal projects, CFS and its members will struggle to meaningfully participate in the  
11 NEPA process or will be prevented from doing so. Without access to information on cumulative  
12 and indirect impacts, CFS will be forced to divert organizational resources to look into these  
13 impacts and fully inform members on federal projects, resources that otherwise would be used on  
14 CFS mission central activities. The Final Rule's weakening of agency NEPA reviews will divert  
15 resources from CFS's other work, including advocating for organic production and other  
16 sustainable, regenerative food systems. Overall, CEQ's unlawful rollbacks of NEPA regulations  
17 frustrates CFS's organizational mission to inform the public on the harmful impacts of industrial  
18 agriculture and promote sustainable food systems.

19 51. The Final Rule also injures CFS's members directly by restricting their ability to  
20 participate in agency decision-making, as well to assure that agencies take a hard look at their  
21 actions, actions that injure the members' health, environmental, aesthetic, recreational, and  
22 intertwined socioeconomic interests. Many of CFS's members rely on healthy and safe methods  
23  
24



1 of food production to keep safe themselves, their families, their livelihoods, and the environment  
2 on which they rely.

3 52. For example, CFS members who live and recreate and own businesses in  
4 Washington's Willapa Bay and Puget Sound are adversely impacted by industrial commercial  
5 shellfish aquaculture and relied on the Army Corps of Engineers to thoroughly assess the  
6 impacts, including cumulative, of allowing tens of thousands of acres of aquaculture in these  
7 aquatic ecosystems. CFS member Ross Barkhurst, a U.S. Naval Academy graduate, lives on 270  
8 acres on Willapa Bay, including two shellfish beds totaling 60 acres, where he has for years  
9 harvested shellfish and used to sell them commercially, and where he recreates as an avid hunter,  
10 fisher, and bird-watcher. He has watched as the health of his tidelands and those around the Bay  
11 he loves are degraded from industrial shellfish aquaculture and especially the pesticide use  
12 associated with it, and has recorded the waning numbers of various fish and waterfowl species.  
13 The Corps' past failure to adequately assess the impacts from the aquaculture it permits under  
14 NEPA have adversely affected Mr. Barkhurst, as well as other CFS members who live or  
15 recreate in these tidal areas, eat oysters, and enjoy watching the large variety of wildlife there,  
16 including threatened and endangered species.

17 53. Mr. Fritz Cohen, another CFS member, owns a historic bed and breakfast on  
18 Willapa Bay but has been unable to harvest the oysters it was once famous for from the tide bed,  
19 due to the impacts of industrial shellfish aquaculture permitted by the Corps, but not properly  
20 analyzed under NEPA.

21 54. These members, and others who live and recreate on Washington shorelines, have  
22 been participating in the regulatory processes for years and will continue to do so, especially now  
23 that a federal court has found that the Corps' NEPA analysis was deficient and sent the agency  
24

1 back to fully assess the impacts, especially cumulative impacts, of commercial shellfish  
2 aquaculture. CFS members' interest in the information required under NEPA as well as their  
3 own participation in the NEPA process, is directly harmed by the Final Rule, especially insofar  
4 as it removes the obligation for agencies to perform cumulative impact analyses.

5 55. CFS members in the Gulf of Mexico are also adversely impacted by the lack of  
6 NEPA analysis for offshore aquaculture. CFS member Barbara Findley, a resident of Bonita  
7 Springs, Florida, is an avid boater and beachgoer who relies on the NEPA process to protect her  
8 aesthetic and recreational interests in Gulf marine life, as well as use of the bodies of waters  
9 surrounding her home state. Ms. Findley regularly utilizes Florida's Gulf and Atlantic coasts,  
10 and takes pleasure in viewing the variety of marine species in the Gulf and surrounding waters,  
11 including loggerhead, green, and leatherback turtles; cobia, grouper, red snapper, tarpon, and  
12 snook; Key West stingrays, cassiopeas, and moon jellyfish; and bottlenose dolphins. As a result,  
13 Ms. Findley is concerned with the development of offshore projects such as offshore aquaculture  
14 farms. Ms. Findley's ability to enjoy the future of waters surrounding her home state is hinged  
15 in part on her ability to voice concerns for their management throughout the NEPA process. Ms.  
16 Findley's interest in the protection of marine species in the Gulf from offshore aquaculture  
17 facilities (which are permitted by federal agencies) will be harmed by the CEQ's narrowing of  
18 NEPA scope of review.

19 56. Plaintiff Environment America is a non-profit corporation organized under the  
20 laws of Colorado. It has hundreds of thousands of members nationwide, with approximately 434  
21 active members in California. Its mission is to transform the power of our imaginations and our  
22 ideas into change that makes our world a greener and healthier place for all. Environment  
23 America's staff works for clean air, clean water, clean energy, wildlife and open spaces, and a  
24

1 livable climate. Its members put grassroots support behind Environment America’s research,  
2 advocacy, and litigation.

3 57. Environment America has worked to ensure that the goals of NEPA are achieved  
4 and that it remains a powerful tool to protect our health and environment and safeguard our  
5 natural treasures for posterity. Environment America opposed the regulations at issue in this  
6 litigation when they were first proposed and provided testimony in opposition, as well as  
7 submitted written comments. In addition, Environment America produced a blog post explaining  
8 the dangers of the proposal and a factsheet to educate the public as to NEPA’s importance.

9 58. Environment America has individual members, including but not limited to  
10 Joseph Sandri of Maryland and Peter Skopec of Wisconsin, who regularly visit, study, work,  
11 photograph, or recreate on lands where NEPA has been and will be used in reviewing federal  
12 projects. Each of the members has specific intentions to continue to interact with these areas  
13 frequently and on an ongoing basis. Environment America members and staff derive  
14 recreational, spiritual, professional, scientific, educational, and aesthetic benefits from their  
15 interactions with these parts of the natural world.

16 59. Joseph Sandri has been a member of Environment America since 2009 and lives  
17 in Maryland. Mr. Sandri has participated in NEPA processes in the past. He is a member of the  
18 board of directors of the Archangel Ancient Tree Archive, which is a non-profit organization that  
19 locates and propagates the world’s largest and most iconic trees. In his role as a member of the  
20 board of directors, Mr. Sandri wrote and submitted a comment opposing U.S. Forest Service’s  
21 proposal to exempt the Tongass National Forest from the 2001 Roadless Area Conservation  
22 Rule.

1           60. Peter Skopec has been a member of Environment America since 2020 and lives in  
2 Wisconsin. Mr. Skopec has participated in NEPA processes in the past, and he plans to  
3 participate in NEPA processes in the future. For example, in his role as the director of the  
4 Wisconsin Public Interest Research Group, a non-profit public interest advocacy organization,  
5 Mr. Skopec was involved in the NEPA review process for the proposed expansion of highway I-  
6 94 in Milwaukee. Mr. Skopec provided in-person testimony on December 4, 2014, and he  
7 submitted written comments on January 27, 2015, April 15, 2016, and May 5, 2016. On July 8,  
8 2020, it was announced that the I-94 expansion project will be revived, and Mr. Skopec plans to  
9 participate in any public engagement opportunities provided by NEPA in the future.

10           61. Plaintiff Environmental Defense Fund (“EDF”) is a national nonprofit  
11 organization representing over 384,000 members nationwide, including over 62,000 in  
12 California. Since 1967, EDF has linked science, economics, and law to create innovative,  
13 equitable, and cost-effective solutions to urgent environmental problems. EDF employs over a  
14 hundred scientists, economists, engineers, business school graduates, and lawyers to help solve  
15 challenging environmental problems in a scientifically sound and cost-effective way. EDF  
16 pursues initiatives at the state and national levels designed to protect human health and the  
17 environment. EDF frequently participates in NEPA review processes for federal actions,  
18 including by submitting comments and bringing litigation to ensure agencies adequately evaluate  
19 the impacts of their actions under NEPA, including climate impacts. EDF and its individual  
20 members will be adversely affected by the Final Rule.

21           62. Francis Don Schreiber is a member of EDF and a rancher and landowner in Rio  
22 Arriba County, New Mexico in the San Juan Basin, one of the most active areas in the country  
23 for oil and gas production. Mr. Schreiber has a split estate—he owns the surface rights to his  
24

1 land, and the mineral rights on his property are owned by the federal government and managed  
2 by the BLM. Mr. Schreiber also holds a federal permit to graze cattle, sheep and horses for  
3 approximately 2,700 acres of land managed by the BLM. There are over a hundred oil and gas  
4 wells managed by BLM on and immediately adjacent to Mr. Schreiber's ranch. Mr. Schreiber  
5 has advocated for BLM to consider the health, environmental, and climate impacts of the oil and  
6 gas development that BLM manages, and implement measures to reduce venting, flaring, and  
7 leaking of natural gas on his land. Rigorous NEPA review has been, and will continue to be,  
8 critical for reducing the harm that this federally-managed oil and gas development causes Mr.  
9 Schreiber, his family, and his community. For example, a BLM regulation, opposed by Mr.  
10 Schreiber, that allowed increased waste of natural gas and increased methane and local air  
11 pollution from federally-managed oil and gas development, including the wells on Mr.  
12 Schreiber's ranch, was recently vacated by a court in this district because BLM failed to comply  
13 with NEPA. The court specifically held that BLM had failed to adequately assess cumulative  
14 impacts, including climate impacts, under NEPA. Currently, a Draft Resource Management Plan  
15 Amendment and Environmental Impact Statement for expanding oil and gas development in the  
16 San Juan Basin is under consideration at the BLM Farmington Field Office. The Final Rule  
17 removes required consideration of cumulative impacts under NEPA, among other damaging  
18 changes, harming Mr. Schreiber, who must live with the cumulative impacts of BLM's decisions  
19 for oil and gas development on his land.

20           63. Jonathan Goldstein is Director of Legislative and Regulatory Affairs at EDF and  
21 an EDF member. Mr. Goldstein frequently submits comments on behalf of EDF on federal  
22 agency NEPA documents. For example, Mr. Goldstein submitted comments in 2018 on BLM's  
23 draft resource management plan and environmental impact statement for Carlsbad that  
24

1 highlighted how BLM failed to conduct adequate NEPA analysis of the impacts, including  
2 cumulative impacts, from existing and future oil and gas development in the planning area. Mr.  
3 Goldstein plans to continue to submit comments in the future on NEPA documents, including  
4 during the currently-open comment period on BLM’s draft resource management plan  
5 amendment and environmental impact statement for Farmington. Mr. Goldstein is also a  
6 frequent user of federal public lands that will be impacted by the changes to NEPA regulations,  
7 including by limiting consideration of climate change effects. Mr. Goldstein regularly hikes and  
8 mountain bikes in the Roosevelt National Forest near his home in Lyons, Colorado and plans to  
9 continue to do in the future.

10 64. Plaintiff Environmental Protection Information Center (“EPIC”) is a nonprofit  
11 organization based in Arcata, California. EPIC advocates for the protection and restoration of  
12 Northwest California’s forests, using an integrated, science-based approach, combining public  
13 education, citizen advocacy, and strategic litigation.

14 65. EPIC was founded in 1977 as a membership organization and its members shape  
15 the priorities of the organization through electing its board of directors. EPIC has approximately  
16 700 members and over 12,000 supporters. EPIC members also contribute to the work of the  
17 organization through volunteering to review projects. NEPA is critical to EPIC’s work. In the  
18 past year, EPIC has commented on over 30 NEPA projects and has four ongoing federal cases  
19 alleging violations of the act.

20 66. EPIC members have an interest in areas and activities that will be impacted by the  
21 revised regulations. For example, Felice Pace is a member of EPIC and volunteers his time to  
22 help EPIC monitor cattle grazing on public land. Mr. Pace currently resides in Klamath Glen,  
23 California. Mr. Pace has participated over a hundred projects on the Klamath National Forest,  
24

1 Six Rivers National Forest and Shasta-Trinity National Forest and NEPA is critical to Mr. Pace's  
2 work to voice his concerns. Mr. Pace runs the Project to Reform Public Land Grazing in  
3 Northern California. Through the Project, Mr. Pace spends numerous days in the field  
4 documenting the effects of grazing on the environment. As part of this, Mr. Pace is particularly  
5 careful to document how grazing near and in streams can impact salmonids listed under the  
6 Endangered Species Act. Because he has spent considerable personal resources developing  
7 long-term data about the impacts of grazing on salmonids, Mr. Pace has a unique interest in areas  
8 that will be harmed by the challenged rule.

9         67. Joseph and Susan Bower are also members of EPIC and devote considerable time  
10 and effort into commenting on Forest Service projects. Mr. and Ms. Bower moved to Peanut,  
11 California in May 1973 and have lived on their homestead since that time. Their land backs up  
12 against the Shasta-Trinity National Forest, which serves as their backyard and source of domestic  
13 drinking water. Mr. and Ms. Bower first became engaged in Forest Service projects in 1975  
14 because of concerns over herbicide use and have remained engaged since that time. Because  
15 they are reliant on the National Forest for their water and because land management decisions,  
16 such as fire break projects, on the National Forest affect their homestead, they actively use  
17 NEPA to comment on proposed projects, commenting on over a hundred proposed projects  
18 primarily on the Shasta-Trinity National Forest. Mr. and Ms. Bower are particularly concerned  
19 with the fate of the northern spotted owl, a species listed as "threatened" under the Endangered  
20 Species Act, because the spotted owl is a designated indicator species for forest health. In their  
21 experience, examining the cumulative effects of a project is particularly important for the  
22 "checkerboard" lands of Northern California, where private and public lands are arranged in neat  
23 squares like on a checkerboard. Under the challenged rules, it appears that much if not all of the

1 cumulative effects analysis that they have relied upon would no longer be required. Their  
2 interest in knowledge about cumulative effects, and their ability to advocate for changes to a  
3 project because of potential cumulative effects, is harmed by the challenged rule.

4 68. Trisha Lotus also exemplifies how EPIC works to satisfy the interests of its  
5 members and how the challenged rule would injure its members. Ms. Lotus is a member of  
6 EPIC and a resident of Humboldt County, California. Ms. Lotus has been instrumental in a  
7 federal challenge brought by EPIC to the Richardson Grove Project, a proposed highway  
8 widening project through Richardson Grove State Park. The proposed highway widening would  
9 critically affect old-growth redwoods in the park, whose root system would be cut and paved  
10 over as part of the project. Ms. Lotus was moved to do something about the project because for  
11 her, this project was personal. In 1922 Ms. Lotus's great-grandfather, Henry Devoy, entrusted  
12 the 120 acres of land to the State of California which came to be known as Richardson Grove  
13 State Park. As an EPIC member, Ms. Lotus and others encouraged EPIC to intercede in the  
14 project, beginning a decade-long engagement with this project that has resulted in numerous  
15 federal cases that have stopped the project from moving forward. The challenged rule would  
16 likely have caused this project to fall outside of NEPA's bounds, as federal financing of a project  
17 is no longer deemed to cause a project to be a "major federal action" under NEPA. Since being  
18 an involved plaintiff in the Richardson Grove State Park lawsuit, Ms. Lotus continues to monitor  
19 highway projects in her area. Many of these highway projects receive significant funding from  
20 the Federal Highway Administration, and would possibly be exempt from NEPA in the future.  
21 Trisha's ability to influence state highway projects would be diminished under the challenged  
22 rule and she would be injured by this loss of her ability to participate.



1           69.     Plaintiff Food and Water Watch (“FWW”) is a national, non-profit, membership  
2 organization that mobilizes people to build political power to move bold and uncompromised  
3 solutions to the most pressing food, water, and climate problems of our time. FWW uses  
4 grassroots organizing, media outreach, public education, research, policy analysis, and litigation  
5 to protect people’s health, communities, and democracy from the growing destructive power of  
6 the most powerful economic interests. FWW’s priority campaigns include fighting for a just and  
7 rapid transition to 100% clean, renewable energy and away from fossil fuels, and fighting for a  
8 ban on factory farms, also known as concentrated animal feeding operations (“CAFOs”).  
9 Central to its mission, FWW has advocated against new fossil fuel infrastructure, government  
10 support for factory farms, and other harmful federal projects since its founding in 2005. This  
11 work regularly involves engaging in the NEPA review process and communicating with FWW  
12 members about opportunities to participate in NEPA reviews. FWW has more than 180,000  
13 members nationwide, including 7,767 in California, and maintains offices across the country  
14 including an office in Oxnard and Los Angeles, with its headquarters in Washington, D.C.  
15 FWW submitted comments on the proposed NEPA rule.

16           70.     FWW is currently challenging a Federal Energy Regulatory Commission NEPA  
17 review for failure to consider cumulative and indirect effects of a project. FWW is also currently  
18 challenging a Farm Service Agency NEPA review for a Maryland chicken factory farm because  
19 it fails to adequately consider the cumulative impacts of agency financing of the project. It  
20 brings these challenges on behalf of members whose interests are harmed by these projects.  
21 However, by eliminating the requirement that agencies consider cumulative and indirect effects,  
22 and declaring that Farm Service Agency financing is not subject to NEPA review, the Final Rule  
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1 will make it difficult if not impossible for FWW to engage in this kind of advocacy work in the  
2 future, resulting in increased environmental and public health harm.

3 71. FWW communicates extensively with its members and supporters, as well as the  
4 general public, about climate change, water pollution, and other harmful impacts of fossil fuel  
5 infrastructure proposals and other federally permitted or funded actions by releasing reports and  
6 fact sheets, issuing press releases and statements, publishing online news pieces, and sending  
7 emails and action alerts. FWW members participate in and rely on the NEPA review processes,  
8 and will be harmed by the Final Rule. For example, the Rule's elimination of cumulative  
9 impacts review will make it difficult or impossible for FWW and its members to obtain adequate  
10 information about and ensure government consideration of the climate change impacts of  
11 projects such as fracked gas pipelines that will contribute to cumulatively significant and  
12 devastating greenhouse gas emissions. The Final Rule's exclusions will make it impossible for  
13 FWW and its members to comment in opposition to proposed factory farms that receive federal  
14 financing, because there will no longer be a NEPA public comment process to notify citizens of  
15 projects proposed in their communities associated with the receipt of federal funds: the prior  
16 CEQ regulations required this public disclosure and analysis, but the Final Rule eliminates this  
17 requirement.

18 72. FWW has individual members, including but not limited to Dane Schumacher of  
19 Arkansas and Carol Kuehn of New Jersey, who regularly visit, study, work, photograph, or  
20 recreate on lands or marine areas where NEPA has been and will be used in reviewing federal  
21 projects. Each of the members has specific intentions to continue to interact with these areas  
22 frequently and on an ongoing basis. FWW members and staff derive recreational, spiritual,  
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1 professional, scientific, educational, and aesthetic benefits from their interactions with these parts  
2 of the natural world.

3         73. FWW member Dane Schumacher resides on a small, sustainable farm in Carroll  
4 County, Arkansas and generates a portion of his income selling produce from the farm. Mr.  
5 Schumacher irrigates his farm from the waters of adjacent Dry Fork Creek, a tributary of the  
6 Kings River, which is part of the White River watershed. He also swims, kayaks, and recreates  
7 in these waters, and plans to continue to do so in the future. However, Mr. Schumacher's use  
8 and enjoyment of these waters is diminished by the operation of factory farms upstream that  
9 discharge pollution into them: he can smell factory farm waste (i.e., animal waste) and is  
10 concerned about farm pollution in the places he swims and recreates. Mr. Schumacher relies on  
11 NEPA processes to learn of new projects that are federally permitted or funded, and seeks to  
12 participate in such processes to ensure that her concerns about downstream pollution are  
13 addressed. Farm Service Agency funding is often the sole federal trigger for NEPA for these  
14 kinds of projects. On one occasion, Mr. Schumacher participated in a NEPA process considering  
15 funding of a factory farm near his home: his comments helped persuade the agency that the site  
16 was ill-suited for such a project and the project was abandoned, thereby preventing a likely  
17 additional source of pollution in the waters near his home. Elimination of NEPA reviews for  
18 such agency funding would mean future NEPA reviews that adversely affect Mr. Schumacher  
19 would not occur at all, resulting in additional pollution in his watershed and further undermining  
20 his use and enjoyment of these waters.

21         74. Carol Kuehn, another FWW member, is a homeowner living in South Brunswick,  
22 New Jersey, whose property abuts the proposed NorthEast Supply Enhancement Project's  
23 Compression Station 206. She has been involved in the NEPA process opposing the  
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1 construction of the pipeline and compressor station that would result in noxious petrochemical  
2 emissions near her property. Ms. Kuehn would be adversely affected by the narrowed scope of  
3 NEPA review proposed by the Final Rule, because the Final Rule would not require the Federal  
4 Energy Regulatory Commission – the federal agency responsible for permitting the pipeline and  
5 compressor station – to analyze the cumulative and indirect impacts of the project that could  
6 result in serious damage to her property and respiratory health. Moreover, reduced public  
7 participation opportunities would result in the diminished capability of Ms. Kuehn to be involved  
8 in the decision-making process related to the fate of her property.

9         75. Plaintiff Friends of the Earth (“FoE”) is a tax-exempt, 501(c)(3) organization and  
10 a not-for-profit corporation existing under the laws of the District of Columbia with offices in  
11 Washington D.C. and Berkeley, California and staff located across the country. FoE is a  
12 membership organization consisting of more than 170,000 members and more than 1.7 million  
13 activists nationwide. FoE is also a member of Friends of the Earth-International, which is a  
14 network of grassroots groups in 74 countries worldwide. FoE’s mission is to protect our natural  
15 environment, including air, water, and land, to create a more healthy and just world. FoE utilizes  
16 public education, advocacy, legislative processes, and litigation to achieve its organizational  
17 goals.

18         76. FoE has five core campaign programs: Climate & Energy, Democracy, Economic  
19 Policy, Food & Agriculture, and Oceans & Vessels. All of these programs utilize the processes  
20 afforded by NEPA to engage in major federal project decision-making. FoE’s Climate program  
21 promotes energy conservation and clean energy sources, including wind, solar, and geothermal  
22 power, to end dependence on fossil fuels, reduce greenhouse gas emissions, and mitigate climate  
23 change. FoE’s Economic Policy program works to redirect tax policies and public spending to  
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1 make polluters pay for the costs of their pollution, and to drive the transition to a cleaner, low-  
2 carbon economy. FoE's Democracy program works to create stronger and more effective  
3 environmental policies by fostering representative and responsive democratic institutions across  
4 the United States. FoE's Food program seeks a fundamental shift in our food system: from toxic  
5 and chemical intensive to healthy and ecologically regenerative; from corporate controlled to  
6 democratically governed; and from a system that embodies the deepest inequities in our society  
7 to one that advances justice and fulfills the needs of all eaters now and in the future. FoE's  
8 Oceans program works to protect our oceans, the tens of millions of people who live near, and  
9 the marine creatures who reside in from the threats from oil spills, air pollution, sewage releases,  
10 industrial ocean fish farming, and unnatural ocean noise.

11         77. The Final Rule is extremely detrimental to and adversely affects the FoE's  
12 interests and those of FoE's members and activists. The changes will restrict FoE's members'  
13 ability to effectively participate in public comment periods, maintain accountability and  
14 transparency in major federal project decision-making, and advocate for solutions to climate  
15 change, air and water pollution and fight against environmentally damaging projects. In addition  
16 to restrictions on the scope of NEPA, the Final Rule impedes FoE and its members' ability to  
17 provide important experience-based and culturally significant comments through newly enforced  
18 restrictions on the specificity of a substantive comment. Many FoE members live on the  
19 frontlines of various proposed major federal projects or existing projects that are being modified  
20 which trigger existing NEPA requirements. However, the shortened time limits for EA/EIS  
21 documents—as well as the overly strict specificity requirements for public comments that  
22 demand a level of technical training that many FoE members do not possess or have the time to  
23 provide—will result in agencies disregarding many of FoE's member perspectives.

1           78.     In particular, FoE member and senior oceans campaigner Verner Wilson will be  
2 harmed by the implementation of the Final Rule. Mr. Wilson is a member of the Curyung Tribe  
3 in Bristol Bay, Alaska. Pebble Mine, a proposed metals mine in Bristol Bay, threatens one of the  
4 largest and last remaining wild salmon populations in the world. The project is moving forward  
5 in a NEPA process with the final EIS published on July 24, 2020. The mine could generate more  
6 than 10 billion tons of dangerous waste, wipe out 90 miles of salmon streams and pollute more  
7 than 5,000 acres of wetlands, ponds and lakes. It would likely plummet the salmon population—  
8 catastrophically impacting local communities and earth’s last great wild sockeye salmon fishery.  
9 Mr. Wilson and his family would be significantly impacted by the project as they are subsistence  
10 fishers who rely on the wild salmon runs every year. If NEPA is curtailed even further, Mr.  
11 Wilson will be significantly impacted in his ability to participate in and object to the Pebble  
12 Mine and any other major federal projects that are proposed for the region.

13           79.     Plaintiff National Parks Conservation Association (“NPCA”) is a non-profit  
14 organization whose mission is to enhance and protect the National Park System. NPCA was  
15 formed in 1919 and today has 1.4 million members and supporters, with approximately 40,629  
16 members in California and offices in Oakland, Joshua Tree, Los Angeles, and Fresno. NPCA is  
17 headquartered in Washington, D.C., and has 27 regional and field offices throughout the country.  
18 A robust NEPA process is essential to NPCA’s mission of protecting national parks, which is  
19 why NPCA provided oral testimony and detailed written comments on the proposed revisions to  
20 CEQ’s NEPA regulations.

21           80.     NPCA is regularly involved in NEPA processes and submits comments on  
22 proposed projects and activities on and near national park lands. For instance, the Midwest  
23 regional office recently submitted comments to the National Park Service on its environmental  
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1 assessment associated with Independence Day fireworks at Mount Rushmore National  
2 Memorial, and several regional offices have submitted NEPA comments to the BLM on recent  
3 oil and gas lease sales. NPCA is also currently asserting NEPA claims in several lawsuits,  
4 including in the challenge to the Alton Coal Mine expansion near Bryce Canyon National Park  
5 and the challenge to three BLM leasing decisions for oil and gas development covering  
6 approximately 117,000 acres near Dinosaur National Monument.

7 81. NPCA has individual members and staff who regularly visit, study, work,  
8 photograph, or recreate on lands or marine areas where NEPA has been and will be used in  
9 reviewing federal projects. Each of these members and staff have specific intentions to continue  
10 to interact with these areas frequently and on an ongoing basis. NPCA members and staff derive  
11 recreational, spiritual, professional, scientific, educational, and aesthetic benefits from their  
12 interactions with these parts of the natural world.

13 82. Joy Oakes, of Arlington, Virginia, is Senior Director of the Mid-Atlantic regional  
14 office for NPCA and long-time NPCA member, has frequently utilized the NEPA process to  
15 advocate for the protection of natural, cultural, and historical places. Most recently, in her role  
16 as Senior Director, Ms. Oakes has been participating in the NEPA permit application review  
17 process for the Surry-Skiffes Creek transmission line project in the scenic James River area.  
18 This project is close to the Colonial National Historical Park, an area that Ms. Oakes has visited  
19 many times throughout her lifetime and plans to continue visiting in the future for both  
20 professional and personal reasons. Ms. Oakes expects to be involved in other NEPA processes  
21 in the future, including assisting with comments on the Federal Highway Administration's I-495  
22 & I-270 Managed Lanes Study Draft EIS, which was released in July 2020.

1           83.     The Final Rule reduces Ms. Oakes’ ability to participate in these and other future  
2 NEPA processes by limiting the alternatives considered (e.g., in the case of the transmission line  
3 across the James River, potentially not identifying alternatives that would meet electricity needs  
4 while also protecting the region’s historic character and resources), eliminating the consideration  
5 of cumulative impacts (e.g., the impacts the transmission line would have on climate change),  
6 and shortening the amount of time given to review draft EISs and provide comments.

7           84.     Plaintiff National Wildlife Federation (“NWF”) is the nation’s largest member-  
8 supported non-profit conservation advocacy and education organization, with more than six  
9 million members and supporters, including more than 583,000 members and supporters in  
10 California. NWF has affiliate organizations in fifty-two states and territories, including  
11 California. NWF has regional offices and staff located throughout the United States, including a  
12 California Regional Office headquartered in Midpines, California and additional staff in San  
13 Anselmo, California. NWF is organized under the laws of the District of Columbia and is  
14 headquartered in Reston, Virginia.

15           85.     NWF works to unite all Americans to ensure wildlife thrive in a rapidly changing  
16 world. NWF advances this mission through numerous programs that, among other things, work  
17 to protect, restore, and connect wildlife habitat; confront climate change; defend the public’s  
18 interest in ownership and management of public lands; address the threat of invasive species and  
19 other systemic threats to wildlife; advance modern approaches to wildlife management; and  
20 connect Americans with wildlife through education and advocacy engagement.

21           86.     A robust NEPA process is essential to NWF’s mission, which is why NWF  
22 actively engaged in both the entire process leading up to the promulgation of the Final Rule.  
23 Among other things, NWF provided extensive and detailed written comments at all stages;



1 provided oral testimony at both the Denver, CO and Washington D.C. public hearings on the  
2 Proposed Rule; met twice with representatives from the Office of Management and Budget and  
3 other federal agencies to discuss our concerns during the Office of Information and Regulatory  
4 Affairs review process; mobilized comments on the Proposed Rule from more than 350  
5 organizations; and collectively generated almost 50,000 individual comments on the from our  
6 members and supporters through our Action Alert system.

7 87. NWF attorneys, policy advocates, scientists, and organizers routinely participate  
8 in commenting at all phases of NEPA processes before numerous federal agencies, including the  
9 U.S. Forest Service, BLM, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife  
10 Service, Bureau of Ocean Energy Management, and others. NWF engages in litigation to ensure  
11 full compliance with NEPA. NWF takes an active role in educating members of Congress about  
12 the importance of maintaining the integrity of NEPA and the NEPA implementing regulations,  
13 and about the importance of strong Congressional oversight to ensure that federal agencies  
14 properly apply NEPA when making major federal decisions that affect the quality of the  
15 environment. NWF also employs numerous media and outreach staff to inform NWF's members  
16 about, and encourage and assist members in participating in, NEPA reviews.

17 88. For example, NWF is currently litigating the U.S. Army Corps of Engineers'  
18 failure to properly comply with NEPA in connection with its navigation maintenance activities  
19 on a 195-mile portion of the Mississippi River. Key issues in this litigation include the indirect  
20 and cumulative impacts of in-stream navigation structures, which have significantly increased  
21 flood levels in the Mississippi River by up to 15 feet in some locations and 6 to 10 feet over  
22 broad stretches where these structures are prevalent. Prior to filing this challenge, NWF had  
23 engaged in all aspects of the NEPA processes providing detailed scoping comments, detailed  
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1 comments on the draft EISs, and detailed comments on the final EISs. NWF routinely monitors  
2 upcoming NEPA review processes and engages in those reviews as appropriate, including the  
3 NEPA processes for oil and gas lease sales and for U.S. Army Corps of Engineers' projects and  
4 permits, among others. By eliminating consideration of indirect and cumulative effects, the Final  
5 Rule will make it difficult if not impossible for NWF to engage in this kind of advocacy in the  
6 future, resulting in increased harm to wildlife, public lands and waters, and our shared climate.

7 89. NWF communicates extensively with its members and supporters, as well as the  
8 general public, about threats to wildlife, the protection of public lands, the ongoing and future  
9 damage from the global climate crisis, and the importance of retaining the long-standing  
10 protections provided by NEPA and the nation's other environmental laws, by issuing press  
11 releases and statements, blogs, newsletters, magazines, and sending emails and action alerts.  
12 NWFs members participate in and rely on the NEPA review processes, and will be harmed by  
13 the Final Rule. For example, the Final Rule's elimination of references to indirect impacts  
14 strikes at the heart of the ability of NWF and its members to obtain information on the indirect  
15 effects of levees, navigation structures, reservoir operating plans, pumping plants and other  
16 major infrastructure on increased flooding, losses of wetlands and other vital wildlife habitat, and  
17 reductions in critical river flows. The Final Rule's elimination of cumulative impacts review  
18 will make it difficult or impossible for NWF and its members to obtain adequate information  
19 about, and ensure government consideration of, the cumulative impacts of climate change on:  
20 (a) the effectiveness, sustainability, and impacts of flood and storm damage reduction and other  
21 projects in both riverine and coastal areas; and (b) the climate change impacts of projects such as  
22 oil and gas development or mining operations. The Final Rule's provision allowing federal  
23 agencies to waive NEPA if other review processes are associated with, or required for, a project  
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1 will eliminate the ability of NWF and its members to obtain adequate information about, or  
2 provide their views and comments on, many types of projects.

3 90. NWF has individual members, including but not limited to Michael Bartlett of  
4 New Hampshire and Melissa Samet of California who regularly visit, study, work, photograph,  
5 or recreate on lands, waters, or coastal areas where NEPA has been and will be used in reviewing  
6 federal projects and permitting decisions. Each of these members has specific intentions to  
7 continue to interact with these areas frequently and on an ongoing basis.

8 91. Michael Bartlett is a member of the Board of Directors of NWF and has been a  
9 member of NWF since 2012. Mr. Bartlett has both a deep personal and a professional interest in  
10 migratory birds. Mr. Bartlett is an avid birder and amateur ornithologist with a particular affinity  
11 for migratory bird species such as the Peregrine Falcon, which is one of his favorite species, and  
12 the Screech Owl. Mr. Bartlett spends considerable time observing birds in his home state of  
13 New Hampshire and has installed bird houses and bird feeders on his property to attract both  
14 migratory and “overwintering” species, and species endemic to New Hampshire like Chickadees,  
15 Nuthatches, Downy Woodpeckers, American Goldfinches, and Northern Cardinals. Mr. Bartlett  
16 likewise seeks out opportunities to study and observe bird populations when he is traveling in the  
17 United States and abroad.

18 92. Earlier in his life, Mr. Bartlett worked for the U.S. Fish and Wildlife Service for  
19 more than thirty-seven years, including many years as Supervisor of the Service’s New England  
20 Field Office, working on matters related to the preservation of avian wildlife resources—  
21 including the protection of migratory bird species like loons, terns, and waterfowl. While the  
22 director of the New England Field Office, Mr. Bartlett supervised the office’s Endangered  
23 Species Program, which included work protecting migratory birds like the Piping Plover.

1           93.     On February 3, 2020, the U.S. Department of Interior Fish and Wildlife Service  
2 issued a proposed rule that followed up on a legal memorandum issued in December of 2017 to  
3 remove long-standing protections of about 1,000 species of migratory birds, including many that  
4 are present in New Hampshire like the common loon, black-capped chickadee, and the above  
5 mentioned species, among others, from the impacts of incidental takes under the Migratory Bird  
6 Treaty Act. Incidental takes – like deaths from oil pits, oil spills, large buildings, power lines,  
7 and wind turbines – comprise the largest number of takes of migratory birds. On June 5, 2020,  
8 the U.S. Fish and Wildlife Service issued a draft EIS on the proposed rule (the MBTA DEIS).  
9 Applying the new NEPA rule to the MBTA DEIS would greatly deprive Mr. Bartlett’s ability as  
10 a member of the public concerned with birds to assess and obtain information about how the  
11 proposed MBTA take rule might impact the birds he watches and cares about. For instance,  
12 impacts like climate change and habitat loss are causing many bird species to decline. Without a  
13 consideration of cumulative impacts, the impacts of the proposed MBTA take rule in  
14 combination with these other reasonably foreseeable impacts may not be assessed or disclosed to  
15 members of the public like Mr. Bartlett.

16           94.     Melissa Samet, the Senior Water Resources Counsel for NWF and an NWF  
17 member, has frequently utilized the NEPA process in a professional and personal capacity to  
18 advocate for the protection of rivers, wetlands, and coastal areas. Ms. Samet has worked for  
19 NWF since 2010 where she directs water resources campaigns and provides policy and legal  
20 direction on issues related to water resources planning and projects, with a particular focus on  
21 improving the planning practices of the U.S. Army Corps of Engineers and improving floodplain  
22 management. Ms. Samet has engaged in NEPA litigation; and has educated Congress about the  
23 importance of maintaining the full suite of protections provided by NEPA and the CEQ NEPA  
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1 regulations and of the importance of effective Congressional oversight of federal agency  
2 compliance with NEPA, including through Congressional testimony. She has found NEPA's  
3 procedural safeguards to be crucial to improving projects and reducing and preventing  
4 unnecessary impacts, because in her experience, NEPA review typically reveals diverse  
5 perspectives, key scientific information, likely impacts, and impact-reduction solutions that  
6 otherwise would not be identified by the agency acting alone. Ms. Samet believes that the Final  
7 Rule will severely undercut her ability to evaluate and comment on the indirect and cumulative  
8 impacts of major federal actions, including U.S. Army Corps of Engineers' flood and storm  
9 damage reduction projects, navigation projects, reservoir operating plans, and permitting  
10 decisions that typically have far reaching indirect and cumulative impacts.

11 95. Ms. Samet is a frequent user of federal, state, and other protected lands in  
12 California, where she hikes, watches birds and other wildlife, photographs, and seeks out the  
13 solace that wildlands can provide. Among the places she has visited on many occasions are  
14 Point Reyes National Seashore in Marin County, Mount Tamalpais in Marin County, Yosemite  
15 National Park in Mariposa County, Humboldt Redwoods State Park in Humboldt County,  
16 Sequoia National Park in Tulare County, Monterey Bay in Monterey County, and Point Lobos  
17 State Natural Reserve in Monterey County. Ms. Samet visits Point Reyes National Seashore on  
18 a regular basis, where she has hiked and watched hawks, owls, pelicans, shorebirds, waterfowl,  
19 seals, whales, Tule Elk and many other mammals at least 6 times each year for more than two  
20 decades. Her most recent visit to Point Reyes was in July 2020, and she plans to continue to visit  
21 Point Reyes on at least a bi-monthly basis for the foreseeable future. In addition to relying on  
22 NEPA in her professional capacity, Ms. Samet has engaged in the NEPA process in her personal  
23 capacity, most recently providing detailed comments on the National Park Services' Draft  
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1 Environmental Impact Statement for a General Management Plan Amendment for Point Reyes  
2 National Seashore. Those comments highlighted significant indirect and cumulative impacts of  
3 the proposed management plan, including the cumulative impacts of climate change and the  
4 indirect impacts of the proposed plan on the Seashore's rich array of predator species.

5 96. Plaintiff Ocean Conservancy is a nonprofit, science-based conservation  
6 organization working to protect the ocean from today's greatest global challenges. Together  
7 with its partners, Ocean Conservancy creates science-based solutions for a healthy ocean and the  
8 wildlife and communities that depend on it. Since 1972, Ocean Conservancy has sought to  
9 improve the health of our nation's marine wildlife and fish, and to face threats such as ocean  
10 trash, shipping, overfishing, and ocean acidification. Ocean Conservancy has over 150,000  
11 members and supporters worldwide, with approximately 20,591 in California. Ocean  
12 Conservancy is headquartered in Washington, D.C. and has offices in Alaska, Washington,  
13 Florida, Oregon, Texas, and Santa Cruz and Santa Barbara, California.

14 97. Ocean Conservancy communicates extensively with its members, its supporters,  
15 and the general public about threats to ocean health, climate change, ocean acidification, ocean  
16 plastics, and fishery management, and comments on numerous federally permitted or funded  
17 actions. The organization regularly releases reports and fact sheets, issues press releases and  
18 statements, publishes online blog and news pieces, and sends emails and action alerts to its  
19 members and supporters. Ocean Conservancy's members participate in and rely on NEPA's  
20 review processes, and will be harmed by the Final Rule. For example, the Final Rule's  
21 elimination of cumulative impacts review will make it difficult or impossible for Ocean  
22 Conservancy and its members to obtain adequate information about, and ensure government  
23 consideration of, the impacts of greenhouse gases on the ocean, such as ocean acidification and  
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1 warming waters, which leads to shifting fish stocks that harm Ocean Conservancy's members  
2 and interests. Nor will Ocean Conservancy and its members be able to obtain adequate  
3 information about shipping and new shipping routes in the Arctic region, which are of interest to  
4 Ocean Conservancy and its members.

5 98. In the context of fishery management, NEPA procedures constitute an important  
6 means of ensuring that fishery managers consider important issues that the Magnuson-Stevens  
7 Act does not address: in this way, the Magnuson-Stevens Act is not a "functional equivalent" of  
8 the NEPA process. NEPA plays an integral role in the fishery management process and Ocean  
9 Conservancy and its members will be harmed by the Final Rule because they will be unable to  
10 fully engage in the fishery management process. At a time when we understand better than ever  
11 that a healthy ocean ecosystem is necessary to support thriving fisheries, NEPA interjects larger  
12 environmental issues into a process proscribed by the Magnuson-Stevens Act that otherwise  
13 focuses on maximizing how many fish can be caught.

14 99. Further, many Ocean Conservancy members are fishermen who spend substantial  
15 amounts of time at sea or operate fish transport or packing activities. These members will be  
16 harmed by shortened NEPA analysis and public comment timelines envisioned by the Final  
17 Rule.

18 100. Ocean Conservancy has individual members, including but not limited to Captain  
19 Dave Monti of Rhode Island, who regularly visit, study, work, photograph, or recreate on lands  
20 or marine areas where NEPA has been and will be used in reviewing federal projects. Each of  
21 the members has specific intentions to continue to interact with these areas frequently and on an  
22 ongoing basis. Ocean Conservancy members and staff derive recreational, spiritual,  
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1 professional, scientific, educational, and aesthetic benefits from their interactions with these parts  
2 of the natural world.

3 101. Captain Dave Monti is an Ocean Conservancy member who resides in Warwick,  
4 Rhode Island and keeps his charter boat, the *Virginia Joan*, in North Kingstown, Rhode Island.  
5 He generates a portion of his income as a charter boat captain and guide. Captain Monti has  
6 been fishing for over 45 years and expects to do so for the foreseeable future. He helps his  
7 clients target Rhode Island fish species such as striped bass, bluefish, summer flounder (fluke),  
8 scup, tautog, black sea bass, cod, and bonito in the Narragansett Bay, Block Island, and Newport  
9 areas. Captain Monti relies on NEPA reviews and public processes to be informed and involved  
10 in federal decisions affecting the areas he fishes in and the habitat that his target fish need to stay  
11 productive, including permitting decisions regarding the Block Island Wind Farm. Elimination  
12 or curtailment of NEPA reviews for the siting of wind farms or for fishery management actions  
13 would result in additional threats in the waters he fishes in and the fish species he targets for his  
14 clients. The proposed rule would undermine his use and enjoyment of these waters and public  
15 fishery resources.

16 102. Plaintiff Rio Grande International Study Center (“RGISC”) is a public interest,  
17 501(c)(3) advocacy organization located in Laredo, Texas. It has a staff of two full-time  
18 employees and three part-time employees. RGISC’s mission is “to preserve and protect the Rio  
19 Grande-Rio Bravo, its watershed and environment, through awareness, advocacy, research,  
20 education, stewardship and bi-national collaboration for the benefit of present and future  
21 generations.” Nearly 95% of the population in Laredo is Hispanic and more than one-third of the  
22 city’s population lives in poverty, more than twice the state average. RGISC staff and board  
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1 members live, work, and recreate in and along the Rio Grande and will continue to do so into the  
2 future.

3 103. RGISC’s workload includes monthly river sampling and water quality testing at  
4 multiple locations in Webb County through the Texas Clean Rivers Program to monitor the  
5 health of the river. RGISC helped establish this program through local and state entities and has  
6 done monthly monitoring for more than 25 years. The City of Laredo has asked RGISC to  
7 operate an educational center (the “South Laredo Nature and Birding Center” or “SoLa Center”)  
8 to promote appreciation of the flora, fauna and wildlife of the region, and in particular within the  
9 Rio Grande ecosystem. Every year in early February, RGISC hosts a four-day Laredo Birding  
10 Festival, and RGISC staff and volunteers take visitors from across the United States and different  
11 countries to observe birds along the Rio Grande in Webb and Zapata counties. RGISC also leads  
12 community outings called Loving Laredo Paddles and Loving Laredo Hikes along the river  
13 several times a year to raise awareness of the beauty and ecological importance of the Rio  
14 Grande. The Laredo Birding Festival and Community Paddles generate revenue for RGISC.

15 104. RGISC uses NEPA and its requirements for public transparency, information-  
16 sharing, and participation in its work to protect the Rio Grande. For example, in 2009-2010, led  
17 by then Executive Director Jay Johnson Castro and Board members Dr. Tom Vaughan & Dr.  
18 James Earhart, RGISC informed and educated the families living in Barrio de Colores of the  
19 potential adverse environmental impacts of a U.S. Customs and Border Protection project to  
20 remove Carrizo cane vegetation along the U.S.-Mexico border through herbicide spraying along  
21 the river banks.

22 105. RGISC board member, Israel Reyna, an attorney with the Texas Rio Grande  
23 Legal Aid, advised the families of their rights and protections under NEPA, including the right to  
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1 know all of the potential harms to their human environment, to ensure alternatives were  
2 considered, a bilingual notice of the proposed project, and of their right to sue if NEPA was  
3 violated.

4 106. In ensuing federal litigation, Dr. Earhart, a biologist and scientist on the RGISC  
5 board, wrote an affidavit that supported the suit's allegations of the potential harmful effects to  
6 families in Barrio de Colores from exposure to herbicides used to remove the Carrizo cane,  
7 particularly because of aerial spray drift. Through a court-approved settlement, Customs and  
8 Border Protection agreed to use a combination of principally non-chemical methods to remove  
9 Carrizo cane, using herbicide in one area only after a 5 day warning period and public  
10 information provided in both English and Spanish. The federal agency also agreed to hire a  
11 certain number of workers from the local labor pool, and to convene a public information  
12 meeting to fully explain the cane removal and control activities to the local community, again in  
13 both English and Spanish. Finally, the federal agency agreed to implement future NEPA  
14 analysis regarding Carrizo cane removal with at least one public scoping meeting, a 45-day  
15 comment period, and summaries and documents translated into Spanish and distributed at the  
16 local public library. *Barrio de Colores v. U.S. Customs and Border Protection, Dep't of*  
17 *Homeland Security*, No. 09-0035 (S.D. Tex.).

18 107. RGISC is currently deep in the throes of a battle against the federal government's  
19 plans to build a border wall, approximately 121 river miles along the Rio Grande in the Laredo  
20 Sector. NEPA, in addition to dozens of other federal laws, has been waived to expedite  
21 construction of the Border Wall. Waiver of NEPA for the Border Wall has meant that the federal  
22 government can undertake projects or issue permits without consulting local communities and  
23

1 local experts. Waiver of NEPA has taken away the community’s voice and input into projects  
2 that would harm the environment, public health, cultural heritage, and way of life.

3 108. Like waiver of NEPA, RGISC believes that the Final Rule will undercut its ability  
4 and the ability of the community that RGISC serves to evaluate and comment on the full impacts  
5 of projects like the border vegetation control project. The Final Rule also harms RGISC’s ability  
6 to push federal agencies to fully provide local communities timely, accessible, Spanish-language  
7 information about proposed actions and meaningful opportunities to participate in federal  
8 decisions that affect them.

9 109. Plaintiff Southern Utah Wilderness Alliance (“SUWA”) is a nonprofit  
10 environmental membership organization dedicated to the preservation of outstanding wilderness  
11 found throughout Utah, and the management of wilderness-quality lands in their natural state for  
12 the benefit of all Americans. SUWA promotes local and national recognition of the region’s  
13 unique character through research and public education, and supports administrative and  
14 legislative initiatives to permanently protect Utah’s wild places. SUWA has more than 14,000  
15 members in all fifty states, with 2,155 members in California, and maintains offices in Utah and  
16 Washington D.C. SUWA members use and enjoy federal public lands throughout Utah for a  
17 variety of purposes, including scientific study, recreation, wildlife viewing, aesthetic  
18 appreciation, viewing cultural and historic artifacts, and financial livelihood.

19 110. SUWA staff are well versed in CEQ’s NEPA regulations and regularly review  
20 and analyze NEPA documents and submit detailed, technical comments on proposed actions that  
21 may impact areas proposed for wilderness designation or other federal public lands in Utah.  
22 These comments often address federal agencies’ discounting of greenhouse gas emissions and  
23 impacts to climate change from proposed actions like federal oil and gas lease sales and  
24

1 applications for oil and gas drilling permits and the clearcutting native vegetation. SUWA staff  
2 and members work to safeguard remarkable federal public lands in Utah will be harmed by the  
3 Final Rule. SUWA submitted comments on CEQ's draft rule. SUWA has individual members,  
4 including Neal Clark and Landon Newell, who establish SUWA's significant interest in the  
5 rulemaking and standing to bring this facial challenge.

6 111. Mr. Clark has been a full-time employee of SUWA since 2011 and serves as the  
7 organization's Wildlands Program Director, and also serves as House Counsel. In this capacity,  
8 Mr. Clark oversees the drafting and filing of dozens of SUWA comments annually on various  
9 federal agency NEPA documents. For example, in 2018 SUWA submitted comments on BLM's  
10 draft resource management plans and environmental impact statements for the Shash Jaa and  
11 Indian Creek units of the reduced Bears Ears national monument and highlighted numerous  
12 instances where the Bureau had failed to comply with the letter and spirit and NEPA's  
13 implementing regulations.

14 112. Mr. Clark is also an active member of SUWA. Mr. Clark lives in Moab, Utah and  
15 spends much of his free time exploring BLM, Forest Service, and National Park Service public  
16 lands in southern Utah, including hiking and camping in Bears Ears National Monument, rafting  
17 in Labyrinth Canyon, and mountain biking on Bureau-managed lands surrounding Moab. He  
18 engages in these activities on a daily basis, year-round, and intends on continuing to do so for  
19 years to come. Mr. Clark's interest in the protection and preservation of these federal public  
20 lands will be harmed by the Final Rule because by eliminating the requirement that federal  
21 agencies fully consider and disclose the cumulative impacts of climate change these agencies  
22 will make fundamentally uninformed decisions that will result in short and long term degradation  
23 that threaten the places he recreates in and enjoys.

1           113. Mr. Newell has been a full-time employee of SUWA since 2012 and serves as one  
2 of the organization’s staff attorneys. In this capacity Mr. Newell focuses his work on reviewing  
3 BLM proposals to hold quarterly oil and gas lease sales across Utah, as well as the Bureau’s  
4 management of those leases and applications by private companies to drill wells and exploit  
5 subsurface resources. Mr. Newell submits detailed comments on these proposals, as well as files  
6 administrative appeals and federal court litigation regarding the Bureau’s failure to comply with  
7 NEPA’s hard look mandate.

8           114. Mr. Newell is also an active member of SUWA. Mr. Newell lives in Salt Lake  
9 City and frequently camps, sightsees, hikes, fishes, and visits Native American cultural sites on  
10 BLM lands in Utah. For example, in the spring of 2020 Mr. Newell traveled to Utah’s San  
11 Rafael Swell (managed by BLM) and Capitol Reef National Park to hike, camp, and sightsee.  
12 He already has plans to return to these places in the fall and winter of 2020. These public lands  
13 are part of the Colorado Plateau in Utah and one of the areas expected to get hotter and drier over  
14 the coming years due to climate change. Mr. Newell’s interest in the protection of these places is  
15 threatened by the environmental degradation brought on by climate change, including drought,  
16 aridification of soils, and loss of native vegetation, and decision by agencies like BLM to  
17 approve oil and gas leases and wells that will be made without considering and disclosing their  
18 impacts to the climate.

19           115. Plaintiff, WE ACT for Environmental Justice (“WE ACT”) is a non-profit  
20 organization founded in 1988 in the West Harlem neighborhood of New York City. WE ACT’s  
21 mission is to build healthy communities by ensuring that people of color and/or low income  
22 residents participate meaningfully in the creation of sound and fair environmental health and  
23 protection policies and practices. WE ACT envisions a community that has informed and  
24

1 engaged residents who participate fully in decision-making on key issues that impact their health  
2 and community; strong and equal environmental protections; increased environmental health  
3 through community-based participatory research and evidence-based campaigns. WE ACT has  
4 grown to 16 staff members, offices in New York City and Washington D.C., and over 800  
5 members throughout New York City.

6 116. WE ACT is a leading group in the Environmental Justice Movement, which  
7 began in order to call attention to and organize against systemic environmental racism, which is  
8 often left out of mainstream, largely white, environmental advocacy agendas. In 1991, a  
9 multinational group, including WE ACT, attended The First People of Color Environmental  
10 Leadership Summit in Washington D.C. At the event, “The Principles of Environmental Justice”  
11 were created and agreed upon, and still stand as a guiding set of principles for the Environmental  
12 Justice Movement today.

13 117. Throughout the 32 years of its existence, WE ACT has provided effective  
14 leadership in the development of New York City and northeast region environmental justice  
15 alliances to network, collaborate, and impact environmental policy-making. WE ACT is also the  
16 administrative arm of the Environmental Justice Leadership Forum, which is a coalition of nearly  
17 60 environmental justice advocates and experts working to eliminate environmental injustices  
18 through technical assistance, capacity building, and policy solutions.

19 118. WE ACT’s founders, Peggy Shepard, Chuck Sutton, and Vernice Miller-Travis  
20 started as community activists. They have long viewed NEPA as an important tool for advocacy.  
21 They used the procedures and requirements of the National Environmental Policy Act in their  
22 attempt to address the noxious emissions and pollution from the North River Sewage Treatment  
23 Plant, which lines the banks of the Hudson River along Manhattan Island in the West Harlem  
24

1 community for almost half a mile. They conducted significant research into the land use and  
2 siting history of this largely federally funded facility and uncovered that EPA Region 2 had twice  
3 declared a Finding of No Significant Impact under NEPA for the North River plant. As a result,  
4 the public was never informed about how a facility designed to treat 180 million gallons a day of  
5 raw sewage and wastewater, constructed without any odor- control features at all, might impact  
6 the tens of thousands of people who live near the plant.

7 119. Peggy Shepard is the co-founder and executive director of WE ACT for  
8 Environmental Justice. She has lived in New York City for over 30 years. In both her role as a  
9 community advocate and executive director of WE ACT, she and WE ACT staff have worked to  
10 effectively educate WE ACT membership on the importance of public engagement, and how to  
11 effectively organize at the local level. Ms. Shepard has a long history of organizing and  
12 engaging Northern Manhattan residents in community-based planning and campaigns to address  
13 environmental protection and environmental health policy locally and nationally. She has  
14 successfully combined grassroots organizing, environmental advocacy, and environmental health  
15 community-based participatory research to become a national leader in advancing environmental  
16 policy and the perspective of environmental justice in urban communities to ensure that the right  
17 to a clean, healthy and sustainable environment extends to all.

18 120. With NEPA as the foundation for many state and city level regulations, WE ACT  
19 has utilized similar regulations to engage locally to voice concerns about projects that impact  
20 their community. In 2017, WE ACT community members concerned about New York City's  
21 plan to rezone the Inwood neighborhood utilized the public participation provisions to voice their  
22 apprehension about this project. The nine residents submitted in depth written comments on the  
23 environmental impact statement because they believed the proposed rezoning would lead to an  
24

1 increase in density and serious environmental and socioeconomic risks that, if it is enacted as  
2 proposed, would cause irreparable harm to their neighborhood. They also believed that the  
3 redevelopment project would jeopardize the special character of their neighborhood. Their  
4 comment particularly identified that the redevelopment plan for Inwood increased the likelihood  
5 of tenant displacement, would negatively impact minority- and women-owned businesses in the  
6 area, and the community would experience the social impact of the loss of the community's  
7 library. The New York Supreme Court judge sided with these local residents, contending the  
8 prior environmental review of the project ignored concerns they had raised.

9       121. WE ACT submitted comments on the Proposed Rule in March 2020 in  
10 coordination with Yale University's Environmental Justice Law Clinic. WE ACT's comments  
11 reflected their grave concern about how these proposed changes would drastically diminish the  
12 ability of communities to know what projects were planned and also be able to meaningfully  
13 provide their expertise to articulate how their respective communities would be impacted. NEPA  
14 is one of the key tools WE ACT uses to effectively advocate on behalf of its membership. The  
15 NEPA mandates of public participation and informed decision-making, based on sound science  
16 and requiring all agencies of the federal government to take a hard look at environmental  
17 consequences prior to issuing a decision, are vital protections.

18       122. WE ACT serves a very diverse membership who live in neighborhoods like  
19 Washington Heights and Inwood. According to the 2018 New York City's Community Health  
20 Profile, 47% of residents in WE ACT's service area are born outside of the United States and  
21 37% have limited proficiency in English. Spanish translation is a costly but necessary service  
22 WE ACT provides for all materials for membership. The changes to the Final Rule cut the  
23 public comment period on major federal projects from 45 days to just 30. That's not enough  
24



1 time for WE ACT community members to organize and respond to long technical documents  
2 that are often only provided in English. These changes to rule would also limit the way agencies  
3 distribute information. Without in-person meetings, and a requirement that agencies physically  
4 distribute documents, WE ACT community members are in danger of being silenced and left in  
5 the dark.

6 123. WE ACT community members without access to the internet or those with slower  
7 access will be disadvantaged. Communities with lower socio-economic statuses are often the  
8 ones impacted the most by projects. By moving documents online, these communities will not  
9 have a chance to meaningfully participate and voice their concerns.

10 124. WE ACT like many environmental justice communities are disproportionately  
11 impacted by pollution. Race, even more than class, is the number one indicator for the  
12 placement of toxic facilities in this country. Exposure to elevated levels of air pollution are  
13 linked to or exacerbate cardiovascular and respiratory diseases, often leading to emergency  
14 department visits, hospitalizations and premature death, as well as reduced birth weight and  
15 cancer. The result is that Black, Asian, and Latino/a communities have some of the highest rates  
16 of asthma nationwide, and African Americans are three times more likely to die from asthma-  
17 related causes than the white population.

18 125. Communities of color and low income communities are often the hardest hit by  
19 climate change. While air quality in New York City has improved over the past few decades due  
20 to actions taken to reduce pollution emissions, not all neighborhoods are experiencing that  
21 improvement equally. NYC neighborhoods with higher rates of poverty also have higher rates of  
22 nearby emissions and pre-existing illnesses that are more sensitive to air quality issues. In  
23 Northern Manhattan, residents continue to suffer disproportionately from the impacts of air  
24

1 pollution, particularly those living in East Harlem. East Harlem children wind up hospitalized  
2 for asthma at more than three times the New York City rate. The changes to NEPA eliminate  
3 that requirement for agencies to look not just at the incremental impacts of their actions, but also  
4 the cumulative effects. While one project might not emit much pollution by itself, but combined  
5 with the emissions of other facilities or projects in the area, the cumulative effects might pose an  
6 unacceptable health risk. Cumulative impacts are life-or-death impacts for already vulnerable  
7 communities.

8         126. Plaintiff Western Watersheds Project (“WWP”) is a 501(c)(3) non-profit  
9 conservation organization based in Hailey, Idaho with over 12,000 members and supporters  
10 nationwide, 74 current dues-paying members in California, and one member of the Board of  
11 Directors who resides in Berkeley, California. Founded in 1993 to protect and restore western  
12 watersheds and wildlife through education, public policy initiatives, and legal advocacy. WWP  
13 has offices in Idaho, Montana, Wyoming, Arizona, Utah, Washington, Oregon, and Nevada, and  
14 focuses its efforts on minimizing environmental impacts to federal public lands, with a particular  
15 focus on public lands livestock grazing.

16         127. WWP works to influence and improve public lands management throughout the  
17 West with a primary focus on the negative impacts of livestock grazing on 250 million acres of  
18 western public lands, including harm to ecological, biological, cultural, historic, archeological,  
19 scenic resources, wilderness values, roadless areas, Wilderness Study Areas and designated  
20 Wilderness. WWP works to ensure that commercial projects on public lands are compatible with  
21 maintaining healthy and fully functioning native ecosystems that support diverse and abundant  
22 wildlife, clean water and native fish habitats, and outstanding opportunities for public recreation  
23 and enjoyment.

1           128. NEPA is critical to WWP’s work because it: first, ensures that WWP is notified of  
2 major federal actions with potential to significantly impact the environment; second, allows  
3 WWP to participate in those actions through submitting detailed comments based in science and  
4 law; and third, encourages better outcomes by requiring federal agencies to “look before they  
5 leap” and consider WWP’s input in their decision-making. WWP commonly recommends  
6 alternative conservation measures for federal plans or projects, and its alternatives are at times  
7 included within the range that federal decision-makers ultimately consider in detail. NEPA also  
8 helps WWP engage its base of members and supporters by encouraging them to participate in  
9 opportunities to share their perspectives with federal agencies through the NEPA process.

10           129. Addressing the environmental impacts of livestock grazing on federal public  
11 lands, including those managed by the Bureau of Land Management, the Forest Service, and the  
12 National Park Service, is at the heart of WWP’s conservation advocacy, and NEPA provides the  
13 framework for federal grazing leases, large-scale land-use plans, federal programs impacting  
14 wildlife such as USDA Wildlife Services, and federal projects including energy development,  
15 and sagebrush and juniper vegetation destruction projects. Domestic livestock are the most  
16 widespread – and often the most important – human impact on federal public lands and  
17 waterways. Poorly managed livestock grazing degrades land health and vegetation communities,  
18 spreads invasive weeds like cheatgrass that destroys wildlife habitat function and increases fire  
19 risk, causes erosion and sedimentation that harms the spawning habitats of native fishes, and  
20 inputs levels of fecal coliform and other biological contaminants that can violate Clean Water  
21 Act standards.

22           130. Many of WWP’s members use federal public lands throughout the West as a  
23 primary source for recreation, engaging in activities ranging from hiking and camping to  
24

1 birdwatching, rockhounding, cross-country skiing, angling, hunting, wildlife viewing, and nature  
2 study. The recreational experience of WWP members is harmed by improper livestock grazing,  
3 and WWP commonly receives and investigates complaints from our members of livestock  
4 trespassing on public lands closed to grazing, or heavily impacting their recreational experiences  
5 in areas of high recreation value like federal campgrounds. NEPA is often the sole way that the  
6 public can have a voice to achieve the proper management of the federal public lands and call  
7 attention to inappropriate or environmentally harmful practices approved by federal agencies,  
8 and seek corrective actions through NEPA processes.

9         131. Erik Molvar is Executive Director of Western Watersheds Project, and also has  
10 been a member of the organization since 2016. Mr. Molvar has been intimately involved in  
11 researching the science and law applicable to Point Reyes National Seashore, located in Marin  
12 County, California, and in drafting comment letters on behalf of Western Watersheds Project and  
13 its members that have been submitted to the National Park Service as part of the NEPA process  
14 for the park's General Management Plan (GMP). Mr. Molvar has personally visited Point Reyes  
15 National Seashore and Golden Gate National Recreation Area (NRA, also governed under GMP)  
16 five separate times since 2015, most recently in May of 2020, for the purposes of camping,  
17 hiking, wildlife viewing, wildlife photography, landscape photography, and nature study, and he  
18 intends to return to this area as soon as health concerns due to the global pandemic subside. Mr.  
19 Molvar's enjoyment of these lands was impaired by federally permitted livestock grazing and  
20 other agricultural activities, including spraying of liquified manure from dairy operations,  
21 invasive weed proliferation, and hazing of elk away from areas of the National Seashore where  
22 livestock are permitted, and the Park Service may remedy these harms by imposing restrictions  
23 on livestock use currently under study in the GMP planning process. His future enjoyment of the  
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1 National Seashore and Golden Gate NRA may be impaired as a result of the Final Rule's  
2 elimination of indirect and cumulative impacts analysis requirements, imposition of new  
3 exhaustion requirements on issues raised by other commenters, and potential imposition of bond  
4 or other financial security requirements. He has definite plans to return to Point Reyes, and a  
5 refunded airplane ticket to use, as soon as COVID-19 pandemic makes travel to California  
6 advisable.

7 132. Dr. Jason A. Lillegraven, a member of WWP since 2017, is a  
8 paleontologist/geologist and retired Professor of Geology and Zoology at the University of  
9 Wyoming. He has camped and recreated extensively on federal public lands throughout  
10 Wyoming, usually in conjunction with his geological and paleontological research. Indeed, he  
11 completely restored a sheep wagon to support his extended geological mapping program in  
12 Wyoming's Hanna/Carbon Basin. Dr. Lillegraven has worked in conjunction with WWP in  
13 submitting detailed, science-based comments during federal agency NEPA processes, advocating  
14 for conservation and protections for public lands and wildlife. He also has submitted  
15 independent comments on federal NEPA processes, most recently including for the U.S. Forest  
16 Service's ongoing Landscape Vegetation Analysis project, originally proposed to permit over  
17 300,000 acres of logging on the Medicine Bow National Forest near his home in Laramie. Dr.  
18 Lillegraven also submitted comments on the Thunder Basin National Grassland plan amendment  
19 referenced above. In 2005, he submitted an expert declaration for an U.S. Interior Board of Land  
20 Appeals challenge against a NEPA-based decision on the Cherokee West 3D vibroseis  
21 exploration project on BLM lands in the southern Red Desert, a project stayed in part on the  
22 strength of his expert testimony. Dr. Lillegraven has keen interests in water diversion projects,  
23 and he submitted comments in opposition to the Corp of Engineers-supported Million  
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1 Conservation Resource Group’s proposal to establish trans-basin water diversion from the Green  
2 River in Wyoming to Pueblo, in southern Colorado. Similarly, he recently wrote in opposition to  
3 the Lake Powell Pipeline Project in southern Utah. Dr. Lillegraven also served as a leader in  
4 opposition to development of the Dunlap Wind Energy Project that eventually was built north of  
5 Medicine Bow, Wyoming. More successfully, Dr. Lillegraven was largely responsible for  
6 opposition to approval and any future plans for development of the DKRW coal gasification  
7 project in Wyoming’s Carbon Basin.

8 133. Plaintiff The Wilderness Society (“TWS”) is a national non-profit organization  
9 working to unite people to protect America’s wild places. Founded in 1935 and with more than  
10 one million members and supporters, with approximately 27,000 members and over 12,000  
11 supporters in California and an office in Oakland, California, TWS has led the effort to  
12 permanently protect 111 million acres of wilderness and to ensure sound management of our  
13 shared national lands. The Wilderness Society sees a future where people and wild nature  
14 flourish together, meeting the challenges of a rapidly changing planet. To accomplish that  
15 vision, TWS works to ensure that public lands are a solution to the climate and extinction crises  
16 and that all people benefit equitably from public lands. Of all our bedrock conservation laws,  
17 NEPA perhaps best speaks to the vision The Wilderness Society seeks to accomplish by  
18 enshrining democratic principles of transparency, public participation, science-based  
19 environmental review, and accountability into government decision-making.

20 134. TWS, its members, supporters, and partners have relied on NEPA and CEQ’s  
21 implementing regulations to drive the organization’s engagement in countless agency decision-  
22 making processes over the last fifty years – everything from small local decisions on a particular  
23 national forest ranger district to sweeping national regulatory changes. The environmental  
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1 review and public process requirements in CEQ's 1978 NEPA regulations have facilitated  
2 decades of productive and informed dialogue between TWS and federal land managers, local  
3 communities, tribes, and other stakeholders that paved the way for decisions to protect roadless  
4 and wilderness-quality lands, policies to reduce climate pollution from fossil fuel development  
5 on public lands, and management plans for newly established national monuments and other  
6 crown-jewels of our federal public lands system.

7 135. The Final Rule will harm the ability of TWS and its members to protect wild and  
8 sensitive landscapes threatened by mining, drilling, logging, and other extractive uses, make  
9 public lands part of the climate solution, and ensure that all people in the U.S. benefit equitably  
10 from public lands. TWS submitted comments and provided public testimony at every  
11 opportunity during the rulemaking process, detailing how the proposed regulatory changes would  
12 harm TWS's ability achieve its mission.

13 136. TWS has individual members, including but not limited to Rebecca Rom of  
14 Minnesota and Brad Meiklejohn of Alaska, who regularly visit, study, work, photograph, or  
15 recreate on lands or marine areas where NEPA has been and will be used in reviewing federal  
16 projects. Each of the members has specific intentions to continue to interact with these areas  
17 frequently and on an ongoing basis. TWS members and staff derive recreational, spiritual,  
18 professional, scientific, educational, and aesthetic benefits from their interactions with these parts  
19 of the natural world.

20 137. Rebecca Rom has been a member of TWS since the 1970s. Ms. Rom is a life-  
21 long citizen advocate for the protection and preservation of the world's greatest canoe country  
22 wilderness: the Boundary Waters Canoe Area Wilderness and Voyageurs National Park. She  
23 lives within the Superior National Forest near Ely, Minnesota and in close proximity to the  
24

1 Boundary Waters. Ms. Rom has definite plans to continue to explore the Boundary Waters and  
2 Voyageurs in 2020 and beyond. For her entire adult life, Ms. Rom has been heavily engaged in  
3 NEPA processes involving activities affecting these areas, as well as NEPA processes affecting  
4 federal public lands throughout the nation, including proposals to develop sulfide-ore copper  
5 mining in the Superior National Forest in the headwaters of the Boundary Waters and  
6 downstream of Voyageurs.

7 138. Brad Meiklejohn has been a TWS member since 2019. Throughout his decades-  
8 long career as a conservation advocate and in his personal capacity as an avid wilderness  
9 explorer, Mr. Meiklejohn has engaged in dozens of NEPA processes to protect federal public  
10 lands in his home state of Alaska and across the country. He has an especially deep and long  
11 involvement in utilizing NEPA to protect the Arctic National Wildlife Refuge – one of the  
12 wildest undisturbed landscapes remaining on the planet and a place that he has visited nearly  
13 every year since 1989 – and intends to continue his annual sojourns there into the future.

14 139. Plaintiff Winter Wildlands Alliance (“WWA”) is a national non-profit  
15 organization dedicated to preserving winter wildlands and quality human-powered snowsports  
16 experiences on public lands. Founded in 2000, WWA represents a growing community of  
17 human-powered winter adventurers from across the country. WWA’s 15,080 members and  
18 supporters – 398 of whom reside in California, and the members of their 33 grassroots groups,  
19 deeply value natural winter soundscapes and the opportunity for refuge and respite afforded by  
20 the last remaining places across the United States where solitude, fundamental wildness, and  
21 non-motorized experiences are preserved. From its headquarters in Boise, Idaho and field  
22 offices in Mammoth Lakes, California and Bozeman, Montana, WWA works with land  
23 managers, elected officials, grassroots groups and other partners to pursue a balanced, adaptive,  
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1 and collaborative approach to public lands management for the long-term protection of the  
2 places where their members recreate and seek adventure. WWA's priority campaigns include  
3 over-snow vehicle travel management planning on Forest Service lands, Forest Service land  
4 management planning, and defense of non-motorized backcountry recreation opportunities on  
5 public lands – all of these campaigns rely upon the public process afforded by NEPA and guided  
6 by CEQ's NEPA regulations.

7 140. Central to its mission, WWA is currently engaged in over a dozen different Forest  
8 Service land or travel management planning processes; three projects involving the expansion of  
9 ski resorts on public land; and several additional projects involving federal land management.  
10 This work regularly involves engaging in the NEPA process and communicating with WWA  
11 members about opportunities to participate in comment periods and other opportunities for  
12 engagement allowed for by NEPA. WWA submitted comments on the proposed rule, and prior  
13 to the publication of the final regulations, met with the Office of Information and Regulatory  
14 Affairs to discuss their comments.

15 141. WWA has individual members, including but not limited to Gus Bekker of  
16 Washington and Darrel Jury of California, who regularly visit, study, work, photograph, or  
17 recreate on lands where NEPA has been and will be used in reviewing federal projects. Each of  
18 the members has specific intentions to continue to interact with these areas frequently and on an  
19 ongoing basis. WWA members and staff derive recreational, spiritual, professional, scientific,  
20 educational, and aesthetic benefits from their interactions with these parts of the natural world.

21 142. Gus Bekker, a WWA member since 2002 and board member of one of WWA's  
22 grassroots groups, El Sendero Backcountry Ski and Snowshoe Club, lives in Wenatchee,  
23 Washington. An avid backcountry skier, Mr. Bekker has worked for years to advocate for  
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1 backcountry skiing and preservation of winter wildlands on the Okanogan-Wenatchee National  
2 Forest, where he regularly skis during the winter months. Mr. Bekker skied several areas on the  
3 Forest this past winter, and has definite plans to do so again this year as soon as there is  
4 sufficient snow. He has engaged extensively in many Forest Service projects in order to preserve  
5 opportunities for backcountry winter recreation on Forest Service lands near Wenatchee.  
6 Currently, Mr. Bekker is advocating for backcountry skier interests as the Forest Service  
7 considers whether to grant a road right-of way to Mission Ridge Ski and Snowboard Resort near  
8 Wenatchee. Mr. Bekker relies on the NEPA process to learn of new projects that may be  
9 federally authorized and participates in these processes to advocate for his and his organization's  
10 interests. As the road right-of-way proposal shows, these projects are not always directly related  
11 to backcountry recreation yet can have significant consequences to Mr. Bekker's interests.  
12 Elimination of the mandate that agencies consider indirect and cumulative effects and barriers to  
13 public participation would mean that either Mr. Bekker would be unable to participate in  
14 decisions affecting backcountry skiing on the Okanogan-Wenatchee National Forest, his  
15 concerns would be dismissed as unrelated to the project at hand, or his participation may not  
16 "count" if the responsible official deems his comments lacking in technicality or specificity. In  
17 all cases, it is likely that the Forest Service would make decisions that reduce or negatively  
18 impact the use and enjoyment of National Forest lands for Mr. Bekker and his fellow  
19 backcountry skiers.

20 143. Darrel Jury, a WWA member since 2015 and president of the WWA grassroots  
21 group Friends of Plumas Wilderness, relies on the NEPA process to engage in public land  
22 management near his home in Quincy, California. Specifically, Mr. Jury advocates for  
23 Wilderness, Wild & Scenic Rivers, and non-motorized areas for winter recreation on the Plumas,  
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1 Lassen, and Tahoe National Forests, where he often recreates. Mr. Jury visits these national  
2 forest lands near his home on a weekly basis and is looking forward to skiing Thompson Peak on  
3 the Plumas National Forest as soon as there is sufficient snow to do so. He is extensively  
4 involved in over-snow vehicle planning on the Plumas, Lassen, and Tahoe National Forests and  
5 has submitted NEPA comments on these planning processes at multiple stages in the process.  
6 Mr. Jury's deep interest in Wilderness preservation and preserving refuges for quiet winter  
7 recreation opportunities will be harmed by the narrowed scope of NEPA review in the Final  
8 Rule.

9           2.       *Interests and Injuries Common to All Plaintiffs*

10           144.   As detailed above, Plaintiff groups and their members reside near, visit, or  
11 otherwise use and enjoy areas where NEPA analysis has occurred and will be undertaken in the  
12 future. Plaintiffs have concrete interests in CEQ's lawful implementation of NEPA and its vital  
13 role in preventing harm to people and the environment, and the regulatory revisions challenged  
14 in this lawsuit fundamentally undermine and contradict the requirements of NEPA. Plaintiffs  
15 have members who reside, work, travel, and recreate in places where federal agency actions and  
16 decisions occur, where threatened and endangered plants and animals are found, and where non-  
17 federal projects that require federal involvement, approval, and/or funding have been and will be  
18 proposed. Plaintiffs' concrete interests are also injured by CEQ's violation of procedural duties  
19 under NEPA and the APA. *Citizens for Better Forestry v. U.S. Dep't of Agric.*, 341 F.3d 961  
20 (9th Cir. 2003); *W. Watershed Project v. Kraayenbrink*, 632 F.3d 472 (9th Cir. 2011). The past,  
21 present, and future enjoyment of the scientific, recreational, aesthetic, economic, and  
22 conservation benefits to Plaintiffs' members has been, is being, and will continue to be  
23 irreparably harmed by CEQ's disregard of its statutory duties. The "presence of one party with  
24 standing is sufficient to satisfy Article III's case-or-controversy requirement." *Rumsfeld v.*

1 *Forum For Academics and Inst. Rights, Inc.*, 547 U.S. 47, 52 n.2 (2006); *see Brown v. City of*  
2 *Los Angeles*, 521 F.3d 1238, 1240 n.1 (9th Cir. 2008) (“[T]he presence in a suit of even one  
3 party with standing suffices to make a claim justiciable”).

4 145. The Final Rule will impede all of the Plaintiff organizations’ ability to obtain  
5 information vital to their central conservation missions, and will also require Plaintiffs to divert  
6 scarce organizational resources from other programs to support their engagement in ongoing and  
7 upcoming NEPA processes. For instance, with shorter timelines and higher standards for  
8 comment “specificity,” Plaintiffs will need to devote new staff time and resources to effectively  
9 engage and support their members, supporters, and partners during important public comment  
10 periods. For those Plaintiffs that have them, Plaintiffs’ legal and technical staff will also need to  
11 spend additional time and resources preparing detailed information to demonstrate, among other  
12 things, that the host of significant environmental impacts associated with proposals to mine, drill,  
13 log, or conduct other activities on public lands have “a reasonably close causal relationship to the  
14 proposed action” and are not “remote in time, geographically remote, or the product of a lengthy  
15 causal chain.” This in turn will require Plaintiffs to recruit and retain experts who will need to  
16 work on compressed timelines. For those organizations that do not have legal and technical  
17 staff, Plaintiffs’ ability to participate in the new NEPA procedures will be dramatically  
18 compromised, and in some instances, impossible. Additionally, by purporting to authorize  
19 federal agencies to require the posting of a bond in order to obtain a stay of agency action while  
20 NEPA issues remain under review, the Final Rule significantly increases the risk that Plaintiffs  
21 will be required to pay for a bond or other security to participate in the NEPA process. Such  
22 expenses would, at minimum, divert funds away from other crucial conservation activities and  
23 may deter Plaintiffs and others with whom they associate from fully participating in NEPA  
24

1 processes. In the absence of the Final Rule, Plaintiffs would dedicate financial and staff capacity  
2 towards other organizational programs such as outreach to urban and communities of color,  
3 expanding recreational opportunities for youth, building a socially diverse conservation  
4 community, developing clean energy and just transition policy platforms, and advocating for  
5 congressional protection of wild places.

6 146. NEPA expressly commands the federal government to “fulfill the responsibilities  
7 of each generation as trustee of the environment for succeeding generations.” 42 U.S.C. §  
8 4331(b)(1). The aesthetic, conservation, organizational, recreational, professional, spiritual, and  
9 scientific interests of Plaintiffs and their members in ensuring that CEQ’s regulations maintain  
10 the requirement to fully analyze and disclose to the public the potential environmental impacts  
11 of, and feasible alternatives to, federal agency actions, 42 U.S.C. § 4332(c), have been, are being,  
12 and, unless the relief prayed for is granted, will continue to be directly and adversely affected by  
13 the failure of Federal Defendants to comply with the law.

14 147. Vacatur of the Final Rule would redress the injuries to Plaintiffs and their  
15 members and supporters by requiring federal agencies to continue conducting meaningful review  
16 of their actions’ environmental impacts and providing opportunities for public participation in  
17 that process.

18 B. Defendants

19 148. Defendant Council on Environmental Quality is an agency within the Executive  
20 Office of the President. CEQ oversees Federal agency NEPA implementation and develops and  
21 recommends national policies to the President that promote the improvement of environmental  
22 quality.

23 149. Defendant Mary Neumayr is the Chair of the Council on Environmental Quality.  
24 Ms. Neumayr is sued in her professional capacity. Ms. Neumayr was confirmed by the United

1 States Senate on January 2, 2019, and sworn in on January 10, 2019. CEQ issued the Final Rule  
2 under the direction of Ms. Neumayr.

### 3 BACKGROUND

#### 4 I. THROUGH NEPA, CONGRESS INFUSED ENVIRONMENTAL AND PUBLIC 5 HEALTH VALUES INTO ALL FEDERAL AGENCY ACTIONS AND DECISIONS.

##### 6 A. Congress Enacted NEPA To Address Overwhelming National Concern about 7 Protection of the Environment and Public Health.

8 150. The 1960s epitomized a period of rapid economic and social change and heralded  
9 the rise of the environmental movement. Members of both political parties, urban and rural  
10 residents, and developers and preservationists all espoused the burgeoning conservation ethic in  
11 America.

12 151. Seizing the moment of profound political change, the United States Congress  
13 hosted a joint House-Senate Colloquium on a “National Policy for the Environment” in July  
14 1968. Invited to participate in the Colloquium were interested members of the public, executive  
15 branch heads, and leaders of industrial, commercial, academic, and scientific organizations, with  
16 the purpose of “focusing on the evolving task the Congress faces in finding more adequate  
17 means to manage the quality of the American environment.”

18 152. The outcome of the day-long discussion was a Congressional White Paper on a  
19 National Policy for the Environment, published in October 1968. Noting the near-consensus  
20 views expressed by those participating in the Colloquium, the Congressional White Paper  
21 explained that “in the recent past, a good deal of public interest in the environment has shifted  
22 from its preoccupation with the extraction of natural resources to the more compelling problems  
23 of deterioration in natural systems of air, land, and water. The essential policy issue of  
24 conflicting demands has become well recognized.”

1           153. The Congressional White Paper explained that “If America is to create a carefully  
2 designed, healthful, and balanced environment, we must (1) find equitable ways of charging for  
3 environmental abuses within the traditional free-market economy; (2) obtain adequate ecological  
4 guidance on the character and impact of environmental change; (3) where corporate resource  
5 development does not preserve environmental values, then consider the extension of  
6 governmental controls in the larger public interest; (4) coordinate the Government agency  
7 activities, which share with industry the dominant influence in shaping our environment; and (5)  
8 establish judicial procedures so that the individual rights to a productive and high quality  
9 environment can be assured.”

10           154. The Congressional White Paper highlighted a number of additional issues that  
11 stakeholders agreed were essential and ripe for Congressional consideration in its development  
12 of a national environmental policy. For example, Dr. Walter Orr Roberts, an atmospheric  
13 physicist and founder of the National Center for Atmospheric Research, explained the  
14 importance of considering climate change due to “[s]ubtle alterations of the chemical  
15 constitution of the atmosphere, through pollutants added in the form of trace gases, liquids, or  
16 solids, result from industrial activity or urbanization. This is an area of biometeorology that has  
17 significance in every living person and yet we have not yet seen even the first beginnings of an  
18 adequately sustained research effort in this area.”

19           155. Russell Train, who would become the first Chair of the Council on Environmental  
20 Quality, testified that “[t]he urgent necessity of taking into account major environmental  
21 influences of foreign economic assistance and other international developments” in American  
22 environmental policy. This was an urgent issue because “to speak about environmental quality  
23 without at least referring to the fact of the international components and consequences of even  
24

1 our activity as Americans and considering our own acreage and our own problems with the  
2 environment, appears to ... be somewhat shortsighted,” according to Dr. Dillon Ripley, the  
3 Secretary of the Smithsonian Institution. In that way, America’s national environmental policy  
4 needed to consider domestic as well as international environmental quality.

5 156. Given the exigency facing the environment and Americans, Senator Henry  
6 Jackson “argued that new approaches to environmental management are now required, and urged  
7 the Colloquium to provide thoughts on the possible ‘action-forcing’ processes that could be put  
8 into operation” through congressional action.

9 B. NEPA Requires All Agencies To Prioritize Protection of the Environment and  
10 Human Health.

11 157. Congress enacted the National Environmental Policy Act in 1969, adopting nearly  
12 all of the Congressional White Paper’s elements of a national policy for the environment and  
13 public health and heralding a new era of environmental awareness in America.

14 158. Section 101 of NEPA sets forth a national policy “to use all practicable means and  
15 measures, including financial and technical assistance, in a manner calculated to foster and  
16 promote the general welfare, to create and maintain conditions under which man and nature can  
17 exist in productive harmony, and fulfill the social, economic, and other requirements of present  
18 and future generations of Americans.” 42 U.S.C. § 4331(a).

19 159. Section 101 also gives federal agencies “continuing responsibility” to fulfill their  
20 role as a “trustee of the environment for succeeding generations”; assure all Americans have  
21 “safe, healthful, productive, and aesthetically and culturally pleasing surroundings”; “attain the  
22 widest range of beneficial uses of the environment” without degradation or risk; preserve  
23 “natural aspects of our national heritage”; “achieve a balance between population and resource



1 use”; and enhance renewable resources and “maximum attainable recycling of depletable  
2 resources.” 42 U.S.C. § 4331(b).

3 160. Finally, Congress recognizes in Section 101 the right and responsibility of each  
4 person to “enjoy a healthful environment and ... to contribute to the preservation and  
5 enhancement of the environment.” 42 U.S.C. § 4331(c).

6 161. Section 102 of NEPA applies the national policy set forth in Section 101 to  
7 “proposals for ... major Federal actions significantly affecting the quality of the human  
8 environment.” 42 U.S.C. § 4332(2)(C). Specifically, Section 102 requires Federal agencies to  
9 prepare a “detailed statement,” which would soon become known as an environmental impact  
10 statement or EIS, analyzing: (1) the environmental impact of the proposed action; (2) any  
11 adverse effects that cannot be avoided; (3) alternatives to the proposed action; (4) the  
12 relationship between local short-term uses of man’s environment and the maintenance and  
13 enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments  
14 of resources that would be involved in the proposed action. 42 U.S.C. § 4332(2)(C).

15 162. The congressional mandates set forth in Section 102 are to be implemented “to  
16 the fullest extent possible.” 42 U.S.C. § 4332(2)(C). NEPA demands a “systematic,  
17 interdisciplinary approach” to “insure the integrated use of the natural and social sciences.” 42  
18 U.S.C. § 4322(2)(A). The statute also recognizes the need to ensure “unquantified  
19 environmental amenities and values” are considered in agency decision-making. 42 U.S.C. §  
20 4322(2)(B).

21 163. NEPA also requires federal agencies to study and develop alternatives to  
22 proposed actions, 42 U.S.C. § 4322(2)(E); to recognize the “worldwide and long-range character  
23 of environmental problems” and “maximize international cooperation in anticipating and  
24

1 preventing a decline in the quality of mankind’s world environment,” 42 U.S.C. § 4322(2)(F);  
2 and make advice and information available to states, municipalities, and the public to be used in  
3 “restoring, maintaining, and enhancing the quality of the environment.” 42 U.S.C. § 4322(2)(G).

4 164. Section 202 of NEPA establishes CEQ within the office of the President. 42  
5 U.S.C. § 4342. Among other things, the statute directs CEQ to “to develop and recommend to  
6 the President national policies to foster and promote the improvement of environmental quality  
7 to meet the conservation, social, economic, health, and other requirements and goals of the  
8 Nation.” 42 U.S.C. § 4344(4).

9 165. Roughly half of U.S. states have modeled state laws based on NEPA, and its  
10 example has been adopted by scores of nations around the world.

11 II. COURTS INTERPRETING NEPA’S PLAIN LANGUAGE HELD THE STATUTE  
12 DEMANDS FULL DISCLOSURE OF THE ENVIRONMENTAL IMPACTS OF  
13 MAJOR FEDERAL ACTIONS AND PUBLIC COMMENT ON SUCH ACTIONS.

14 166. As federal agencies began to implement NEPA in the absence of regulatory  
15 direction in the first years after the law’s enactment, courts stressed the broad requirements  
16 Congress instilled in the statute. In an early opinion, the D.C. Circuit confirmed “[t]he sweep of  
17 NEPA is extraordinarily broad, compelling consideration of any and all types of environmental  
18 impact of federal action.” *Calvert Cliffs’ Coordinating Comm., Inc. v. U. S. Atomic Energy*  
19 *Comm’n*, 449 F.2d 1109, 1122 (D.C. Cir. 1971); *see also id.* at 1114-15 (stressing “as forcefully  
20 as possible” that the language “to the fullest extent possible ... does not provide an escape hatch  
21 for foot-dragging agencies; it does not make NEPA’s procedural requirements somehow  
22 “discretionary”).

23 167. Early circuit court opinions also addressed the purposes of an environmental  
24 impact statement, *Silva v. Lynn*, 482 F.2d 1282, 1284–85 (1st Cir. 1973); the standards for  
25 determining whether a project will have a “significant” impact and necessitate an environmental

1 impact statement, including the need to consider potential direct, indirect, and cumulative  
2 environmental effects, *Hanly v. Kleindienst*, 471 F.2d 823, 830–31 (2d Cir. 1972); and the  
3 importance of agency consideration of a robust range of alternatives, *Nat. Res. Def. Council, Inc.*  
4 *v. Morton*, 458 F.2d 827 (D.C. Cir. 1972).

5 168. The Ninth Circuit in 1975 further outlined the statutory obligation to consider the  
6 indirect effects of agency action. “[C]onsideration of secondary impacts may often be more  
7 important than consideration of primary impacts. ... A new highway located in a rural area may  
8 directly cause increased air pollution as a primary effect. But the highway may also induce  
9 residential and industrial growth, which may in turn create substantial pressures on available  
10 water supplies, sewage treatment facilities, and so forth.” *City of Davis v. Coleman*, 521 F.2d  
11 661, 676–77 (9th Cir. 1975) (quoting *Scientists’ Institute for Public Information v. A. E. C.*, 481  
12 F.2d 1079, 1092 (D.C. Cir. 1973) and Fifth Annual Report of the Council on Environmental  
13 Quality, 410-11 (December 1974)).

14 169. In 1976, again before CEQ adopted any regulations, the U.S. Supreme Court  
15 confirmed that comprehensive environmental review under NEPA required consideration of  
16 long-term and cumulative effects. The Court explained:

17 Section 102(2)(C) [of NEPA] is one of the “action-forcing” provisions intended  
18 as a directive to all agencies to assure consideration of the environmental impact  
19 of their actions in decisionmaking. By requiring an [environmental] impact  
20 statement Congress intended to assure such consideration during the development  
21 of a proposal or as in this case during the formulation of a position on a proposal  
22 submitted by private parties. A comprehensive impact statement may be  
23 necessary in some cases for an agency to meet this duty. Thus, when several  
24 proposals for coal-related actions that will have cumulative or synergistic  
25 environmental impact upon a region are pending concurrently before an agency,  
26 their environmental consequences must be considered together. Only through  
comprehensive consideration of pending proposals can the agency evaluate  
different courses of action.

1 *Kleppe v. Sierra Club*, 427 U.S. 390, 409–10 (1976) (citing Congressional Conference Report on  
2 NEPA, 115 Cong. Rec. 40,416 (1969)).

3 III. CEQ ENGAGED IN EXTENSIVE OUTREACH TO DEVELOP THE 1978 NEPA  
4 REGULATIONS.

5 170. Prompted by the early case law interpreting NEPA, President Carter issued  
6 Executive Order 11991 on May 24, 1977, directing CEQ to issue regulations that would guide all  
7 agencies in implementing NEPA. *Relating to Protection and Enhancement of Environmental*  
8 *Quality*, Exec. Order No. 11991, 42 Fed. Reg. 26, 967 (May 24, 1977). The Executive Order  
9 was based on the President’s Constitutional and statutory authority, including NEPA, the  
10 Environmental Quality Improvement Act, and Section 309 of the Clean Air Act. In signing  
11 Executive Order 11991, the President delegated this authority to the agency created by NEPA,  
12 the Council on Environmental Quality. *Implementation of Procedural Provisions, Final*  
13 *Regulations*, 43 Fed. Reg. 55,978 (Nov. 29, 1978) (codified at 40 C.F.R. Part 1500).

14 171. Following President Carter’s Executive Order, CEQ announced three days of  
15 public hearings regarding how to best reform NEPA implementation and invited testimony from  
16 a “broad array of public officials, organizations and private citizens, affirmatively involving  
17 NEPA’s critics as well as its friends.” 43 Fed. Reg. at 55,980.

18 172. After the hearings, CEQ “culled the record to organize both the problems and the  
19 solutions proposed by witnesses into a 38-page “NEPA Hearing Questionnaire,” which it then  
20 sent “to all witnesses, every State governor, all Federal agencies, and everyone who responded to  
21 an invitation in the Federal Register.” 43 Fed. Reg. at 55,980. CEQ collated the responses to the  
22 questionnaire for use in drafting its anticipated regulations.

23 173. CEQ also met with every agency of the executive branch to discuss what should  
24 be in the regulations, and it circulated an early draft of proposed regulations to all federal

1 agencies in December 1977. Further one-on-one consultation with agencies ensued, culminating  
2 with a fourth draft of the proposed NEPA regulations sent to interested parties for comment.

3 Meanwhile:

4 At the same time that Federal agencies were reviewing the early draft, [CEQ]  
5 continued to meet with, listen to, and brief members of the public, including  
6 representatives of business, labor, State and local governments, environmental  
7 groups, and others. Their views were considered during this early stage of the  
8 rulemaking. [CEQ] also considered seriously and proposed in our regulation  
9 virtually every major recommendation made by the Commission on Federal  
10 Paperwork and the General Accounting Office in their recent studies on the EIS  
11 process.

12 43 Fed. Reg. at 55,980.

13 174. Following these extensive hearings and intergovernmental consultations, CEQ  
14 published proposed regulations to implement NEPA in June 1978, with a 60-day public comment  
15 period. *National Environmental Policy Act Regulations; Proposed Implementation of*  
16 *Procedural Provisions*, 43 Fed. Reg. 24,230 (June 9, 1978). CEQ prepared a “special  
17 environmental assessment” to accompany the rulemaking. CEQ promulgated final regulations  
18 on November 29, 1978 and the regulations became effective July 30, 1979. 43 Fed. Reg. at  
19 55,978.

20 175. Prior to the Final Rule at issue in this case, CEQ made only two modifications to  
21 the 1978 regulations. First, in 1986, CEQ revised a regulation regarding a “worst case analysis.”  
22 *National Environmental Policy Act Regulations; Incomplete or Unavailable Information*, 51 Fed.  
23 Reg. 15,625 (April 26, 1986). Second, in 2005, CEQ changed the address for filing copies of  
24 EISs. *Other Requirements of NEPA; Final Rule*, 70 Fed. Reg. 41,148 (July 18, 2005).

25 IV. CEQ HAS ISSUED NEPA GUIDANCE AND REVIEWS FOR OVER 40 YEARS,  
26 NONE FINDING A NEED FOR MAJOR AMENDMENTS TO ITS REGULATIONS.

176. Over the years, CEQ has issued additional guidance regarding the implementation  
of NEPA and the 1978 regulations (as amended in 1986). In particular, CEQ published its “40

1 Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations" in  
2 the Federal Register in 1981. *Forty Most Asked Questions Concerning CEQ's National*  
3 *Environmental Policy Act Regulations*, 46 Fed. Reg. 18,026 (March 23, 1981) (*Forty Questions*).

4 177. Several congressional and presidential reviews of the regulations have occurred;  
5 but none have previously resulted in changes to the 1978 regulations.

6 178. In 1981 during the Reagan Administration, CEQ requested public responses to 11  
7 questions, ranging from the specific ("Is the scoping process used at an appropriate stage in the  
8 development of agency proposals?") to the general ("What day-to-day practices could be  
9 improved to assure better compliance with NEPA?"). *Agency Implementation of CEQ's NEPA*  
10 *Regulations; Request for Public Comment*, 46 Fed. Reg. 41,131 (Aug. 14, 1981). The comment  
11 period remained open for 60 days. After release of a summary of the comments in July 1982, a  
12 public meeting was held to solicit any additional comments or suggestions. The process resulted  
13 in guidance published in 1983 on five particular topics, but no changes to the regulations  
14 themselves. *Guidance Regarding NEPA Regulations*, 48 Fed. Reg. 34,263 (July 28, 1983).

15 179. In 1997, CEQ published the study *The National Environmental Policy Act: A*  
16 *Study of Its Effectiveness After Twenty-Five Years* (Jan. 1997). The study built on input from  
17 some of the original framers of NEPA, members of Congress, state and local agencies, and  
18 federal agencies along with a major effort to include the public. Eleven separate groups of  
19 partners were established to provide input into this study: businesses, decision-makers, state and  
20 local governments, agencies, academicians, Congress, framers of NEPA, drafters of CEQ  
21 regulations, Native American tribes, lawyers and public interest/citizen groups. In coordination  
22 with CEQ, the Environmental Protection Agency ("EPA") conducted a survey of states regarding  
23 NEPA implementation. CEQ, EPA, and the North Carolina Department of Environment, Health  
24

1 and Natural Resources held a regional conference to investigate the effectiveness of state-federal  
2 interaction in NEPA implementation. The study concluded that “[o]verall, what we found is that  
3 NEPA is a success — it has made agencies take a hard look at the potential environmental  
4 consequences of their actions, and it has brought the public into the agency decision-making  
5 process like no other statute.” The 1997 report emphasized the importance of several factors in  
6 ensuring that the congressional intent of NEPA was met, including adequate agency training to  
7 implement the 1978 regulations, consideration of a robust range of alternatives, engaging the  
8 public early and often in the NEPA process, and the need to develop concise NEPA documents  
9 rather than lengthy reviews.

10 180. At the same time, CEQ published its guidance on *Considering Cumulative Effects*  
11 *Under the National Environmental Policy Act* (Jan. 1997). This guidance stated that “[e]vidence  
12 is increasing that the most devastating environmental effects may result not from the direct  
13 effects of a particular action, but from the combination of individually minor effects of multiple  
14 actions over time,” highlighting the importance of this aspect of NEPA review. The 1997  
15 guidance explained how federal agencies may analyze their actions for cumulative effects;  
16 provided advice regarding inviting public scoping of and comment on cumulative effects; and  
17 included methods, tools, and techniques (including examples) for analyzing cumulative effects.  
18 Nothing in the 1997 guidance suggested that consideration of cumulative effects was difficult,  
19 costly, or otherwise resulted in delays in project implementation.

20 181. Most recently, the George W. Bush Administration’s CEQ published  
21 “Modernizing NEPA Implementation” in December 2003. The NEPA Task Force, *The NEPA*  
22 *Task Force Report to the Council on Environmental Quality: Modernizing NEPA*  
23 *Implementation* (September 2003). The report was based on the work of a task force composed  
24

1 of federal agency employees with diverse skills, expertise, and perspectives. The Task Force  
2 engaged with state, tribal, and local governments and public interest organizations in completing  
3 its report. CEQ took comments from the public at large for 75 days on the 2003 report. The  
4 report provided a number of recommendations for action by CEQ, but did not commence  
5 rulemaking to change the 1978 regulations.

6 V. NEPA PROMOTES ENVIRONMENTAL JUSTICE.

7 182. Guided by CEQ's 1978 regulations, NEPA became a crucial tool for public  
8 engagement and better governmental decision-making in the fight against environmental racism.  
9 NEPA and the 1978 regulations promote environmental justice by requiring federal agencies to  
10 include a proposed project's potential environmental, economic, and public-health impacts on  
11 low-income communities, communities of color, and rural communities. One of the visionary  
12 elements of NEPA was its creation of broad opportunities for public participation in government  
13 decisions that affect communities and their environment.

14 183. In 1994, President Clinton issued Executive Order 12898, *Federal Actions to*  
15 *Address Environmental Justice in Minority Populations and Low-Income Populations*, Exec.  
16 Order No. 12898, *codified at 3 C.F.R. § 859 (1995), reprinted as amended in 42 U.S.C. § 4321*  
17 *(1998)*. Executive Order 12898 directs federal agencies to make environmental justice part of  
18 their mission, and to identify and address the disproportionate environmental and health effects  
19 of their activities on communities of color and low-income populations. The Executive Order  
20 also requires agencies to ensure effective public participation and access to information.

21 184. The Presidential Memorandum accompanying the Executive Order directs all  
22 agencies to utilize NEPA to analyze environmental, health, economic, and social effects of  
23 federal actions, including effects on communities of color and low-income communities; develop  
24 mitigation measures that address significant effects of actions on communities of color and low-



1 income communities; and to provide opportunities for public input in decision-making. Most  
2 importantly, agencies must provide opportunities for effective community participation in the  
3 NEPA process.

4 185. Executive Order 12898 recognized the importance of gathering data and  
5 conducting research to identify and address disproportionately high and adverse health,  
6 environmental, social, and economic effects of federal agency programs and policies on  
7 communities of color and low-income communities. Public participation is an integral part of  
8 addressing environmental justice concerns. The Presidential Memorandum also makes clear that  
9 any NEPA document should “address significant and adverse environmental effects of proposed  
10 federal actions on minority populations, low-income populations, and Indian Tribes.”  
11 Furthermore, each federal agency must provide opportunities for effective community  
12 participation in the NEPA process through consultation with affected communities and  
13 improving the accessibility of public meetings, crucial documents, and notices.

14 186. CEQ has repeatedly published guidance documents on how to include  
15 environmental justice in NEPA analyses. In 1997, in consultation with EPA and other agencies,  
16 CEQ developed guidance to “further assist Federal agencies with their NEPA procedures so that  
17 environmental justice concerns are effectively identified and addressed.” *Environmental Justice*  
18 – *Guidance Under the National Environmental Policy Act* (1997). CEQ recognized that  
19 environmental justice issues may arise during federal decision-making and should be considered  
20 at any step in the NEPA process, and courts have noted that “[e]nvironmental justice is not  
21 merely a box to be checked.” *Friends of Buckingham v. State Air Pollution Control Bd.*, 947  
22 F.3d 68, 92 (4th Cir. 2020).

1 187. In 2016, a Federal Interagency Working Group issued a report on how better to  
2 implement environmental justice in the NEPA process: *Promising Practices for EJ*  
3 *Methodologies in NEPA Reviews*. CEQ and other agencies recognized that engaging community  
4 members early and often informs an agency’s decision-making process, benefitting agencies by  
5 communicating their objectives for the proposed activity. The interagency report recognized that  
6 communities have varying levels of access to information, and instructed agencies to “consider  
7 providing notice to the public (as appropriate) of the meeting date(s) and time(s) well in advance  
8 and through methods of communication suitable for minority and low income populations.”  
9 Furthermore, when addressing impacts on environmental justice communities, the report stressed  
10 that NEPA requires agencies to consider three types of effects or impacts: direct, indirect, and  
11 cumulative impacts, and that agencies should be mindful that environmental justice communities  
12 may be differently affected by past, present, or reasonably foreseeable future impacts—that is,  
13 cumulative effects—than the general population.

14 VI. THE PRESIDENT’S 2017 INFRASTRUCTURE DIRECTIVE AND CEQ’S 2018  
15 ADVANCE NOTICE OF PROPOSED RULEMAKING.

16 188. On August 15, 2017, the President issued Executive Order 13807, entitled  
17 “Establishing Discipline and Accountability in the Environmental Review and Permitting  
18 Process for Infrastructure Projects.” *Establishing Discipline and Accountability in the*  
19 *Environmental Review and Permitting Process for Infrastructure Projects*, 82 Fed. Reg. 40,463  
20 (Aug. 24, 2017). The Executive Order emphasized an alleged need for greater efficiency in  
21 environmental reviews of infrastructure projects, defined to include “pipelines,” “energy  
22 production and generation,” and “electricity transmission.” For example, the Order noted the  
23 importance of “using CEQ’s authority to interpret NEPA to simplify and accelerate the NEPA  
24

1 review process” and sought “expedited environmental review for the development of energy  
2 infrastructure projects.” *Id.* at 40,468.

3 189. In response to the Executive Order, CEQ announced its intention to review  
4 existing NEPA regulations to “identify changes needed to update and clarify those regulations”  
5 in September 2017. *Initial List of Actions To Enhance and Modernize the Federal*  
6 *Environmental Review and Authorization Process*, 82 Fed. Reg. 43,226 (Sept. 14, 2017).

7 190. On June 18, 2018, CEQ issued an “advance notice of proposed rulemaking  
8 (“ANPRM”) indicating that CEQ was proposing to amend the longstanding CEQ regulations  
9 governing NEPA. *Update to the Regulations for Implementing the Procedural Provisions of the*  
10 *National Environmental Policy Act; Advanced Notice of Proposed Rulemaking*, 83 Fed. Reg.  
11 28,591 (June 20, 2018).

12 191. The ANPRM gave little or no indication of what revisions CEQ was considering.  
13 Instead, it asked a series of twenty open-ended questions about whether various features of the  
14 existing regulations should be amended, and if so, how.

15 192. Plaintiffs and others responded with detailed comments explaining why the CEQ  
16 regulations should not be amended. Instead, the vast majority of the public comments explained  
17 how NEPA was successful in meeting its goals, and offered suggestions as to how  
18 implementation of NEPA could be improved to increase efficiency without undermining those  
19 goals. The purported problems that CEQ sought to address, Plaintiffs and others explained, were  
20 a product of external factors such as inadequate training, funding, and implementation of the  
21 existing regulations and would not be solved by amending and weakening the CEQ regulations  
22 themselves.

1 VII. CEQ PROPOSED SIGNIFICANT CHANGES TO THE 1978 REGULATIONS THAT  
2 CONFLICT WITH CONGRESSIONAL INTENT IN ENACTING NEPA.

3 193. On January 10, 2020, CEQ issued its proposed revision to its implementing  
4 regulations in a Notice of Proposed Rulemaking in the Federal Register (“Proposed Rule”).

5 *Update to the Regulations Implementing the Procedural Provisions of the National*  
6 *Environmental Policy Act; Notice of Proposed Rulemaking*, 85 Fed. Reg. 1,684 (Jan. 10, 2020).

7 The Proposed Rule aimed to “comprehensively update and substantially revise” the longstanding  
8 1978 CEQ regulations, touching virtually every aspect of them. Taken as a whole, the Proposed  
9 Rule sought to transform NEPA from a sweeping infusion of environmental values and  
10 environmental justice into federal decision-making to an expedited paperwork exercise designed  
11 primarily to limit NEPA’s reach, reduce public involvement, and narrow the scope of what  
12 environmental consequences of federal agency actions are considered by federal agencies in  
13 direct contravention to the statutory command to implement NEPA “to the fullest extent  
14 possible.”

15 194. In virtually every instance where CEQ proposed changes, the effect was to  
16 undermine NEPA or create ambiguity about the applicability and scope of NEPA review. The  
17 Proposed Rule contained changes that undermined NEPA’s policies, including by deleting prior  
18 regulatory language focused on the policy-driving, action-forcing congressional mandate. In  
19 other places, the Proposed Rule replaced the word “possible” with the word “practicable.”

20 195. The Proposed Rule also advanced changes to reduce the scope of NEPA’s  
21 applicability, limiting the number and types of federal actions that are subject to NEPA. For  
22 example, the Proposed Rule ignored longstanding regulatory and judicial precedent that the  
23 adjective “major” in front of “federal action” reinforces but does not have independent meaning  
24 from the qualifier “significantly.” In other words, the Proposed Rule refocused on the extent of

1 federal “control” rather than the extent and nature of the impacts of federal actions to the  
2 environment. The Proposed Rule compounded this mistake by asserting that federal financial  
3 assistance does not qualify as a “major federal action” if the agency did not retain an undefined  
4 level of “control and responsibility” over the effects of the action.

5 196. Additionally, the Proposed Rule proposed to add a new “functional equivalency”  
6 test, allowing NEPA to be waived if there was some other environmental review process  
7 associated with the project. Nothing in the Proposed Rule set any meaningful boundaries on  
8 such use, meaning that alternative reviews with lower environmental standards and less robust  
9 public processes could be used to avoid the application of NEPA. Even the example offered by  
10 CEQ—a Regulatory Impact Analysis (“RIA”) required by an Executive Order—proved the  
11 point: an RIA focuses on economic cost-benefit analysis, rather than review of environmental  
12 impacts and potential alternatives.

13 197. The Proposed Rule announced a new definition of “significance” that would  
14 reduce the number of actions deemed substantial enough to trigger the preparation of an  
15 environmental impact statement. The Proposed Rule similarly eliminated language prohibiting  
16 “piecemealing” or segmentation of agency actions by breaking them into individually less  
17 significant or relatively minor component parts, and it expanded the scope and application of  
18 “categorical exclusions,” a mechanism to simplify NEPA compliance for actions that did not  
19 individually or cumulatively have a significant effect on the environment.

20 198. In addition to narrowing the type of actions to which NEPA applied in the first  
21 instance, the Proposed Rule also significantly limited the scope of environmental review for  
22 those actions that still triggered NEPA compliance. Of particular concern, the Proposed Rule  
23 categorically eliminated the requirement to consider cumulative effects and eliminated any  
24

1 obligation to consider indirect effects. Under the 1978 CEQ regulations and longstanding  
2 judicial interpretation, cumulative effects constitute an “impact on the environment which results  
3 from the incremental impact of the action when added to other past, present, and reasonably  
4 foreseeable future actions,” regardless of what agency (Federal or non-Federal) or person  
5 undertakes such other actions, while indirect effects are those effects that are “caused by the  
6 action and are later in time or farther removed in distance, but are still reasonably foreseeable.”  
7 Indirect and cumulative effects are critical components of environmental impacts that must be  
8 considered under NEPA. In many cases, they are the most important issues of concern to the  
9 public and other stakeholders.

10         199. While there are many reasons why the consideration of indirect and cumulative  
11 effects is essential to sound decision-making, the failure to consider such effects is especially  
12 harmful with regard to the issue of climate change, both in terms of a proposed action’s  
13 greenhouse gas emissions that contribute to it, as well as how a changing climate could affect a  
14 proposed action or the location where the action takes place. As many agencies and courts have  
15 recognized, climate change is the ultimate “cumulative effect,” because it arises from the  
16 aggregate of countless actions over time and around the world. CEQ in the past has issued  
17 guidance on how to include climate change in NEPA analyses, and courts have been repeatedly  
18 called on to interpret agencies’ duties in this regard. By eliminating the review of cumulative  
19 and indirect effects, the Proposed Rule attempted to relieve agencies of the duty to consider  
20 climate change related impacts in their NEPA analyses.

21         200. The Proposed Rule also undermined the analysis of environmental justice impacts  
22 without explanation. Environmental justice addresses the disproportionate impact of pollution  
23 and environmental degradation on people of color and low-income communities. Cumulative  
24

1 impact analysis is essential to identifying whether and how low income and frontline  
2 communities of color may be overburdened by the additive environmental impacts of a proposed  
3 federal action, particularly actions that contribute air, land, and water pollution to the  
4 environment. By eliminating cumulative impact review, the Proposed Rule allowed agencies to  
5 sidestep considering environmental justice impacts. CEQ also failed to conduct an  
6 environmental justice analysis of the Proposed Rule under Executive Order 12898, *Federal*  
7 *Actions To Address Environmental Justice in Minority Populations and Low-Income*  
8 *Populations*, 59 Fed. Reg. 7,629 (Feb. 11, 1994).

9         201. The Proposed Rule limited the discussion of alternatives, the “heart” of the EIS  
10 process. *Forty Questions; Answer to Question 7*, 46 Fed. Reg. at 18,026. Indeed, the Proposed  
11 Rule explicitly struck regulatory language declaring as much. Instead, the Proposed Rule sought  
12 to constrain the range of alternatives considered in an EIS, providing that federal agencies did  
13 not need to consider alternatives not within the jurisdiction of the lead agency—in contravention  
14 of precedent and governing caselaw. *NRDC v. Morton*, 458 F.2d 827, 834 (D.C. Cir. 1972)  
15 (noting that the reasonableness requirement does not limit the agency to evaluate only measures  
16 within its jurisdiction); *see EDF v. U.S. Army Corps of Engineers*, 492 F.2d 1123, 1135 (5th Cir.  
17 1974) (agreeing with the D.C. Circuit that there is no statutory restriction that limits “an agency  
18 to consideration of only those alternatives that it could adopt or put into effect”).

19         202. The Proposed Rule included a series of provisions that would raise barriers to  
20 public participation, limit the requirements for agencies to engage with the public and respond to  
21 comments, and eliminate protections against conflicts of interest. The Proposed Rule eliminated  
22 restrictions on project proponents writing their own environmental reviews, stripped references  
23  
24

1 to public participation from regulations, eliminated the requirement for public comments at the  
2 scoping stage for EAs.

3         203. The Proposed Rule also included provisions intended to raise the bar on public  
4 comment, effectively allowing agencies to ignore comments that do not meet an arbitrary  
5 technical standard of precision. Many commenters, especially members of the public, may have  
6 useful environmental, cultural, social, or other knowledge that should be brought to bear in  
7 agency decision-making, but lack the technical knowledge to express that information consistent  
8 with the Proposed Rule. Simultaneously, the Proposed Rule reduced requirements that the  
9 agency respond to comments with detailed explanation and citation to authorities. In other  
10 words, the Proposed Rule raised the bar for the public in commenting during the NEPA process  
11 while it lowered the bar for agencies to respond to comments.

12         204. Finally, the Proposed Rule contained several elements which were directed at  
13 limiting judicial review of agency compliance with NEPA, for example, redefining “final agency  
14 action” for purposes of APA review to exclude an agency’s failure to act and stating that “it is  
15 the Council’s intention that the regulations ... create no presumption that violation of NEPA is a  
16 basis for injunctive relief or for a finding of irreparable harm.”

17         205. In sum, the Proposed Rule fundamentally mischaracterized, and attempted to  
18 fundamentally rewrite, the statutory purpose and goals of NEPA. It proposed to substantially  
19 reduce both the breadth and depth of NEPA analysis, and to eviscerate available remedies for  
20 inadequate agency compliance. Instead of centering environmental values and sound decision-  
21 making at the heart of the environmental and public health review process, the Proposed Rule  
22 elevated private interests and resource exploitation. The Proposed Rule proposed to reverse  
23  
24



1 longstanding positions accepted by CEQ, other agencies, and the courts for decades without  
2 explanation or a basis in fact or law.

3 VIII. DESPITE OVERWHELMING OPPOSITION TO THE PROPOSED RULE, CEQ  
4 RUSHED TO ISSUE A FINAL RULE THAT EVISCERATED NEPA.

5 206. The Proposed Rule ran for nearly 50 pages in the Federal Register and touched on  
6 virtually every aspect of the longstanding prior regulations, yet CEQ only offered 60 days for  
7 public comment. Hundreds of states, Tribes, organizations, and others—including 167 members  
8 of the United States Congress—formally requested additional time to comment; CEQ denied all  
9 extension requests.

10 207. CEQ only held two public hearings on the Proposed Rule, one in Denver,  
11 Colorado and one in Washington, D.C. Speaking slots were made available during a 90-minute  
12 window, in advance, through a web-based registration system. After the online registration  
13 system opened, all available speaking slots filled within a few minutes. The vast majority of  
14 people who wished to provide oral comment were not able to do so. Again, many members of  
15 the public requested additional hearings in vain.

16 208. Despite the truncated process and the impacts of the global COVID-19 pandemic  
17 on every aspect of people's lives, CEQ received over one million public comments, a significant  
18 number of them containing detailed and comprehensive analyses explaining the significant harm  
19 that would arise from the proposal. Opposition came from states and state agencies, Tribes, and  
20 a broad swath of public interests such as environmental protection, environmental justice, human  
21 health, public lands, and outdoor recreation groups, as well as former Chairs and staff of CEQ  
22 under both Republican and Democratic administrations. Plaintiffs submitted detailed comments  
23 on the proposal.

1           209. CEQ closed the comment period for the Proposed Rule on March 10, 2020. CEQ  
2 released a pre-publication version of the Final Rule on July 15, 2020. The Final Rule was  
3 published in the Federal Register on July 16, 2020. 85 Fed. Reg. 43,304. Despite CEQ’s prior  
4 statement that the Proposed Rule was only an update to the 1978 regulations, in announcing the  
5 Final Rule, President Trump declared that the new regulations were a “top to bottom overhaul”  
6 intended to bolster America “as a nation of builders.”

7 IX. CEQ’S FINAL RULE MADE ONLY MINOR CHANGES TO THE PROPOSED RULE.

8           210. Aside from small changes such as altering verb tense and other technical  
9 corrections, the Final Rule closely mirrors the content of the Proposed Rule.

10           211. The Final Rule only requires agencies to consider environmental information and  
11 “inform” the public regarding an agency decision. 40 C.F.R. §§ 1500.1(a), 1503.1(2)(v),  
12 1507.3(f)(3) (2020). The Final Rule deleted language that NEPA should be implemented “to the  
13 fullest extent possible.” 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.2 (1978).<sup>2</sup>

14           212. The Final Rule prohibits agencies from imposing any more stringent procedures  
15 or requirements beyond that required by the Final Rule. 40 C.F.R. 1507.3(b) (2020). It deleted  
16 language stating that an EIS is an “action forcing” document intended to ensure NEPA’s goals  
17 are “infused” into programs and activities of the Federal government. 40 C.F.R. 1502.1 (2020).

18           213. The Final Rule replaces the word “possible” in the 1978 regulations with the word  
19 “practicable,” weakening existing requirements and providing agencies with open-ended  
20 discretion to refuse to comply with requirements if they are inconvenient or cumbersome. *See,*  
21 *e.g.,* 40 C.F.R. §§ § 1500.2, 1501.2(b)(2), 1501.5(d), 1501.7(g), (g)(1), (g)(2), (i), (j),  
22

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23 <sup>2</sup> The following citations to the 1978 regulations include changes made to 40 C.F.R. § 1502.22 in  
24 1986.

1 1501.8(b)(1), (b)(6), (b)(8), 1501.9(a), (b), 1502.5(b), 1502.9(b), 1502.11(g), 1505.2(g)(3),  
2 1506.2(b), (c), 1506.4, 1506.2(b), (c) (2020).

3 214. The Final Rule limits the number and nature of federal actions that are subject to  
4 NEPA. For example, the Final Rule departs from longstanding regulatory and judicial precedent  
5 that the adjective “major” in front of “federal action” reinforces but does not have independent  
6 meaning from the qualifier “significantly.” 40 C.F.R. § 1508.1(q) (2020).

7 215. The Final Rule asserts that federal financial assistance does not qualify as a  
8 “major federal action” if the agency does not retain an undefined level of “control and  
9 responsibility” over the effects of the action, in a manner that is inconsistent with judicial  
10 precedent, creates confusion, and invites abuse by applicants. 40 C.F.R. § 1508.1(q) (2020).

11 216. The Final Rule narrowed the definition of “major federal action” even further by  
12 deleting language that defines “action” to include circumstances where an agency “fails to act”  
13 and that failure is reviewable under the APA. 40 C.F.R. § 1508.1(q)(1)(iii) (2020).

14 217. The Final Rule allows federal agencies to waive NEPA if other review processes  
15 are either associated with or required for the project. 40 C.F.R. §§ 1501.1(a)(6) (2020), 1506.2,  
16 1506.4, 1506.5, 1506.9, 1506.11(e), 1507.3(c)(5), (d)(6).

17 218. The Final Rule allows federal agencies to circumvent NEPA by authorizing  
18 agencies, in their discretion, to determine that other statutes or directives conflict with NEPA. 40  
19 C.F.R. §§ 1501.1(a)(2), (a)(3), § 1507.3(d)(2) (2020). However, Congress did not delegate  
20 federal agencies authority to interpret “whether compliance with NEPA would clearly and  
21 fundamentally conflict with the requirements of another statute,” or “whether compliance with  
22 NEPA would be inconsistent with Congressional intent expressed in another statute.” This is  
23  
24

1 also inconsistent with NEPA’s statutory directive to apply the law to “the fullest extent  
2 possible,” as well as judicial precedent prohibiting such a narrow reading of NEPA.

3       219. The Final Rule exempts certain categories of federal actions from the definition of  
4 “major federal action,” including actions that have long been understood to trigger NEPA  
5 review, such as “loans, loan guarantees and other forms of financial assistance.” 40 C.F.R. §  
6 1508.1(q)(1)(vii) (2020). Similarly, the Final Rule characterizes the “action” for treaties and  
7 international conventions such that NEPA compliance would only be required for  
8 implementation of treaties and international conventions or agreements, 40 C.F.R. §  
9 1508.1(q)(3)(i) (2020); the Final Rule eliminated the ratification of treaties from the definition of  
10 “proposals for legislation.” 40 C.F.R. § 1508.17 (1978).

11       220. The Final Rule eliminates language from the 1978 regulations that programmatic  
12 EISs are sometimes required and language that they are specifically required under certain  
13 circumstances. 40 C.F.R. § 1502.4(b) (2020).

14       221. The Final Rule eviscerates the regulatory definition of “significance,” which will  
15 reduce the number of actions deemed significant enough to trigger the preparation of an  
16 environmental impact statement. *Compare* 40 C.F.R. §§ 1501.3(a)(2) (2020), (b)(1), 1501.5(a),  
17 1502.16(a)(1) *with* 40 C.F.R. §§ 1508.27 (1978), 1508.8. Specifically, the Final Rule eliminates  
18 the consideration of critical concerns like context, cumulative effects, scientific controversy, and  
19 effects to listed species from the evaluation of a federal action’s significance. *Id.*

20       222. The Final Rule no longer prohibits the “piecemealing” or segmentation of agency  
21 actions by breaking them into individually less significant or relatively minor component parts.  
22 *Compare* 40 C.F.R. § 1501.3(b) (2020), 1501.9(e)(1) *with* 40 C.F.R. §§ 1508.25(a)(1) (1978),  
23 (a)(2), (a)(3).

1           223. The Final Rule substantially expands the scope and application of “categorical  
2 exclusions,” normally a mechanism to simplify NEPA compliance for actions that do not  
3 individually or cumulatively have a significant effect on the environment. *Compare* 40 C.F.R. §  
4 1508.1(d) (2020) *with* 40 C.F.R. § 1508.4 (1978). Instead, the Final Rule eliminates key factors  
5 that previously prevented the use of categorical exclusions for actions that “individually or  
6 cumulatively” may have impacts to the environment. *Id.* Regardless of whether extraordinary  
7 circumstances exist, the Final Rule allows federal agencies, in their sole discretion, to use a  
8 categorical exclusion if there are “circumstances that lessen the impacts or other conditions  
9 sufficient to avoid significant effects;” but does not require the utilization of these other  
10 “circumstances” or “conditions.” 40 C.F.R. § 1501.4(b)(1) (2020). The Final Rule allows  
11 agencies to apply a different agency’s categorical exclusion, a sweeping expansion of what  
12 should be a narrow exception tailored to a specific federal agency and its mission-specific  
13 undertakings. *Id.* at §§ 1506.3(d) (2020), 1507.3(f)(5).

14           224. The Final Rule authorizes multiple exceptions to the general rule that action may  
15 not be taken to advance a proposal pending finalization of the NEPA process, thereby allowing  
16 agencies and private applicants to commit resources before a decision is made (including without  
17 public comment), and “steamroll” decisions before environmental analysis is complete and the  
18 information shared with the public.

19           225. The Final Rule eliminates the requirement that agencies consider both  
20 “cumulative” and “indirect” effects from NEPA analysis. *Compare* 40 C.F.R. § 1508.1(g)(3)  
21 (2020) *with* 40 C.F.R. §§ 1502.16(b) (1978), 1508.25(c), 1508.4, 1508.7, 1508.8, 1508.27(b)(7).  
22 Indirect and cumulative effects are critical components of environmental impacts and in many  
23 cases, they are the most important issues of concern to the public and other stakeholders. For  
24

1 example, allowing agencies to forgo consideration of cumulative and indirect effects will have  
2 profound adverse effects on the environment, particularly on the global climate, which is the  
3 ultimate example of indirect effects aggregated into cumulative effects. A robust indirect and  
4 cumulative effects analysis is essential to preventing the disproportionate impact of pollution and  
5 environmental degradation on people of color and low-income communities.

6 226. The Final Rule only requires NEPA to consider effects that have a “reasonably  
7 close causal relationship” with the proposed action, ruling out effects that are “remote in time  
8 and space” or “the product of a lengthy causal chain.” 40 C.F.R. § 1508.1(g) (2020). Terms  
9 such as “reasonably close” and “lengthy” were not defined, inviting agencies to ignore decades  
10 of judicial and regulatory precedent interpreting the scope of review by claiming that foreseeable  
11 impacts do not have a “reasonably” close causal relationship to the proposed action. Without any  
12 standard against which to gauge these determinations, public and judicial accountability will be  
13 undermined, and efficiency in agency decision-making will not occur.

14 227. The Final Rule adopts a new definition of “reasonably foreseeable” that imports  
15 tort law concepts by linking impacts to what a “person of ordinary prudence” would consider  
16 “likely.” 40 C.F.R. §§ 1508.1(g), (aa) (2020). But federal agencies using NEPA to evaluate  
17 risks and impacts are not “ordinary people:” they purport to be expert agencies applying  
18 technical analysis under standards developed over decades of experience. The new regulation  
19 will allow agencies to ignore impacts that are truly “foreseeable,” simply because they may  
20 be beyond the ken of an “ordinary” person.

21 228. The Final Rule limits the scope of NEPA’s application to domestic federal agency  
22 actions, regardless of whether those actions have extraterritorial effects. 40 C.F.R. §

1 1508.1(q)(1)(i) (2020). This regulation is inconsistent with NEPA’s statutory directive to  
2 “recognize the worldwide and long-range character of environmental problems.”

3 229. The Final Rule does not require federal agencies to seek out and include  
4 information regarding the adverse impacts of federal agency actions, an important departure  
5 from the 1978 regulations. 40 C.F.R. § 1502.21 (2020). Instead, the duty to obtain information  
6 is waived if the cost of doing so is “unreasonable,” an undefined term that invites abuse and  
7 provides no standards against which to evaluate compliance. *Id.* The Final Rule further asserts  
8 that agencies do not need to undertake “new scientific and technical research” to inform an EIS,  
9 *id.* at § 1502.23 (2020), in contravention to decades of precedent identifying the importance of  
10 new research when needed to accomplish NEPA’s goals. Without this information, the  
11 environmental consequences of many federal actions will be unknown, in contravention to the  
12 congressional intent of NEPA.

13 230. The Final Rule also limits the discussion of alternatives, which has always  
14 represented the “heart” of the EIS process: indeed, the Final Rule strikes this keystone language  
15 from the 1978 regulations. 40 C.F.R. § 1502.14 (2020). The Final Rule constrains the range of  
16 alternatives considered in an EIS, providing that federal agencies need not consider alternatives  
17 not within the jurisdiction of the lead agency, *compare* 40 C.F.R. § 1502.14 (2020) *with* 40  
18 C.F.R. § 1502.14(e) (1978), in contravention of precedent and governing caselaw.

19 231. The Final Rule revises the definition of “purposes and need” to highlight the  
20 applicant’s preferred project purpose, 40 C.F.R. § 1502.13 (2020), diminishes the role of  
21 alternatives, *id.* at § 1502.14 (2020), and redefines “reasonable alternatives” such that  
22 alternatives focus on the needs of the applicant rather than the public and federal agency  
23 involved, *id.* at § 1508.1(z) (2020).

1           232. The Proposed Rule required contractors to execute a disclosure statement  
2 specifying that they have no financial or other interest in the outcome of the project. In one of  
3 the only substantive changes to the Proposed Rule, the Final Rule instead requires contractors to  
4 submit a disclosure statement to the lead agency that specifies any financial or other interest in  
5 the outcome of the action. 40 C.F.R. § 1506.5(b)(4) (2020). Thus, the Final Rule authorizes  
6 conflicts of interest, so long as they are disclosed to the federal agency; but there is no  
7 requirement that the public be informed of a contractor’s conflict of interest. *Id.*

8           233. The Final Rule undermines public participation in the NEPA process, even though  
9 public involvement is one of NEPA’s “twin aims.” For example, the Final Rule eliminates a  
10 requirement to circulate draft EISs that satisfy NEPA standards, meaning that agencies could  
11 circulate incomplete or misleading draft EISs that undercut the public’s ability to comment. 40  
12 C.F.R. § 1502.9 (2020). The Final Rule eliminates the scoping process for EAs, an important  
13 step that allows the public to provide comment to federal agencies regarding developing  
14 alternatives for further review. *Id.* at § 1501.9(a). The Final Rule imposes a 30-day timeline for  
15 comment on Final EISs, even in instances where there are changes in the project considered in a  
16 draft EIS, with no discretion for extensions, *id.* at § 1506.11, and eliminates a requirement in the  
17 1978 regulations that EISs be available for 15 days before a public hearing, allowing agencies to  
18 schedule hearings without allowing the public meaningful time to review EISs prior to such a  
19 hearing. 40 C.F.R. § 1506.6(c)(2) (1978).

20           234. The Final Rule imposes obligations on the public to provide technically specific  
21 and detailed comments on an agency action, but many commenters, including Plaintiffs, have  
22 useful environmental, cultural, social, or other knowledge that should be brought to bear in  
23 agency decision-making, but lack the technical knowledge to express that information consistent  
24



1 with the undefined requirements of the Final Rule. 40 C.F.R. § 1503.3 (2020). Commenters  
2 must not only provide “data sources and methodologies supporting the proposed changes” to a  
3 proposed agency action, but also comment on the “economic and employment impacts” of that  
4 change, issues that they may or may not have anything to say, or the expertise and resources to  
5 bring to bear. *Id.* at § 1503.3(a).

6 235. The Final Rule allows agencies to respond to public comments without detailed  
7 explanation and citation to authorities, 40 C.F.R. § 1503.4 (a)(5) (2020), makes responding to  
8 comments permissive rather than obligatory by changing “shall” to “may,” *id.* at § 1503.4 (a),  
9 and broadens the agency’s discretion to respond to substantive public comments generically  
10 rather than specifically, *id.* at §§ 1503.4 (a), (a)(5). The Final Rule eliminates the requirement  
11 that a federal agency “assess and consider” public comments and instead allows a brief summary  
12 of comments, *id.* at §§ 1503.4(a), § 1502.17, replaces the requirement to assess and consider  
13 comments with a statement “certifying” that the agency “considered” the comments, *id.* at §  
14 1505.2, and in an effort to shift the burden for judicial review, imposes a “conclusive  
15 presumption” that an agency has considered all comments and other information during the  
16 comment process, *id.* at § 1505.2(b). Coupled with the changes to the public’s comment  
17 obligations, these changes raise the bar for the public in commenting during the NEPA process  
18 while lowering the bar for agencies to respond to those comments.

19 236. The Final Rule imposes arbitrary and unworkable page and time limits, which  
20 will undermine the NEPA process and increase conflict and litigation around NEPA reviews  
21 rather than promoting efficiency. 40 C.F.R. §§ 1501.5(f) (2020), § 1501.10, § 1502.7, §  
22 1508.1(v).

1           237. The Final Rule redefines “final agency action” for purposes of APA review to  
2 limit reviews of NEPA compliance where no “record of decision” or formal decision document  
3 is created, for example, where an agency fails to undertake an otherwise required environmental  
4 analysis (e.g., a failure to act). 40 C.F.R. § 1508.1(q)(1)(iii) (2020). The effort is contrary to  
5 settled precedent and serves only to unlawfully constrain judicial review.

6           238. Contrary to judicial precedent disfavoring the practice, the Final Rule allows  
7 agencies to impose “bond and security” requirements on plaintiffs seeking administrative and  
8 judicial review of agency decisions. 40 C.F.R. § 1500.3(c) (2020). Plaintiffs will be required to  
9 divert organizational assets in order to participate in a public review process guaranteed by  
10 statute.

11           239. The Final Rule states that “it is the Council’s intention that the regulations ...  
12 create no presumption that violation of NEPA is a basis for injunctive relief or for a finding of  
13 irreparable harm” and that “it is also the Council’s intention that minor, nonsubstantive errors  
14 that have no effect on agency decision-making shall be considered harmless and shall not  
15 invalidate an agency action.” 40 C.F.R. § 1500.3(d). The Final Rule misstates current law, and  
16 impinges upon the role of the judiciary to assess whether a party has demonstrated irreparable  
17 harm and whether a legal violation is “harmless error.”

18           240. The Final Rule is a sweeping alteration of the legal framework for environmental  
19 review and public engagement.

20           241. The effective date of the Final Rule is September 14, 2020.

21           242. The Final Rule states that “No more than 12 months after September 14, 2020 ...  
22 each agency shall develop or revise, as necessary, proposed procedures to implement the  
23 regulations in this subchapter, including to eliminate any inconsistencies with the regulations in  
24

1 this subchapter ... Except for agency efficiency (see paragraph (c) of this section) or as otherwise  
2 required by law, agency NEPA procedures shall not impose additional procedures or  
3 requirements beyond those set forth in the regulations in this subchapter.” 40 C.F.R. §  
4 1507.3(b).

## 5 CLAIMS FOR RELIEF

### 6 FIRST CLAIM FOR RELIEF

#### 7 Violation of the National Environmental Policy Act and the Administrative Procedure Act: 8 Failure to Prepare an EA or EIS

9 243. Plaintiffs re-allege, as if fully set forth herein, every allegation contained in the  
10 preceding paragraphs.

11 244. NEPA is America’s “basic national charter for protection of the environment.” 40  
12 C.F.R. § 1500.1 (1978). NEPA requires all agencies of the federal government to prepare a  
13 “detailed statement” analyzing the environmental effects of, and reasonable alternatives to, all  
14 “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C.  
15 § 4332(2)(C). This statement is commonly known as an environmental impact statement.

16 245. Under the CEQ regulations in effect while CEQ considered, proposed, and  
17 promulgated the Final Rule, a “major federal action” upon which an EIS may be required  
18 included “new or revised agency rules [and] regulations.” 40 C.F.R. § 1508.18(a) (1978). The  
19 environmental effects that must be considered in an EIS include “indirect effects, which are  
20 caused by the action and are later in time or farther removed in distance, but are still reasonably  
21 foreseeable,” as well as direct effects. 40 C.F.R. § 1508.8 (1978). An EIS must also consider  
22 the cumulative impacts of the proposed action, that is, the environmental impacts that result  
23 “from the incremental impact of the action when added to other past, present, and reasonably  
24

1 foreseeable future actions.” 40 C.F.R. § 1508.7 (1978); *see also* 40 C.F.R. § 1508.27(b)(7)  
2 (1978).

3 246. The purpose of an EIS is to inform federal agency decision-makers as well as the  
4 public of the significant environmental impacts of the proposed action, means to mitigate those  
5 impacts, and reasonable alternatives that may have reduced environmental effects.

6 247. CEQ is a federal agency subject to NEPA.

7 248. CEQ’s issuance of the Final Rule is a “major federal action significantly affecting  
8 the quality of the human environment.” 42 U.S.C. § 4332(2)(C).

9 249. In issuing the Final Rule, CEQ did not prepare an EA, EIS, or any NEPA  
10 documentation at all. Responding to the fact that CEQ prepared “special environmental  
11 assessments” for the original 1978 regulations and 1986 amendment, CEQ noted that “long-prior  
12 voluntary decisions do not forever establish that CEQ has an obligation to apply the CEQ’s  
13 regulations to changes to those regulations.” 85 Fed. Reg. at 43,353. Instead, CEQ insisted that  
14 because the Final Rule “would not authorize any activity or commit resources to a project that  
15 may affect the environment,” preparation of an EA or EIS was not required. *Id.* at 43,354. CEQ  
16 also stated that preparing an EA for the Final Rule “would not meaningfully inform CEQ or the  
17 public,” and that there was no precedent for applying the 1978 regulations “to a rule that revises  
18 those same regulations.” *Id.*

19 250. Because the Final Rule is a major federal action significantly affecting the quality  
20 of the human environment within the meaning of 42 U.S.C. § 4332(2)(C), CEQ violated NEPA  
21 by failing to prepare and circulate either an EA or an EIS for public comment prior to the  
22 publication of the Final Rule. Public comments on the Proposed Rule, including comments  
23 submitted by Plaintiffs, highlighted the significant environmental impact that will result from  
24

1 CEQ’s decision to adopt the Final Rule. For example, the Final Rule will have a significant  
2 environmental impact because it substantially reduces the scope and applicability of NEPA to  
3 meet the explicit goal of expediting development and resource extraction projects as directed by  
4 EO 13807. Indeed, CEQ promulgated the Final Rule to achieve EO 13807’s mandate to  
5 streamline federal approvals for consequential, high-impact projects like pipelines and energy  
6 generation, production, and transmission projects. Assuming that the premise of the Final Rule  
7 is correct—that the Final Rule will expedite the approval and construction of many such projects  
8 with potential significant environmental impacts—then it unavoidably follows that the Final  
9 Rule itself will have significant environmental impacts that CEQ must consider in an EIS or, at  
10 the very least, an EA.

11 251. Consistent with NEPA, an EIS, or at least an EA, on the Final Rule should have  
12 considered the adverse environmental and health impacts of replacing the 1978 regulations with  
13 the Final Rule and identified alternative approaches that could meet the objectives of the  
14 rulemaking without significant environmental impacts.

15 252. To satisfy NEPA, an EA or EIS on the Final Rule should also have analyzed the  
16 environmental justice impacts of abandoning the 1978 regulation’s robust standards for  
17 environmental analysis. Environmental justice communities are disproportionately affected by  
18 pollution and other environmental and health hazards. These communities have the most to lose  
19 from the truncated NEPA process set forth in the Final Rule that narrows NEPA’s applicability,  
20 ignores cumulative and indirect impacts, reduces the range of alternatives, and raises the bar for  
21 both public participation and judicial review.

22 253. Consideration of the environmental justice implications of the Final Rule is  
23 required both by NEPA and EO 12898.

1           254. An EA or EIS on the Final Rule should have been prepared that would also have  
2 assessed the impact of the Final Rule on efforts to limit greenhouse gas emissions that contribute  
3 to global climate change, as well as efforts to evaluate how a changing climate affects proposed  
4 projects that are under review. As noted above, the Final Rule limits the requirement that federal  
5 agencies consider the climate-related effects of their actions. This is a significant impact that  
6 NEPA required CEQ to assess in an EA or EIS.

7           255. An EA or EIS on the Final Rule should have been prepared that considered the  
8 extent to which the Final Rule's changes will affect agencies' ability to take other cumulative  
9 effects into consideration in their decision-making. Agencies such as the U.S. Army Corps of  
10 Engineers, U.S. Forest Service, BLM, and others make decisions that individually may not have  
11 significant impacts but that cumulatively have such impacts in conjunction with other federal,  
12 state, local, and private actions. By precluding these agencies from considering such impacts in  
13 their NEPA decision-making, the Final Rule will have a significant adverse environmental  
14 impact that should have been considered in an EA or EIS.

15           256. CEQ's promulgation of the Final Rule without preparing an EA or EIS that: (a)  
16 examines a reasonable range of alternatives; (b) has a statement of purpose and need that  
17 corresponds to the agencies' proposed action; (c) identifies the correct no action alternative  
18 baseline for comparing and assessing direct, indirect, and cumulative environmental effects; (d)  
19 uses high quality scientific information; and (e) examines the overarching direct, indirect, and  
20 cumulative environmental effects of the Final Rule is arbitrary, capricious, an abuse of  
21 discretion, and otherwise not in accordance with law, in violation of NEPA and the APA, 5  
22 U.S.C. § 706(2).

1 SECOND CLAIM FOR RELIEF

2 Violation of the National Environmental Policy Act and Administrative Procedure Act:  
3 Failure to Review Environmental Justice Impacts

4 257. Plaintiffs re-allege, as if fully set forth herein, every allegation contained in the  
5 preceding paragraphs.

6 258. In adopting NEPA, Congress placed environmental justice concerns at the core of  
7 the statute by recognizing that each person “should enjoy a healthful environment” and by  
8 premising the entire requirement for an environmental impact statement on “major Federal  
9 actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(C)  
10 (emphasis added).

11 259. Beginning with Executive Order 12898 in 1994 and continuing with CEQ’s 1997  
12 “Environmental Justice Guidance under the National Environmental Policy Act” Guidance and  
13 the 2016 Federal Interagency Working Group report “Promising Practices for EJ Methodologies  
14 in NEPA Reviews,” CEQ has developed longstanding policies and practices that rely on  
15 advancing environmental justice through NEPA.

16 260. In the Final Rule, CEQ acknowledged that it was required to analyze the effect of  
17 its proposal on Executive Order 12898, and asserted that it “analyzed this final rule and  
18 determined that it would not cause disproportionately high and adverse human health or  
19 environmental effects on minority populations and low-income populations.” 85 Fed. Reg. at  
20 43,356. CEQ failed to provide factual support for this assertion.

21 261. Nothing in the Final Rule provides rational reasons for departing from CEQ’s  
22 longstanding policy and practice of fully analyzing the environmental justice impacts of its  
23 actions through a NEPA review. Many provisions in the Final Rule will have a disparate and  
24 adverse impact on communities of color and low-income communities. These provisions include

1 but are not limited to imposing arbitrary page limits, redefining “major federal action,” striking  
2 required cumulative impact analysis, authorizing the imposition of a bond requirement to  
3 participate in the NEPA process, and allowing collective responses to public comments.

4 262. CEQ claimed that environmental justice effects should be analyzed only at the  
5 point of action agency project implementation, 85 Fed. Reg. at 43,356. To the contrary, CEQ  
6 has an obligation under NEPA and the 1978 implementing regulations to assess environmental  
7 justice impacts in its rulemaking, especially when considering changes to longstanding  
8 regulations that, among other changes that will disproportionately affect environmental justice  
9 communities, eliminate requirements to consider indirect and cumulative impacts on  
10 overburdened communities that already bear disproportionate impacts of past harmful actions.

11 263. NEPA has been an essential mechanism for ensuring that disenfranchised and  
12 underrepresented communities have voice in major federal actions. The sweeping changes in the  
13 Final Rule will fundamentally alter nearly every step of the NEPA review process, and yet  
14 because CEQ did not engage in a NEPA analysis of the Final Rule, there is no explanation or  
15 analysis of how the development and implementation of the Final Rule will affect  
16 implementation of Executive Order 12898; if the Final Rule is consistent with CEQ’s 1997  
17 environmental justice guidance; or how the Final Rule will affect environmental justice  
18 communities themselves. CEQ acknowledged that commenters raised these issues, 85 Fed. Reg.  
19 at 43,356, but insisted that the Final Rule would not result in any adverse environmental impacts.  
20 *Final Rule Response to Comments* (June 30, 2020) at 34.

21 264. CEQ’s decision to adopt the Final Rule without analyzing how the Rule and its  
22 implementation would affect the environmental justice mandates in Executive Order 12898, how  
23 the Final Rule affects with CEQ’s 1997 environmental justice guidance, or how the Final Rule  
24



1 will affect environmental justice communities themselves is arbitrary, capricious, an abuse of  
2 discretion, and otherwise not in accordance with law, in violation of NEPA and the APA, 5  
3 U.S.C. § 706(2).

4 THIRD CLAIM FOR RELIEF

5 Violation of the National Environmental Policy Act and Administrative Procedure Act:  
6 CEQ's Arbitrary and Capricious Decision-Making

7 265. Plaintiffs re-allege, as if fully set forth herein, every allegation contained in the  
8 preceding paragraphs.

9 266. CEQ's issuance of the Final Rule is a "final agency action" subject to judicial  
10 review under the APA. 5 U.S.C. § 704.

11 267. The APA provides that courts must "hold unlawful and set aside agency action,  
12 findings, and conclusions found to be ... arbitrary, capricious, an abuse of discretion, or  
13 otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

14 268. The Supreme Court has clarified that an agency action is arbitrary and capricious  
15 for purposes of the APA "if the agency has relied on factors which Congress has not intended it  
16 to consider, entirely failed to consider an important aspect of the problem, offered an explanation  
17 for its decision that runs counter to the evidence before the agency, or is so implausible that it  
18 could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicles*  
19 *Mfrs v. State Farm*, 463 U.S. 29, 43 (1983). The agency "must examine the relevant data and  
20 articulate a satisfactory explanation for its action including a rational connection between the  
21 facts found and the choice made." *Id.* Moreover, "an agency changing course" is "obligated to  
22 supply a reasoned analysis for the change" beyond what would be required if the agency were  
23 operating on a clean slate. *Id.* at 42; *see also Organized Vill. of Kake v. U.S. Dep't of*  
24 *Agriculture*, 795 F.3d 956, 968 (9th Cir. 2015) ("[E]ven when reversing a policy after an

1 election, an agency may not simply discard prior factual findings without a reasoned  
2 explanation.”).

3       269. When an agency issues a regulation changing or amending a prior regulation, it  
4 faces an even higher burden. The agency must demonstrate that: (1) a new rule is permissible  
5 under the statute; (2) there are good reasons for the change; (3) the agency believes it to be  
6 better; and (4) the agency displays awareness that it is changing its position. *F.C.C. v. Fox*  
7 *Television Stations, Inc.*, 556 U.S. 502, 514-16 (2009) (*Fox*). When a new regulation rests upon  
8 a factual finding contrary to prior policy, an agency must provide a more detailed justification  
9 than what would suffice if the new policy were created on a blank slate. An unexplained  
10 inconsistency between the prior rule and its replacement is a basis for finding the agency’s  
11 interpretation arbitrary and capricious. *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet*  
12 *Servs.*, 545 U.S. 967, 981 (2005). Furthermore, when an agency reverses course and chooses a  
13 new policy direction, it must address how the new policy affects other parties who have relied  
14 upon the old policy to meet their legal obligations; and failing to take account of legitimate  
15 reliance interests is arbitrary and capricious. *Fox*, 556 U.S. at 515-16; *Smiley v. Citibank (South*  
16 *Dakota), N.A.*, 517 U.S. 735, 742, (1996); *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117,  
17 2125-26 (2016).

18       270. In issuing the Final Rule, CEQ violated these fundamental standards. CEQ failed  
19 to make a rational connection between the facts in the record, including comments submitted by  
20 Plaintiffs, and the conclusions it made in the text of the Final Rule, and/or failed to consider an  
21 important aspect of the problem, and/or relied on factors that it should not have considered.

22       271. Promulgation of the Final Rule is also unlawful because CEQ failed to provide a  
23 rational explanation for changes in its longstanding agency practice. For example, the Final Rule  
24

1 glossed over the significance of the many changes to longstanding statutory and judicial  
2 interpretation and packages the Final Rule as “streamlining” and “efficiency” without providing  
3 support in the record for these changes. In fact, the Final Rule will achieve the exact opposite of  
4 its goals, by creating conflict with governing case law, agency regulations and guidance, and  
5 longstanding practices that the public, decision-makers, and the courts have relied upon for the  
6 past four decades. Conflicts like these will slow NEPA implementation, sow public and agency  
7 confusion, and increase litigation, undermining the very goals of efficiency that the Final Rule  
8 claimed to seek to implement.

9 272. The Final Rule is arbitrary, capricious, and not in accordance with law, in  
10 violation of the APA, 5 U.S.C. § 706(2).

#### 11 FOURTH CLAIM FOR RELIEF

##### 12 Violation of National Environmental Policy Act and Administrative Procedure Act: 13 CEQ Exceeded Its Delegated Authority

14 273. Plaintiffs re-allege, as if fully set forth herein, every allegation contained in the  
15 preceding paragraphs.

16 274. CEQ is a federal agency delegated authority to implement NEPA, including by  
17 promulgating interpretive regulations.

18 275. As part of this authority, CEQ may define terms found in NEPA, provided it is  
19 consistent with congressional intent and the purposes of the Act. CEQ may also develop  
20 procedures to guide implementation of NEPA.

21 276. CEQ cannot adopt regulations that are manifestly contrary to the text and purpose  
22 of NEPA.

23 277. Both individually and collectively, provisions in the Final Rule are contrary to  
24 law and the plain language and purpose of NEPA.

1           278. For example, the Final Rule exceeds CEQ’s delegated authority by purporting to  
2 determine whether a party has standing to go to court and challenge violations of NEPA, the  
3 presumptions courts apply in such cases, and other matters that are the province of the judiciary.

4           279. Similarly, the Final Rule exceeds CEQ’s delegated authority and violates NEPA  
5 by authorizing agencies to create bonding and other security requirements as a condition for  
6 public participation in the NEPA process. In enacting NEPA, Congress sought to increase public  
7 participation and input into agencies’ analysis of environmental impacts. The Final Rule’s  
8 bonding requirements impede congressional intent and the purposes of NEPA.

9           280. The Final Rule also dramatically alters the parameters regarding exhaustion of  
10 administrative remedies, stating that “comments or objections of any kind not submitted,  
11 including those based on submitted alternatives, information, and analyses, shall be forfeited as  
12 unexhausted.” While the principles of administrative exhaustion are well known, exceptions to  
13 the principle exist within the case law, such as when an issue arises after the administrative  
14 process about which a party was unaware and therefore could not have commented; the Final  
15 Rule impermissibly purports to preclude this well-known exception.

16           281. Likewise, the Final Rule states that “it is the Council’s intention that the  
17 regulations ... create no presumption that violation of NEPA is a basis for injunctive relief or for  
18 a finding of irreparable harm” and that “it is also the Council’s intention that minor, non-  
19 substantive errors that have no effect on agency decision-making shall be considered harmless  
20 and shall not invalidate an agency action.” The Final Rule is based on an erroneous and  
21 incomplete reading of case law, and impinges upon the role of the judiciary to assess whether a  
22 party has demonstrated irreparable harm and whether a legal violation is “harmless error.”

1 282. Moreover, while CEQ has been delegated an interpretive and implementation role  
2 under NEPA, other agencies have been given no such role. NEPA is a “good government”  
3 statute that regulates, constrains, and imposes obligations on such federal agencies. The Final  
4 Rule purports to authorize federal agencies to self-certify their NEPA compliance that will be  
5 given a conclusive presumption of compliance by federal courts. This provision exceeds CEQ’s  
6 authority under NEPA and intrudes into the province of the judiciary.

7 283. These and other provisions of the Final Rule are inconsistent with the plain  
8 language of NEPA as interpreted by longstanding judicial precedent.

9 284. The Final Rule is arbitrary, capricious, and not in accordance with law, in  
10 violation of the APA, 5 U.S.C. § 706(2).

11 FIFTH CLAIM FOR RELIEF

12 Violation of the Administrative Procedure Act:  
13 CEQ Invalidly Attempted To Amend Thresholds for Judicial Review

14 285. Plaintiffs re-allege, as if fully set forth herein, every allegation contained in the  
15 preceding paragraphs.

16 286. Congress enacted the APA to establish procedures agencies must follow in  
17 promulgating rules. The APA is applicable to all federal agencies.

18 287. CEQ does not have unique authority or expertise in interpreting the applicability  
19 of the APA, and CEQ cannot amend the APA’s statutory thresholds for judicial review through a  
20 rulemaking.

21 288. The Final Rule attempts to eliminate the APA’s failure to act cause of action by  
22 narrowing the definition of “major federal action” such that the NEPA process would not apply  
23 to where a responsible agency official fails to act.



1 (5) Hold unlawful and vacate the Final Rule, reinstating the 1978 regulations, as  
2 amended, in place prior to the enactment of the Final Rule;

3 (6) Enjoin federal defendants from implementing, enforcing, or relying upon the  
4 Final Rule;

5 (7) Award Plaintiffs their reasonable fees, costs, and expenses, including attorneys'  
6 fees; and

7 (8) Grant Plaintiffs such further and additional relief as the Court may deem just and  
8 proper.

9 DATED this 29th day of July, 2020.

10 Respectfully submitted,

11 *s/ Kristen L. Boyles*

12 KRISTEN L. BOYLES (CSBA # 158450)

13 JAN E. HASSELMAN (WSBA # 29017)

14 *[Pro Hac Vice Application Pending]*

15 EARTHJUSTICE

16 810 Third Avenue, Suite 610

17 Seattle, WA 98104

18 (206) 343-7340

19 kboyles@earthjustice.org

20 jhasselman@earthjustice.org

21 SUSAN JANE M. BROWN (OSBA # 054607)

22 *[Pro Hac Vice Application Pending]*

23 WESTERN ENVIRONMENTAL LAW CENTER

24 4107 N.E. Couch St.

25 Portland, OR 97232

26 (503) 914-1323

brown@westernlaw.org

*Attorneys for Plaintiffs*

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GREGORY C. LOARIE (CSBA # 215859)  
EARTHJUSTICE  
50 California Street, Suite 500  
San Francisco, CA 94111  
(415) 217-2000  
gloarie@earthjustice.org

*Local Counsel for Plaintiffs*