

**THE BIDEN ADMINISTRATION'S
EXECUTIVE OVERREACH AND ITS IMPACT
ON AMERICAN ENERGY INDEPENDENCE**

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND
INVESTIGATIONS

OF THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

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**OVERSIGHT HEARING ON THE BIDEN
ADMINISTRATION'S EXECUTIVE OVERREACH
AND ITS IMPACT ON AMERICAN ENERGY
INDEPENDENCE**

**Thursday, May 11, 2023
U.S. House of Representatives
Subcommittee on Oversight and Investigations
Committee on Natural Resources
Washington, DC**

The Subcommittee met, pursuant to notice, at 2:16 p.m. in Room 1334, Longworth House Office Building, Hon. Paul Gosar [Chairwoman of the Subcommittee] presiding.

Present: Representatives Gosar, Rosendale, Hunt, Luna, Westerman; Stansbury, and Lee.

Also present: Representative Huffman.

Dr. GOSAR. Without objection, the Chair is authorized to declare a recess of the Subcommittee at any time.

We are now convening the Subcommittee on Oversight and Investigations, and it will come to order.

The Subcommittee is meeting today to hear testimony on the Biden administration's executive overreach and its impact on American energy independence.

I ask unanimous consent that all Members testifying today be allowed to sit with the Subcommittee, giving their testimony, and participate in the hearing from the dais.

I ask that the gentleman, Mr. Huffman, be allowed to sit with the Subcommittee and participate in the hearing.

No objection, so ordered.

Without objection, the Chair is authorized to declare a recess of the Subcommittee at any time.

Under Committee Rule 4(f), any oral opening statements at the hearings are limited to the Chairman and the Ranking Minority Member. I therefore ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted in accordance with Committee Rule 3(o).

Without objection, so ordered.

**STATEMENT OF THE HON. PAUL GOSAR, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF ARIZONA**

Dr. GOSAR. I want to thank everyone for joining us today for this critically important hearing, especially the witnesses who have taken time out of their day and their jobs just to be here.

Speaking of showing up for your job today, I would like to point out that we are missing a government witness today, CEQ Chairman Brenda Mallory, who declined to attend today's hearing, citing official business travel, appears to be working from Hawaii on a taxpayer-funded junket. While I agree that soaking up the sun

and making grant announcements in Hawaii sounds nicer than answering to Congress, sometimes you just need to face the music.

Today, we are here to discuss the themes of the executive branch, specifically with the current Administration, and what can happen when that branch of government expands its power beyond the scope of its original intent.

America's founders were gravely aware of the dangers of concentrated power, and intentionally designed a system of separating government powers into the legislative, executive, and judicial. In the 20th century, as our nation grew, the size, scope, and the intrusion of the government activity increased exponentially. Today, the size and the breadth of the Federal Government would be unrecognizable to our nation's founders. The growth of the executive branch in both size and power has far outpaced the growth of other branches, and has resulted in more concentrated power and less accountability to the public.

The Biden administration has continued on a relentless march towards expansion, particularly by trying to reimagine the energy sector as a puppet of environmental activism. Instead of attempting to work with Congress and pass legislation, President Biden has ruled by fiat, abusing executive orders to radically restrict America's energy independence. These actions include canceling the construction of an energy pipeline and halting leasing on large swaths of Federal lands for oil and gas production on his first day in office; issuing an executive order that utilized the executive branch as forces for social and cultural movements for the left, rather than good governance; and issuing executive orders that inject principles of environmental justice into nearly all Federal actions.

Time and time again, we have seen President Biden abuse executive authority to promote his radical eco-agenda created by academics and social activists, regardless of the reality on the ground for the American public. The results of President Biden's radical eco-agenda have been catastrophic. We have seen the highest inflation in 40 years, crushing energy prices for American consumers and increased reliance on our foreign adversaries, notably China.

I am certain that my friends on the other side of the aisle will extoll the virtues of these executive orders today, in particular as it relates to climate change and environmental justice. But I ask you: at what cost? The left's race to achieve a clean energy standard is simply unsustainable, at least on the timeline that the Biden administration has set forth. Experts say a quantum leap in science and technology would be necessary to replace carbon-based energy sources on the timeline proposed by the Biden administration. I again ask you: at what cost?

In the United States, we utilize the best available practices, standards, and science in terms of extraction, manufacturing, and labor. The same cannot be said for our counterparts in China, Russia, Venezuela, and the African nations. We have lower greenhouse emissions, stringent labor laws, yet continually seek to move the goal posts, which results in nothing more than outsourcing our resources needs to countries that routinely violate human rights

laws. The last time I checked, benevolent dictators don't really care about permits or anything closely resembling NEPA.

And what happens at home, the end result of all this nonsense? In my district, I can tell you. Some of the most vulnerable, those who identify as environmental justice communities, are still not being heard by this Administration. They are paying more for the few services they do have, and losing out on opportunities for new income streams, like fully utilizing oil and gas allotments on their homelands.

Today, we take the first step at exposing the radical executive overreach of President Biden as we work to reverse course and inject a dose of restraint and reason into America's energy policies. And perhaps most important of all, restore the balance of powers between the executive and legislative branches.

With that, I turn and recognize Ranking Member Stansbury, my neighbor from the Southwest and neighboring New Mexico, for any statement she may have.

**STATEMENT OF THE HON. MELANIE A. STANSBURY, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF
NEW MEXICO**

Ms. STANSBURY. Good afternoon. Thank you, Mr. Chairman, and thank you to all of our witnesses for being here today.

I do want to just take a moment before I make a few statements about the content of today's hearing just to note that, while we are aware that the Administration is unable to join us today, we also want to be clear that the reason why they are unable to join us is there was not sufficient notice given in order for them to be here. So, we look forward to working with the Majority in order to make sure that they can attend a future hearing.

We are going to hear a lot today about domestic energy production. We are going to hear a lot today about permitting, about climate change, and about environmental justice. Why are these topics so important, and why do we continue to have hearings about these?

First and foremost, as we all know, the science is telling us and the latest report from the IPCC has indicated that if we do not take climate action now, our planet is facing a major nexus in terms of potential planetary disaster. And that is why we in the Majority, the Democrats during the last Congress, passed the most significant infrastructure and climate action bills ever in the history of the United States, including the Inflation Reduction Act, which is really aimed at reducing climate emissions by 40 percent by 2030.

But let's talk a little bit about domestic energy production. It is important to understand that over the last 20 years, the United States has actually become the second largest, not only consumer of energy in the world, but the second largest producer of energy in the world. In fact, we have the second highest crude oil production in America ever, and the highest natural gas production ever. And in my home state of New Mexico, in the Permian Basin, we are seeing the highest production ever in the history of our state.

So, the oil and gas industry is not struggling in the United States, and certainly that is not what is driving prices at the pump,

as our colleagues across the aisle would like to have us believe. We are, in fact, coming out of a major global pandemic in which our communities, like probably everyone who is sitting here in this hearing room, spent at least a year, if not more, inside our homes. We were not driving, we were not consuming petroleum products on the level we had historically. And as a result, oil and gas production actually reduced, due to the lack of demand. And also, that affected the price of oil and gas. We then saw, of course, last year Russia invaded Ukraine. That caused another spike in global oil and gas prices. And then there was an effort by OPEC+ and Russia to restrain oil production globally. All of these global forces have affected the global supply and demand of oil and gas, which drives the prices at the pump.

Our President, this Administration, and the Congress that is sitting before you have done everything we can within our toolbox to try to address these issues so that we can lower prices at the pump for Americans. But at the end of the day, much of this is outside of the power of the individuals who are sitting on this dais or are sitting at the other end of Pennsylvania Avenue.

I think it is crucial as part of this conversation to acknowledge we are going to hear a lot today, probably, about permitting and leasing, that because of the limitations on our ability to affect global oil and gas prices, the argument that, ultimately, at the end of the day, what is constraining prices at the pump is leasing on public lands is just factually untrue. Really, at the end of the day, what it is about and what is driving that argument is the desire by the oil and gas industry to make future oil and gas leases in order to keep their business plans afloat, especially as there has been consolidation in the industry and over-capitalization. It is not a permitting problem. It is not a leasing problem. So, it is crucial that we stay focused on the facts.

Now, the reason why the Administration has advanced multiple efforts in this Congress, this past Congress under Democratic leadership has advanced environmental justice initiatives is because our communities for far too long have borne the brunt of development of our oil and gas and other natural resources without seeing the benefits of those. So, it is crucial that we ensure, as we are investing in a more sustainable transition, a more climate-just future that our communities have the opportunity to get access to those resources, that they are able to plan for their own future, and to determine what they would like to see as their own economic future for their communities.

I want to thank our witnesses once again for being here. We are fortunate to be joined by one of our nation's foremost experts on NEPA, which is one of the environmental policy bills that we are going to discuss today.

And I just want to end by saying that we know that we have to take climate action now, and it is our job to ensure that we create a more sustainable, a more just, and a more equitable future for our communities.

Thank you, Mr. Chairman, and I yield back.

Dr. GOSAR. I thank the gentlelady from New Mexico. I have to correct the lady from New Mexico. We did give 2 weeks' notice as required. They just said that she had travel plans. So, they are not

entitled to their facts; those are the facts. She was given ample time.

I now want to turn to the Full Committee Chair, Mr. Westerman, for his opening statement.

STATEMENT OF THE HON. BRUCE WESTERMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. WESTERMAN. Good afternoon, everyone, and thank you to Subcommittee Chairman Gosar for holding this important hearing today, as well as the witnesses and Members for their time and for showing up.

And speaking of showing up, we have a key witness who declined to attend today. And again, that is Brenda Mallory, the Chair of the Council of Environmental Quality. And this is not the first time we have had issues with attendance from CEQ, although her office did note she looks forward to showing up soon. But I am not holding my breath. Apparently, she is tweeting from Hawaii today instead of being here with us. And all I can say is we are working closely with the Appropriations Committee and looking at their budget every chance we get. I am sure Hawaii is fun, but it is not a valid reason to skip coming here and taking care of the people's business.

Decisions made by CEQ have real impacts on American families, and it is time to face those facts. As of this morning, the average price of gasoline was \$3.53 a gallon. That is nearly a full dollar higher than when President Trump left office. If last summer is any indication, this number will skyrocket right as families begin to head out on road trips. And speaking of road trips, the price of a new car is a whopping \$48,000, and even used car prices average around \$26,500. And I would like to note for the record that the average cost of a new vehicle right now is higher than the median household income in my hometown of Hot Springs, Arkansas.

So, why is this relevant to our discussion? The Biden administration continues repeating the same talking points about the need to invest in infrastructure, underserved communities, and social and environmental justice. Time and again, these lofty words result in more red tape, bigger bureaucracies, and higher prices for American families. It is all talk with not any action in the right direction.

Look no further than the dramatic growth of the Council on Environmental Quality, commonly known as CEQ, in both size and mission creep. From 2019 to 2023, CEQ's baseline budget increased by 63 percent, in addition to receiving a massive cash infusion from the Inflation Reduction Act to further inject radical environmental justice initiatives in the government. Those taxpayer dollars still haven't been spent, yet President Biden's latest budget request calls for even more money to CEQ.

Despite this Administration's best efforts, we can never spend our way out of the problems that America is facing. We need proactive, long-term solutions to get our economy back on track, to shore up our national security, and hold Federal agencies accountable. House Republicans have already advanced many of those solutions this Congress, and we remain committed to turning over

every stone and ensuring taxpayer dollars aren't going to waste here in DC.

CEQ and our current permitting processes, primarily through NEPA, blanket the American energy sector in red tape. And I said the American energy sector, not just oil and gas, but the entire sector. It is keeping shovel-ready projects and good-paying jobs on the back burner, while bureaucrats twiddle their thumbs. Just last week, the editorial board of *The New York Times*, that is *New York Times*, not *Wall Street Journal*, described the red tape for energy transmission projects as "a jumble of approval processes" that "causes environmental damage." Given the length of time it takes to get new projects reviewed and approved to fix the mess, the *Times* editors called for decisive action to reform "unnecessarily cumbersome regulations," including NEPA.

I couldn't agree more. Our own regulations are killing us. I have often used the illustration of Aesop's fable of the eagle that was flying high overhead, and he was struck by an arrow, and as he fluttered to the ground with his lifeblood pouring out, he looked back at the arrow and said, "Alas, I have been mortally wounded by an arrow that is feathered with my own plume." That is what we are doing to ourselves in this country. We are killing our country with our own means, and I can't figure out for the life of me for what reason, because it is not doing anything to help the environment. It is certainly not helping the economy. And I don't understand the purpose or the reason behind these actions.

And that is why we passed H.R. 1, the Lower Energy Costs Act, and that is why we have continued advancing solutions to get our country back on track. Our businesses, families, our communities, and America deserve better, and that is what we are going to continue working to make sure that this country stays strong, that this country continues to lead the world in environmental stewardship, in human rights, and that we can lead the world in energy and manufacturing, and be an example instead of being a donor to countries like China and to OPEC that our current policies are making us dependent on.

With that, Mr. Chairman, I yield back.

Dr. GOSAR. I thank the Chairman for his opening statement, and now I am going to introduce our witnesses.

First, we have Ms. Diana Furchtgott-Roth. Did I say that right?

Ms. FURCHTGOTT-ROTH. Yes.

Dr. GOSAR. Bingo. Director, Center of Energy, Climate, and Environmental Policy, The Heritage Foundation.

A personal friend of mine, Mr. Jeremy Harrell, Chief Strategy Officer from ClearPath.

Good to see you, Jeremy.

Ms. Jamie Pleune, Associate Professor, S.J. Quinney College of Law, University of Utah.

Thank you.

And Mr. Kenny Stein, Director of Policy, Institute for Energy Research.

Let me remind the witnesses that under Committee Rules, they must limit their oral statements to 5 minutes, but their entire statement will appear in the hearing record.

To begin your testimony, please push the “on” button so we can hear you.

We use timing lights. When the light turns green, you have 5 minutes. When it turns yellow, you have 1 minute. And when it turns red, please summarize and try to complete your statement.

I will also allow all witnesses to testify before Members’ questioning.

I now recognize Ms. Furchtgott-Roth for 5 minutes.

**STATEMENT OF DIANA FURCHTGOTT-ROTH, DIRECTOR,
CENTER FOR ENERGY, CLIMATE, AND THE HERBERT AND
JOYCE MORGAN FELLOW IN ENERGY AND ENVIRONMENTAL
POLICY, THE HERITAGE FOUNDATION, CHEVY CHASE,
MARYLAND**

Ms. FURCHTGOTT-ROTH. Thank you very much. Chairman Westerman, Chairman Gosar, Ranking Member Stansbury, and members of the Subcommittee, I am honored to be invited to testify before you today.

Creeping executive overreach not envisaged by Congress in the original messages or purposes of cabinet agencies is driving up the price of energy and energy-related products. This is raising automotive and electricity costs for all Americans, and poor and middle-class Americans are disproportionately paying the price. This is not environmental justice or any kind of justice to have to pay higher prices for necessities such as electricity, gasoline, and cars. Led by the White House, mission creep can be found at many agencies, including the Environmental Protection Agency, the Council on Environmental Quality, the Office of the Comptroller of the Currency, the Securities and Exchange Commission, and the Federal Energy Regulatory Commission.

President Biden’s higher prices for electricity and transportation bring no climate benefits. Even completely eliminating all fossil fuels from the United States would result in less than $\frac{2}{10}$ of 1 degree Celsius in temperature mitigation by the year 2100, according to research using EPA’s own climate models. So, these higher prices are all for nothing.

EPA’s attempt to regulate regional emissions through a novel attempt of the Clean Air Act, known as the Clean Power Plan, was deemed executive overreach by the Supreme Court in *West Virginia v. EPA*. Creeping executive branch oversight of energy started on the first day in office, when President Biden revoked the permit for Keystone XL pipeline. In August 2021, the President issued an executive order that, by 2030, half of new vehicles sold in the United States must be electric, including fuel cell electric plug-in hybrids and full battery electric.

Last month, EPA proposed costly regulations on automobile emissions that would require new car sales to be 60 percent battery powered electric by 2030 and 67 percent by 2023, compared to fewer than 6 percent in 2022. This will make cars more expensive, less safe, and cost American auto workers jobs. United Auto Workers President Shawn Fain came out on April 26 saying, “Shame on Congress for doing this, shame on the President for doing this,” because it is costing his workers jobs. Stellantis is laying off 3,500 people. They closed a plant in Illinois in December.

The Office of the Comptroller of the Currency, which regulates banks, has appointed a Chief Climate Risk Officer to assess and monitor climate-driven risks to banks. This is going to discourage investment in fossil fuels, and will allow the investigations of companies and banks that OCC believes are making the wrong investment.

The Council on Environmental Quality issued new guidance on January 9, 2023 requiring Federal agencies to use the NEPA process to reduce emissions from greenhouse gases. That means that projects that result in higher greenhouse gas emissions will find it harder to get NEPA approval. The guidance takes effect immediately, without even waiting for CEQ to address comments from the public and regulated industries. Some agencies are including in their compliance with NEPA factors, factors that Congress did not originally intend. This is an example of harmful arbitrary and capricious policy.

The Securities and Exchange Commission also wants to stick its fingers into energy production. SEC Chairman Gary Gensler has proposed rules to require companies to disclose information about government and management of climate risks, making it more difficult to get approval for fossil fuel investments. Meanwhile, China is increasing its construction of coal-fired power plants. America has 225 and China has 1,118. China has increased carbon emissions by over 5,000 million metric tons over the past 16 years; the United States has reduced it by about 1,000 million metric tons.

Americans, particularly the poor and middle class, are bearing the costs in higher electricity prices, higher food prices, and a forced switch to electric vehicles without benefits for the environment. This is not environmental justice, social justice, or any kind of justice.

Thank you very much.

[The prepared statement of Ms. Furchtgott-Roth follows:]

PREPARED STATEMENT OF DIANA FURCHTGOTT-ROTH, DIRECTOR, CENTER ON ENERGY, CLIMATE, AND ENVIRONMENT AND THE HERBERT AND JOYCE MORGAN FELLOW IN ENERGY AND ENVIRONMENTAL POLICY, THE HERITAGE FOUNDATION

My name is Diana Furchtgott-Roth. I am the director of the Center for Energy, Climate, and Environment at The Heritage Foundation. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

Chairman Gosar, Ranking Member Stansbury, Members of the Subcommittee, I am honored to be invited to testify before you today on the subject of, "The Biden Administration's Executive Overreach and Its Effect on American Energy Independence."

In addition to my role at The Heritage Foundation, I am also an adjunct professor of economics at George Washington University. My professional training is in economics. From 2019 to 2021, I was deputy assistant secretary for research and technology at the U.S. Department of Transportation. Previous positions include acting assistant secretary for economic policy at the U.S. Department of the Treasury; chief economist at the U.S. Department of Labor; chief of staff of the Council of Economic Advisers under President George W. Bush; and deputy executive secretary of the Domestic Policy Council under President George H.W. Bush.

In the last State of the Union, President Biden said, "The climate crisis doesn't care if your state is red or blue. It [the climate crisis] is an existential threat."¹ The

¹President Joe Biden, State of the Union Address, February 7, 2023, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/02/07/remarks-of-president-joe-biden-state-of-the-union-address-as-prepared-for-delivery/> (accessed May 8, 2023).

President has used the so-called existential climate crisis to expand dramatically the power of different executive branch agencies with the object of reducing greenhouse gas emissions.

This creeping overreach, not envisaged by Congress in the original missions or purposes of these agencies, has driven up the price of energy and energy-related products. A runaway government is trying to control our lives for no apparent benefit, but guaranteeing impoverishment of opportunity, safety and security. Government is sticking its fingers into every aspect of our lives, making it more difficult and more expensive to get ahead. By creeping over the limits on its power, government is switching off the power for growth.

Some government agencies noted for mission creep include, but are not limited to: the Environmental Protection Agency, the Council on Environmental Quality, the Office of Comptroller of the Currency, the Securities and Exchange Commission, the Federal Energy Regulatory Commission, and the White House itself.

Overreach is sometimes used when Congress declines to pass a bill into law. Rather than accept the status quo, the president takes matters into his own hands with rules or guidance from executive branch agencies. The result is policies outside of congressional authorization. In this case, poorly-considered policies are forcing all Americans to pay more for electricity and transportation, for little or no benefit—because the new regulations will have a minimal effect on global temperatures. These costs are falling disproportionately on poor and middle-class Americans, many of whom voted for President Biden, who pay a higher share of their income in food and energy costs.

Sadly, there are many examples of regulatory overreach.

The Environmental Protection Agency's attempt to regulate regional emissions through a novel interpretation of the Clean Air Act, known as the Clean Power Plan,² proposed in 2015 under President Barack Obama, was deemed executive overreach by the Supreme Court in *West Virginia v. Environmental Protection Agency*. Ruling 6-3 on June 30, 2022, the Supreme Court decided that the Clean Air Act does not allow the EPA to move from regulating individual power plants to regulating regional emissions.

Although the Clean Air Act allows the EPA to set maximum levels of new and existing emissions sources, the Clean Power Plan³ went further. If emissions exceeded the EPA's requirements, a state, or group of states, would be required to shut down power plants or to install renewable energy sources. The plan was similar to the American Clean Energy and Security Act, introduced by Democratic Congressmen Henry Waxman and Edward Markey in 2009, and the American Power Act, introduced by Senators John Kerry and Joe Lieberman in 2010. Neither bill became law, despite sizable Democratic majorities in both chambers.

The opinion in *West Virginia v. Environmental Protection Agency*, written by Chief Justice John Roberts, cited the major questions doctrine, according to which Congress must “speak clearly if it wishes to assign to an agency decisions of vast economic and political significance.”⁴ Writing for the majority, Chief Justice Roberts stated that “EPA claimed to discover an unheralded power representing a transformative expansion of its regulatory authority in the vague language of a long-extant, but rarely used, statute designed as a gap filler. That discovery allowed it to adopt a regulatory program that Congress had conspicuously declined to enact itself.”⁵ Justice Neil Gorsuch elaborated on the major questions doctrine in a concurring opinion, writing, “The framers believed that the power to make new laws regulating private conduct was a grave one that could, if not properly checked, pose a serious threat to individual liberty.”⁶

The case has far-reaching implications for other agencies that could currently be exceeding their statutory limits. The Securities and Exchange Commission, for example, has proposed requirements for companies to disclose their exposure to climate risk and to provide details about the climate effects of their operations. The Office of the Comptroller of the Currency has appointed a chief climate risk officer who has decided to do the same.

Executive overreach could also be occurring in other areas. Courts are in the process of examining whether the Department of Education can unilaterally cancel or reduce student loans. Meantime, the National Labor Relations Board is considering making franchise businesses such as McDonald's accountable for the actions

² *Federal Register*, Vol. 80, No. 205 (October 23, 2015), pp. 64661–65120, <https://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22842.pdf> (accessed May 9, 2023).

³ *Ibid.*

⁴ *West Virginia et al. v. Environmental Protection Agency et al.*, 597 U.S. (2022).

⁵ *Ibid.*

⁶ *Ibid.*

of local franchises. Such rules could find themselves on the wrong side of the Court’s approach, which found the EPA’s rulemaking to be an example of “agencies asserting highly consequential power beyond what Congress could reasonably be understood to have granted.”⁷ If the Court had found the other way, EPA could have changed the entire vehicle fleet to electric vehicles through a change in a regulation.

When federal agencies exceed their authority, opportunities for ordinary people are stifled. Severe, government-imposed cuts in carbon emissions raise the cost of electricity and American-made goods. Under the Clean Power Plan, some states or groups of states would have had to meet EPA targets by ensuring plants cut emissions or by financing reductions in other ways, such as suppressing consumer demand or investing in more costly renewable energy. In any case, carbon emissions are declining naturally without the plan. Emissions of energy-related carbon dioxide declined by 18 percent from 2007 to 2021, according to the Energy Information Administration.⁸ Between 2014, when the Clean Power Plan was proposed, and 2021, four years after the Trump administration rescinded it, these emissions fell by 9 percent.⁹

Creeping executive branch oversight of energy started early in the Administration. On his first day in office, President Biden revoked the permit for the Keystone XL pipeline, which would have brought 850,000 barrels of oil per day from Canada to be refined in U.S. refineries.¹⁰ This reduced energy independence, and higher gasoline prices and inflation soon followed. President Biden the following year asked Saudi Arabia and Venezuela to produce more oil. In addition to eliminating the Keystone XL pipeline, President Biden has reduced oil and gas production¹¹ by expanding the boundaries of the Grand Staircase-Escalante, Bears Ears, Northeast Canyons, and Seamounts Marine National Monuments, preventing oil and natural gas production in those areas.¹²

On August 5, 2021, President Biden issued an Executive Order¹³ setting a goal that by 2030 half of new vehicles sold in the United States must be electric, including fuel cell electric, plug-in hybrids, and full battery electric. According to President Biden,¹⁴ the Executive Order will “improve our economy and public health, boost energy security, secure consumer savings, advance environmental justice, and address the climate crisis.” On the contrary, the Executive Order will raise costs for Americans, and poor and middle-class people disproportionately would pay the price.

The president’s 2021 announcement coincided with the August 11 meeting of the California Air Resources Board,¹⁵ which discussed draft regulations to implement Governor Gavin Newsom’s Executive Order¹⁶ that all new vehicles sold in the Golden State be electric by 2035 and a ban on the sale of diesel trucks by 2036. Through regulations and executive orders, President Biden wants to follow the lead¹⁷ of California and other states seeking to reduce emissions—laws that Congress would not pass.

⁷ Ibid.

⁸ U.S. Energy Information Administration, “U.S. Energy-Related Carbon Dioxide Emissions, 2021,” Figure 2, December 14, 2022, <https://www.eia.gov/environment/emissions/carbon> (accessed May 9, 2023).

⁹ Ibid.

¹⁰ Joseph R. Biden, Jr., “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” Executive Order 13990, January 20, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/> (accessed May 9, 2023).

¹¹ *Federal Register*, Vol. 86, No. 14 (January 25, 2021), pp. 7037–7043, <http://www.federalregister.gov/documents/2021/01/25/2021-01765/protecting-public-health-and-the-environment-and-restoring-science-to-tackle-the-climate-crisis> (accessed May 9, 2023).

¹² Ibid.

¹³ Joseph R. Biden, Jr., “Strengthening American Leadership in Clean Cars and Trucks,” Executive Order 14037, August 5, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/08/05/executive-order-on-strengthening-american-leadership-in-clean-cars-and-trucks/> (accessed May 9, 2023).

¹⁴ Ibid.

¹⁵ California Air Resources Board, “Public Workshop on Advanced Clean Cars II,” <https://ww2.arb.ca.gov/events/public-workshop-advanced-clean-cars-ii-0> (accessed May 9, 2023).

¹⁶ Executive Department State of California, “Executive Order N-79-20,” <https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-Climate.pdf> (accessed May 9, 2023).

¹⁷ Press Release, “Fact Sheet: President Biden Announces Steps to Drive American Leadership Forward on Clean Cars and Trucks,” The White House, August 5, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/05/fact-sheet-president-biden-announces-steps-to-drive-american-leadership-forward-on-clean-cars-and-trucks/> (accessed May 9, 2023).

The Environmental Protection Agency followed with new proposed regulations¹⁸ on automobile emissions from the Environmental Protection Agency would require new car sales to be 60% battery powered electric by 2030 and 67% by 2032, compared to fewer than 6% in 2022. EPA is also planning new rules for power plants,¹⁹ driving up the costs of the electricity needed to charge these vehicles. These rules again would raise driving costs for Americans, and poor and middle-class Americans disproportionately would pay the price.

New electric vehicles cost more than gasoline-powered vehicles. The electric version of the base version of the Ford 150 pickup truck, the best-selling vehicle in America, costs an additional \$26,000.²⁰ Tesla's base prices start at about \$40,000 for a Model 3 and go up to almost \$100,000 for a Model X.²¹ These are staggering costs to impose on American families.

Charging will also cost more. At the same time as EPA issuing new rules for automobile emissions, it is also planning new rules for emissions from power plants, *The New York Times* has reported.²² According to the reports, EPA will regulate carbon dioxide and other so-called greenhouse gas emissions from both new and existing natural gas and coal-fired power plants, and require carbon capture systems or a switch to hydrogen fuels. These systems for capturing carbon are costly and will be passed on to consumers in the form of higher electricity rates. Drivers will find it more expensive to use electricity for all purposes, including charging their electric vehicles, harming poor and middle-class drivers the most.

Three-quarters of vehicles sold are previously owned cars.²³ In 2019, the last year for which complete data on used car sales are available, Americans bought 41 million used cars and 13 million new cars.²⁴ But people do not want to buy used electric vehicles, because it is difficult to evaluate how long the battery will last. Replacing an EV battery can cost anywhere from \$5,000 to \$20,000.²⁵ The poor and the middle class will suffer most from higher prices for used vehicles, because they cannot afford the new electric vehicles.

Mandating electric vehicles would reduce Americans' standard of living. Back in the early 1900s, when Henry Ford started producing cars, only rich Americans could afford them. Throughout the 20th century cars became less expensive, and many households could afford not one but two. Cars are already becoming more expensive, and the proposed rule accelerates that trend, taking America back a century, when new cars were only for the rich.

Recharging an electric vehicle from empty can take over an hour, compared to 5 minutes to fill up with gas.²⁶ If there is a line to use the charging station the wait can double. Manufacturers suggest not allowing EV batteries to go below 20%, and the charging rate goes down when it is charged over 80%.²⁷ Throughout America the poor rarely have access to indoor garages for overnight charging, and in most large cities, such as New York City, the middle-class also have no access to indoor

¹⁸U.S. Environmental Protection Agency, "Notice of Proposed Rulemaking: Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles," <https://www.epa.gov/system/files/documents/2023-04/lmdv-multi-pollutant-emissions-my-2027-nprm-2023-04.pdf> (accessed April 28, 2023).

¹⁹Valerie Volcovici, "Biden EPA to Issue Power Plant Rules That Lean on Carbon Capture," Reuters, April 24, 2023, <https://www.reuters.com/business/sustainable-business/biden-epa-issue-power-plant-rules-that-lean-carbon-capture-2023-04-23/> (accessed April 28, 2023).

²⁰Ford Motor Company, Models & Specs, 2023 F-150 XL, <https://www.ford.com/trucks/f150/models/?gnav=vhpnav-specs> (accessed April 28, 2023); and Ford motor Company, Models & Specs, 2023 F-150 Lightning PRO, <https://www.ford.com/trucks/f150/f150-lightning/models/?gnav=vhpnav-specs> (accessed April 28, 2023).

²¹Tesla, Model 3, Purchase Price, <https://www.tesla.com/model3/design#overview> (accessed April 28, 2023); and Tesla, Model X, Purchase Price, <https://www.tesla.com/modelx/design#overview> (accessed April 28, 2023).

²²Coral Davenport and Lisa Friedman, "E.P.A. to Propose First Controls on Greenhouse Gases from Power Plants," *New York Times*, updated April 27, 2023, <https://www.nytimes.com/2023/04/22/climate/epa-power-plants-pollution.html> (accessed April 28, 2023).

²³Mathilde Carlier, Statista, New and Used Light Vehicle Sales in the United States, 2010 to 2021, <https://www.statista.com/statistics/183713/value-of-us-passenger-cas-sales-and-leases-since-1990/> (accessed April 28, 2023).

²⁴U.S. Department of Transportation, Bureau of Transportation Statistics, New and Used Passenger Car and Light Truck Sales and Leases Data Set, 1990 to 2021, <https://www.bts.gov/content/new-and-used-passenger-car-sales-and-leases-thousands-vehicles> (accessed April 28, 2023).

²⁵Recurrent, "Updated: Electric Car Battery Replacement Costs," March 26, 2023, <https://www.recurrentauto.com/research/costs-ev-battery-replacement> (accessed April 28, 2023).

²⁶Lazar, "How Long Does It Take to Refuel a Gasoline Car?" GasAnswer, <https://gasanswer.com/how-long-take-refuel-gasoline-car/> (accessed April 28, 2023).

²⁷Sebastian Blanco, "How to Maximize EV Range," J.D. Power, July 20, 2022, <https://www.jdpower.com/cars/shopping-guides/how-to-maximize-ev-range> (accessed April 28, 2023).

charging. Using charging stations on the street, if available, risks theft of expensive charging cables.

Battery-powered vehicles lack sufficient range to satisfy most customers. Although 60 to 70 miles of range is enough for most trips, people buy cars for all circumstances, including long trips and cold weather. Batteries lose up to 40% of their range in cold climates and manufacturers suggest using heating systems.²⁸ A study by Autocar²⁹ shows that electric vehicles lose, on average, a third of their range in the winter, which reduces the typical 240-mile range to 160 miles. If a heat pump is added to the car, the loss is less, but still the 240-mile range would shrink to 180.

Car results varied. The Fiat 500 42kWh Icon lost 40% of its range in the winter.³⁰ The Ford Mustang Mach-E Extended Range RWD lost 35%, and the Porsche Taycan 4S Performance Battery Plus, with heat pump, lost 22% (the Taycan costs between \$83,000 and \$166,000).³¹

The loss of range in cold weather is one reason why, at the end of 2021, the latest full year available, North Dakota had 380 electric vehicle (EV) registrations, the fewest in the United States, according to the Energy Department.³² North Dakota will receive \$26 million for charging stations, according to the Department of Transportation,³³ or \$68,000 per registered EV. Wyoming, with \$27 million and 510 EVs, gets \$53,000 per EV.³⁴ South Dakota, with \$29 million, had 680 vehicles, and will collect \$43,000 per vehicle.³⁵ Alaska had 1,290 registered electric vehicles (EVs). Alaska will get \$52 million³⁶ of the \$7.5 billion that the new Infrastructure Investment and Jobs Act allocates to states for electric charging stations.³⁷ That works out to more than \$40,000 per electric vehicle. These funds could be saved or put to better use.

Minerals such as lithium and cobalt are essential for batteries. Mining for these minerals is energy-intensive, and the Chinese Communist Party (CCP) has substantial access to global mineral sources for battery production, resulting in a loss of American independence. Lithium is mined in western China's Qinghai Province, aided by government funding, and China purchases cobalt for electric batteries from Kisanfu, in the Democratic Republic of Congo.³⁸ Our federal government makes opening new mines in the United States virtually impossible, even though the jobs generated would help all Americans, particularly the poor and the middle class. Thus, the rule will result in a massive increase in mining in countries that have no respect for the environment or human welfare. The mining of minerals as a result of the rule will be bad for the environment and is frequently performed by child workers.

The Council on Environmental Quality, part of the Executive Office of the President, issued new guidance³⁹ on January 9, 2023, requiring federal agencies to use the National Environmental Policy Act (NEPA) process to reduce emissions from greenhouse gases. That means that projects that result in higher greenhouse gas

²⁸ Ellen Edmonds, "Icy Temperatures Cut Electric Vehicle Range Nearly in Half," AAA News Room, February 7, 2019, <https://newsroom.aaa.com/2019/02/cold-weather-reduces-electric-vehicle-range/> (accessed April 28, 2023).

²⁹ Move Electric, "Electric Vehicle Range Test Reveals Up to 20% Drop in Winter," Autocar, March 17, 2022, <https://www.autocar.co.uk/car-news/move-electric/electric-vehicle-range-test-reveals-20-drop-winter> (accessed April 28, 2023).

³⁰ Ibid.

³¹ Ibid.

³² U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Electric Vehicle Registrations by State Data Set, updated June 2022, <https://afdc.energy.gov/data/10962> (accessed April 28, 2023).

³³ U.S. Department of Transportation, Federal Highway Administration, 5-Year National Electric Vehicle Infrastructure Funding by State Data Set, FY 2022 to FY 2026, updated September 13, 2022, https://www.fhwa.dot.gov/bipartisan-infrastructure-law/evs_5year_nevi_funding_by_state.cfm (accessed April 28, 2023).

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ News Release, "President Biden, U.S. Department of Transportation Releases Toolkit to Help Rural Communities Build Out Electric Vehicle Charging Infrastructure," U.S. Department of Transportation, February 2, 2022, <https://www.transportation.gov/briefing-room/president-biden-us-department-transportation-releases-toolkit-help-rural-communities> (accessed April 28, 2023).

³⁸ Dionne Searcey, Michael Forsythe, and Eric Lipton, "A Power Struggle Over Cobalt Rattles the Clean Energy Revolution," *New York Times*, December 7, 2021, <https://www.nytimes.com/2021/11/20/world/china-congo-cobalt.html> (accessed April 28, 2023).

³⁹ *Federal Register*, Vol. 88, No. 5 (January 9, 2023), pp. 1196–1212, <https://www.federalregister.gov/documents/2023/01/09/2023-00158/national-environmental-policy-act-guidance-on-consideration-of-greenhouse-gas-emissions-and-climate> (accessed May 9, 2023).

emissions will find it harder to get NEPA approval. The guidance takes effect immediately, without waiting for CEQ to address the comments. Some agencies are including in their compliance with NEPA factors that Congress did not originally intend. This is an example of a harmful, arbitrary, and capricious policy.

Other Executive Branch agencies are deviating from traditional roles of approving investments and instead are slowing production and transportation of oil and natural gas. For instance, the Federal Energy Regulatory Commission proposed a new policy⁴⁰ on February 17, 2022, that would have made it even harder to put new pipelines in place to carry oil and gas from the interior of the country to the coasts, where it can be exported. FERC was intending to “consider a proposed project’s impacts on existing pipelines” as well as the environmental effects of the new pipeline. The February 2022 policy statement was pulled back and deemed a “draft” in March 2022 due to public pressure.

Even though the policy statements have been downgraded to “draft” status, they have not been officially withdrawn, and regulatory uncertainty at FERC is slowing the development of pipelines. Last week FERC Commissioner James Danly said at a hearing before the Senate Committee on Energy and Natural Resources, “The consequences of premature retirements and resource scarcity are even more acute when you consider the constraints on natural gas supply resulting from the underdevelopment of interstate natural gas infrastructure—again, driven by the FERC’s maladministration of the Natural Gas Act. Although I am genuinely delighted that the Commission has recently increased the pace of natural gas pipeline reviews, the policies FERC recently sought to promulgate have had the very effects I predicted at last year’s hearing: according to the Energy Information Administration, 2022 saw the lowest quantity of additional capacity added to the natural gas pipeline system since 1995, the obvious result of the FERC’s slow walking natural gas pipeline applications over the last two years and the chilling effect of the regulatory uncertainty created by the Commission’s issuances. Interstate natural gas infrastructure is absolutely critical: as coal, nuclear and hydroelectric generators retire due to subsidies and public policy choices, the need for natural gas to ensure system reliability continues to grow.”⁴¹

The Interior Department has issued a Report on the Federal Oil and Gas Leasing Program,⁴² calling for fewer leases, higher royalties from oil and gas leases, and a more thorough bidding process to screen buyers. It proposed that oil and gas drilling not be a priority, and its recommendations would make it more difficult to drill. This interference with America’s energy production makes it more difficult for companies to flourish and consumers to get affordable energy.

In the finance area, outside of its statutory authority, the Securities and Exchange Commission wants to stick its fingers into energy production. SEC Chairman Gary Gensler has proposed rules⁴³ to require companies to disclose information about the following: governance and management of climate-related risks; how climate related risks will affect companies’ strategy and outlook; and the effects of climate events such as hurricanes and wildfires on financial statements. This rule would reduce America’s energy independence and make it more difficult to get capital for fossil fuel investments.

The Office of the Comptroller of the Currency, which regulates banks, has appointed a Chief Climate Risk Officer to assess and to monitor climate-driven risks to banks. Dr. Yue Chen does not have a background in risk assessment. She is an engineer, with a bachelor’s degree in chemical engineering from Tsinghua University in China and a Ph.D. in chemical engineering from the Massachusetts Institute of Technology.⁴⁴ Monitoring climate risks to bank lending and assets will have the effect of discouraging investments in fossil fuels and will allow the investigation of companies and banks that it believes are making the wrong investments.

⁴⁰ Federal Energy Regulatory Commission, “Fact Sheet: Updated Pipeline Certificate Policy Statement (PL18-1-000),” updated February 17, 2022, <http://www.ferc.gov/news-events/news/fact-sheet-updated-pipeline-certificate-policy-statement-pl18-1-000> (accessed May 9, 2023).

⁴¹ James P. Danly, testimony before Committee on Energy and Natural Resources, U.S. Senate, May 4, 2023, <https://www.energy.senate.gov/services/files/0A896B12-2895-4F68-A367-74009F2975C4> (accessed May 9, 2023).

⁴² *Federal Register*, Vol. 86, No. 14.

⁴³ Press Release, “SEC Proposes Rules to Enhance and Standardize Climate-Related Disclosures for Investors,” U.S. Securities and Exchange Commission, March 21, 2022, <https://www.sec.gov/news/press-release/2022-46> (accessed May 9, 2023).

⁴⁴ News Release, “OCC Announces Chief Climate Risk Officer,” Office of the Comptroller of the Currency, September 12, 2022, <https://www.occ.gov/news-issuances/news-releases/2022/nr-occ-2022-110.html> (accessed May 9, 2023).

The Defense Department, whose mission is to defend the United States, wants to use biofuels to make its military vehicles and jets more climate friendly. Such vehicles are less resilient and more costly, so the Pentagon would be able to afford fewer of them, with major effects on national security.

The Federal Trade Commission is considering investigating oil and gas companies for price gouging—even though people know that lower supply always leads to higher prices.

With prices of new and used cars higher, the biggest loser from runaway government is the American consumer, who will purchase fewer new cars, which have additional safety features and better fuel economy. More people will be injured or killed in car crashes. Mandating electrics won't solve problems of environmental justice. Requiring sales of electric vehicles discriminates against low-income Americans who cannot as easily afford expensive electric cars. Upper-income urban Americans buy Teslas; lower-income rural Americans buy pickup trucks and large vehicles. Mandating sales of electrics helps the rich and hurts the poor.

In April Stellantis announced that it would be offering buyouts to 33,500 hourly and white-collar workers in an attempt to cut 3,500 jobs due to its planned transition to electric vehicles.⁴⁵ It closed a plant in Illinois in December. General Motors and Ford are also laying off workers as part of their move to make more battery-powered vehicles.

United Auto Workers president Shawn Fain said in a statement on April 26, “Stellantis’ push to cut thousands of jobs while raking in billions in profits is disgusting. This is a slap in the face to our members, their families, their communities, and the American people who saved this company 15 years ago. Even now, politicians and taxpayers are bankrolling the electric vehicle transition, and this is the thanks the working class gets. Shame on Stellantis.”⁴⁶

Americans’ jobs in the oil and gas fields are being sacrificed to Chinese nationals (sometimes with forced labor) making wind turbines and solar panels. Americans’ jobs in auto plants are being sacrificed to Chinese nationals (sometimes with forced labor) making batteries and electric vehicle components.

As well as taking away Americans’ choice of cars, the Department of Energy wants to regulate a variety of other appliances, depriving Americans of the ability to have a gas stove.⁴⁷ Poor and middle-class people will be disproportionately paying the price for these rules, both proposed and enacted.

Renewables raise the costs of electricity, which disproportionately affects the poor and middle class. President Biden’s plan to transition away from fossil fuels is making the United States weaker and China stronger. This will have no noticeable effects on global temperatures, using the Model for the Assessment of Greenhouse Gas Induced Climate Change developed by researchers at the EPA, which is used for such calculations at the Heritage Foundation.

Government overreach is reducing America’s energy independence and strengthening China, which makes nearly 80% of the world’s electric batteries,⁴⁸ over 80% of global solar panels,⁴⁹ and almost 60% of wind turbines.⁵⁰

This is especially troubling because the Chinese Communist Party (CCP) is a totalitarian regime which has a poor record both on the environment and on human rights. Beijing is engaged in genocide against the minority Uyghur people of Xinjiang and has imposed draconian restrictions on political freedoms in Hong Kong.⁵¹ The CCP has reduced or eliminated religious liberties for Christians and Buddhist worshippers of the Dalai Lama throughout Tibet.⁵² Empowering the Chinese government is fundamentally at odds with “good corporate governance.”

⁴⁵ Ryan Felton and Nora Eckert, “Jeep Maker Stellantis to Offer Buyouts to Hourly, Salaried Workers,” *The Wall Street Journal*, April 26, 2023, <https://www.wsj.com/articles/jeep-maker-stellantis-to-offer-buyouts-to-hourly-salaried-workers-d3c71fdc> (accessed May 1, 2023).

⁴⁶ United Auto Workers, UAW Statement on Job Cuts at Stellantis, <https://uaw.org/uaw-statement-job-cuts-stellantis/#:~:text=%E2%80%9CStellantis%20push%20to%20cut%20thousands,this%20company%2015%20years%20ago> (accessed May 1, 2023).

⁴⁷ *Federal Register*, Vol. 88, No. 21 (February 1, 2023) pp. 6818–6904.

⁴⁸ International Energy Agency, Global Supply Chains of EV Batteries, July 2022, p. 2, <https://iea.blob.core.windows.net/assets/4eb8c252-76b1-4710-8f5e-867e751c8dda/GlobalSupplyChainsOfEVbatteries.pdf> (accessed May 9, 2023).

⁴⁹ International Energy Agency, Special Report on Solar PV Global Supply Chains, updated August 2022, p. 7, <https://iea.blob.core.windows.net/assets/d2ee601d-6b1a-4cd2-a0e8-d02dc64332c/SpecialReportonSolarPVGlobalSupplyChains.pdf> (accessed May 9, 2023).

⁵⁰ International Energy Agency, “Geographic Concentration by Supply Chain Segment, 2021,” updated January 25, 2023, <https://www.iea.org/data-and-statistics/charts/geographic-concentration-by-supply-chain-segment-2021> (accessed May 9, 2023).

⁵¹ James J. Carafano et al., “Winning the New Cold War,” p. 24.

⁵² *Ibid.*, p. 3.

Due to hypocritical, bureaucratic, executive branch mission creep, rather than using its own oil and natural gas resources, America will depend on energy from China. In order to produce supplies of renewables, China is increasing its construction of coal-fired power plants. America has 225 coal-fired power plants, and China has 1,118 (half of all the coal-fired plants in the world).⁵³ That is one reason why China has increased carbon emissions by over 5,000 million metric tons over the past 16 years.⁵⁴ In contrast, America's carbon emissions have declined by over 1,000 million metric tons over the same period due to the use of clean natural gas.⁵⁵

A new report by the Heritage Foundation, *Winning the Cold War: A Plan for Countering China*,⁵⁶ shows how America's environmental policies benefit China and harm America.

Heritage issued the report on the same day that the House of Representatives introduced H.R. 1, The Lower Energy Costs Act,⁵⁷ sponsored by Majority Leader Steve Scalise (R-LA), Energy and Commerce Committee Chair Cathy McMorris Rodgers (R-WA), Natural Resources Committee Chair Bruce Westerman (R-AR), and Transportation and Infrastructure Committee Chair Sam Graves (R-MO). The bill emphasizes domestic energy production, lower energy costs, and reduction in emissions.

Rather than kowtowing to China, companies should reject environmental policies that raise the costs of doing business and favor the CCP. The rush to a green energy future, driven more by politics and virtue-signaling than economics and emissions reductions, will only enrich China at America's expense and place vital energy supply chains at mercy of Beijing.

China has not committed to reducing emissions until 2027. Research by Dr. Kevin Dayaratna, chief statistician and senior research fellow at The Heritage Foundation, has shown that even completely eliminating all fossil fuels from the United States would result in less than 0.2 degrees Celsius in temperature mitigation by 2100.⁵⁸ Americans, particularly poor and middle class, would be bearing major costs in higher electricity prices, higher food prices, and a forced switch to costly electric vehicles without benefits for the environment. They would pay the price for President Biden's energy agenda.

Cleaner air and efficient power generation are worthwhile goals. But so is the security that comes from the rule of law. The Supreme Court weighed in on that balance in 2022 and could weigh in further in the years ahead.

Dr. GOSAR. I thank the gentlelady.

The gentleman, Mr. Harrell, is recognized for 5 minutes.

**STATEMENT OF JEREMY HARRELL, CHIEF STRATEGY
OFFICER, CLEARPATH, WASHINGTON, DC**

Mr. HARRELL. Thank you, Mr. Chairman. Great to see you, and great to see many other familiar faces on both sides of the dais. My name is Jeremy Harrell, and I am the Chief Strategy Officer of ClearPath, and thank you for the opportunity to testify today.

America's energy demands are rapidly increasing. By some estimates, the United States will need to double the capacity of the grid by 2050 to meet expected energy demand. Unfortunately, building energy infrastructure at that pace is procedurally impossible in today's regulatory environment. Never has the phrase

⁵³ Jessica Aizarani, Statista, "Global operational coal-fired power stations by country 2022," January 30, 2023, <https://www.statista.com/statistics/859266/number-of-coal-power-plants-by-country/> (accessed April 28, 2023).

⁵⁴ The Heritage Foundation, CO₂ Emissions Trends in Key Countries Data Set, 2005–2021.

⁵⁵ Ibid.

⁵⁶ James J. Carafano et al., "Winning the New Cold War: A Plan for Countering China," Heritage Foundation *Special Report* No. 270, March 28, 2023, https://www.heritage.org/sites/default/files/2023-03/SR270_0.pdf (accessed April 28, 2023).

⁵⁷ Lower Energy Costs Act, H.R. 1, 118th Congress, Session 1, (2023) <https://www.congress.gov/118/bills/hr1/BILLS-118hr1ih.pdf> (accessed April 28, 2023).

⁵⁸ Kevin D. Dayaratna, PhD, Katie Tubb, and David Kreutzer, "The Unsustainable Costs of President Biden's Climate Agenda," Heritage Foundation Backgrounder No. 3713, June 16, 2022, https://www.heritage.org/sites/default/files/2022-06/BG3713_0.pdf, (accessed May 1, 2023).

“time is money” been more appropriate. The combination of permitting delays and ping-pong decisions from administrations past and present make projects exceedingly expensive.

Fortunately, fixing this outdated system is at the top of the congressional agenda. This Committee has rightly put permitting reform front and center, passing with bipartisan support the Lower Energy Costs Act as H.R. 1. The bill addresses many bottlenecks that make the current system a quagmire: unnecessary duplication, a morass of reviews across multiple agencies, and superfluous legal action. Solving these challenges will create jobs, boost energy security, and reduce global emissions, all while providing safety and environmental protection for all our communities.

Project developers are ready to build today. The important thing is for policymakers to keep an eye on the prize. The next step in the process cannot be to water down H.R. 1 into something milquetoast that fails to change our broken system. As bipartisan efforts continue in both the House and Senate, I would like to highlight three pillars of reform that must be expanded upon to unlock our energy future: (1) restore predictability to the system; (2) provide more streamlined litigation; and (3) improve coordination between Federal, state, and local governments.

To restore predictability, we must flip the permitting paradigm from a system that favors stopping a project to one that expedites the approval of projects that bring net benefits. The status quo is overwhelmingly tilted toward those who seek to delay or block projects. That may have made sense four decades ago, but today it is actually resulting in increased emissions and environmental degradation. We need a system that promotes good outcomes, both economic and environmental. That means projects that do not have an environmental impact should be granted immediate approval. This approach, similar to permit-by-rule concepts some states have implemented, allow pre-qualified technologies proven to have minimal environmental impacts and immense positive outcomes to move forward without delay.

Additionally, designating a list of pre-qualified geographic areas such as brownfields is also reasonable. The environmental impacts of new development in these locations is minimal and, in many cases, they are near the communities that need the redevelopment the most. That would be a win-win for the environment and the economy. And if you take those no-brainer projects out of the way, you have more time and resources to focus on more complicated projects.

Critically, Federal action can no longer vacillate according to political whims, particularly when the Congress has acted. Developers must be able to rely on decisions from one administration to the next. We have seen this pointedly, particularly in mining, like the Resolution Copper mine in Arizona or the Twin Metals Project in Minnesota. This Administration’s tortured approach increases U.S. reliance on minerals sourced from overseas, including from countries that lack basic environmental and human rights protections. Our system should create jobs here, promote American innovation, and foster better global environmental outcomes.

Second, once a project is approved, any further adjudication should move quickly. Litigation under NEPA has become the favored tools of those who seek to indefinitely delay projects. Such prominent examples include the Cape Wind Project off the coast of Massachusetts and the Atlantic Coast pipeline connecting the Utica and Marcellus gas fields to Appalachia, where excessive legal challenges to Federal and State permits forced developers to cut their losses.

Recent history has shown clean energy projects are not immune to these delay tactics. Any changes to judicial review must balance a plaintiff's right to be heard with the goal of reaching finality on a more predictable timeline. This could be accomplished by immediately elevating any legal challenge under NEPA to Federal appellate courts. Ultimately, legal disputes must be resolved in less than a year.

And finally, it is important to embrace federalism where appropriate, and return more permitting authority to the people who know the communities the best. One recent example is Class VI wells for carbon capture projects. While many states have long held enforcement authority for other well classes, only North Dakota and Wyoming have been granted primacy by the EPA for permanent CO₂ storage. To gain primacy, a state must prove their standards are as rigorous as the Federal standards. Whereas the EPA has taken 6 years to permit a Class VI well, it took North Dakota only 5 months to do so after receiving primacy.

These Federal delays are particularly egregious, given that the Department of Energy is investing billions of dollars to deploy new carbon capture technologies that we need. These types of measures would improve efficiency with no different environmental outcome. So, why wouldn't we shift the authority to the people closest to the geology?

In conclusion, the challenges are numerous, but Republican and Democratic policy-makers have never been more closely aligned on the need for permitting reform. Whether the motivation is climate, economic growth, or energy security, it is well past time to fix what is broken. ClearPath looks forward to working with this Committee to push reform across the finish line. Thank you.

[The prepared statement of Mr. Harrell follows:]

PREPARED STATEMENT OF JEREMY HARRELL, CLEARPATH, INC.,
CHIEF STRATEGY OFFICER

Good afternoon Chairman Gosar, Ranking Member Stansbury and members of the Committee. My name is Jeremy Harrell, and I am the Chief Strategy Officer of ClearPath, a 501(c)(3) organization that develops and advances policies that accelerate innovations to reduce and remove global energy emissions.

Thank you for the opportunity to testify today and for holding this important hearing. America's energy demands are rapidly increasing. Some estimates say the U.S. will need to double the capacity of the grid by 2050 to meet expected clean energy demand. To support that grid modernization and U.S. manufacturing competitiveness, America will simultaneously need to construct tens of thousands of miles of new pipelines carrying natural gas, hydrogen, and captured carbon dioxide from power plants and industrial facilities.

Financing and building enough energy infrastructure projects to meet our nation's need for reliable, affordable cleaner energy is an immense challenge. Recent projections show that 1,300 gigawatts of new clean energy would need to be added by 2035. This would more than double the grid's current capacity within the next

12 years. But under the current regulatory environment, this pace of deployment is procedurally impossible.

Never has the phrase “time is money” been more appropriate. Regulatory delays that can last nearly a decade are making projects more expensive, and impeding the U.S.’ ability to deploy billions of dollars of capital that would create American jobs, enhance U.S. energy security, keep consumer costs affordable, and reduce emissions.

The Council on Environmental Quality’s (CEQ) own data shows that on average it takes agencies 4.5 years to issue a Record of Decision for an Environmental Impact Statement (EIS).¹ But the average belies the real challenge. In reality, 10 percent of projects took 10 years or more to reach a Record of Decision. The projects most likely to be held up in permitting purgatory are those that have the potential to offer the greatest benefits to the United States, including reduced energy costs, enhanced energy independence, increased economic opportunity, and lower global emissions.

The current system is broken. The structures in place are overwhelmingly tilted toward those who seek to delay or block projects as opposed to those who seek to build. While that dynamic may have made sense four decades ago when policy-makers enacted these laws as a response to environmental disasters, today, those laws are being used to block projects that will reduce emissions and improve environmental quality. We need a system that promotes good outcomes—both economic and environmental. The pace and scale necessary to build clean energy infrastructure projects to reliably meet America’s energy demand and reduce emissions is not something the authors of the 1970s environmental laws could have imagined.

The energy infrastructure we need today is simply not getting built fast enough, and throwing federal money at the projects or the agencies reviewing them is not going to substantially change that problem. The combination of permitting delays and “ping-ponged” decisions from Administrations past and present have disrupted the U.S. ability to build to fulfill needs. As a result, it can now take six years to permit carbon dioxide storage locations needed to store billions of tons captured from industrial sites, 16 years to permit an offshore wind farm in Massachusetts, and up to 15 years for a new transmission line from Wyoming to Utah.^{2,3,4} Another important example is the need for timely approval of a new LNG terminal as well as any necessary interstate natural gas pipelines to supply these new terminals. These are just a few of the hundreds of projects held up by the status quo of the current system.

Fortunately, fixing this outdated, broken system is at the top of the agenda this Congress. This Committee has rightly put permitting reform front and center this year, passing with bipartisan support its signature energy package, the Lower Energy Costs Act, as H.R. 1.

This bill addresses bottlenecks that make the current system a quagmire: unnecessary duplication, a morass of reviews across multiple agencies, and superfluous legal action. Solving these challenges will reduce emissions, increase production and boost U.S. energy security, all while providing safety and environmental protection for local communities.

Project developers are ready to build today. There is real opportunity for this Congress to work on a bipartisan basis to modernize the permitting process. The important thing is policymakers keep an eye on the prize. Senate action cannot simply water down H.R. 1 into something milquetoast that fails to fundamentally change the current regulatory regime.

This is underscored by recent proposals released this month, as leaders in the key Senate committees on both sides of the aisle have put forward their own proposals, including many concepts that match themes included in H.R. 1.

As the permitting reform effort continues in both the U.S. House and Senate, I will highlight three key solutions that have been identified by project developers, former federal officials, academics and environmental non-governmental organizations.

1. Restore predictability to the system;
2. Provide more streamlined litigation; and
3. Improve coordination between and among federal, state and local governments.

¹ https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/01/20200612CEQ_EIS_Length_Report_Update.pdf

² <https://www.reuters.com/business/energy/top-us-oil-states-vie-carbon-capture-oversight-speed-up-permits-2022-01-26/>

³ <https://www.nytimes.com/2017/12/19/us/offshore-cape-wind-farm.html>

⁴ <https://cowboystatedaily.com/2023/04/20/after-15-years-of-permitting-transwest-wind-transmission-project-is-still-5-years-from-going-live/>

American entrepreneurs have the wind at their backs to deploy more energy projects now. Congress has come together in a bipartisan manner, with bills like the CHIPS and Science Act and the Infrastructure Investment and Jobs Act (IIJA), to bring new technologies to the market and invest in American supply chains. 2022 saw record industry investment in energy, with the largest boost in recent years coming from the power sector.⁵

But again, simply spending more money on new projects will not necessarily make them a reality. Without meaningful permitting reform, there is a real risk that these major investments in technologies that the globe needs, such as carbon capture, advanced nuclear, and geothermal will go unrealized. And the U.S. will miss out on an opportunity to lead a global energy transformation.

While these challenges are numerous, Republican and Democratic policymakers have never been more closely aligned on the need for significant permitting reform. Whether the motivation is climate, economic growth, more energy production, or energy supply chain security, it is well-past time to fix what is broken, as America's energy, environmental, and economic future depends on sweeping reform.

Restore Predictability to the System

Reform must flip the permitting paradigm from one that favors stopping a project to one that expedites the approval process for projects that bring net benefits and comply with the legal requirements meant to ensure clean water and clean air. This approach would rely on a three-pronged approach that automatically advances projects with significant net benefits, focuses environmental and permit review on uniquely local conditions of a project on an accelerated timeline review, and keeps the relevant agencies within the boundaries of the laws Congress has enacted. Many of these concepts were included in H.R. 1, and it is important a final bill doubles down on the concept and maximizes their impact.

First, projects that do not have an environmental impact should be granted immediate approval. For example, replacing a retiring power plant with a zero-emissions advanced nuclear generator at an existing site or building a solar project on a brownfield site should not require a yearslong permitting process. Advancing these types of projects without delay is a win-win. The economic and environmental benefits of these projects should not be delayed by unnecessary bureaucracy.

There should be criteria to prequalify technologies that are proven to have minimal environmental impacts and immense positive outcomes—similar to “permit-by-rule” concepts some states have implemented. In other words, there should be a presumption of project approval so long as the specifics of a project satisfy certain predefined criteria. In many cases, this would alleviate the requirement to do unnecessary boilerplate re-analysis.

One starting point could be to automatically advance projects that have nationally significant outcomes, like enhancing resilience of the grid or a significant reduction of global emissions, where the environmental impacts of development are well known. For example, a carbon capture retrofit of an existing facility, the modernization of a grid substation, or powering of a non-powered dam. H.R. 1 took a similar tack for energy storage projects at existing facilities and maintenance or upgrades to existing transmission and distribution infrastructure.

Similarly, designating a list of prequalified geographic areas to encourage project sponsors to seek out specific locations, would go a long way toward accelerating projects with the lowest impact. Such areas could include previously disturbed locations or well categorized sites, such as brownfield sites that present opportunities to use existing electrical or mechanical infrastructure or former military bases. The environmental impacts to these locations related to energy deployment are minimal, and in many cases these locations are in or near communities that need the redevelopment most urgently. Congress could also consider regulatory incentives to direct investment toward areas where impacts are already well understood.

Another opportunity could be to pair existing financial incentives, such as the “Opportunity Zones” or “Energy Communities” classifications established by Congress, with a streamlined permitting process to further boost investment. Both Opportunity Zones and Energy Communities were established by Congress to drive investment in distressed areas and communities that would benefit the most from new energy investments. Matching financial incentives with regulatory certainty will create a clear signal to project developers during the site selection process. Coordinated incentives like these can help drive investment to previously under-

⁵ <https://www.iea.org/reports/world-energy-investment-2022/overview-and-key-findings>

served areas and ensure the benefits of clean energy reach these communities without unnecessary delays.

Some of the most egregious problems of our broken system would be solved by this type of reform. For example, nonsensical approaches to geothermal exploration inhibit our ability of scaling baseload clean energy at scale. The Department of Energy estimates that geothermal generation could double by 2035 if our immense potential was unleashed. But concurrently, the Department found that “because additional steps and NEPA analyses are required, confirming the resource is more costly and risky,” translating to permitting timelines of 5–7 years, rather than a 1–3 year period that would otherwise be available with a categorical exclusion.⁶

Geothermal energy uses similar technology as oil and gas exploration and drilling activities. When oil and gas uses this technology, these resource confirmation (e.g. exploration) activities benefit from statutory authority enacted by the Energy Policy Act of 2005 that expedites five types of development activities. However, when the same mechanisms are used to confirm a geothermal energy resource, the expedited pathway does not apply. As a result, two very similar methods to test for resource feasibility must undergo substantially different permitting reviews despite both having negligible environmental impact. The Bureau of Land Management has the authority to administratively grant this same expedited pathway for geothermal energy resources, yet has wrung its hands for years rather than simply updating its regulatory guidance. This system is clearly broken.

Further, departments should proactively consult with other agencies to identify existing NEPA categorical exclusions available to accelerate development of energy infrastructure projects. DOE’s recent Request for Information (RFI) to adopt new Categorical Exclusions is a model that should be replicated across other federal agencies.

Second, reform must streamline the approval process for projects where there are unique environmental impacts. In these cases, the review process could focus specifically on issues of the highest impact, resulting in more efficient timelines that still ensure compliance with existing environmental laws.

There are several provisions that have earned broad bipartisan support, including applying the “One Federal Decision” framework to energy projects. Similar support exists to reuse existing environmental review documents when a project will have substantially similar impacts as one previously studied. These provisions are both included in H.R. 1 and other proposals that have been recently made public. Those principles should be expanded upon.

One immense opportunity that could be fostered by reforms like this is in new nuclear technologies. The U.S. Nuclear Regulatory Commission (NRC) has publicly stated it anticipates at least 13 applications for advanced reactors by 2027, technologies that could bring safe, flexible, and reliable clean energy to our energy system.⁷ Decades of operation have shown that nuclear energy has a minimal environmental impact. Future designs hold the same promise.

Since the dawn of the nuclear age in the 1950s, nuclear reactors have been supplying Americans with clean, reliable, and affordable energy. On a bipartisan basis in the 115th, 116th, and 117th Congresses, legislation has been passed that strengthens the U.S. nuclear industry. However, except for the Vogtle Unit 3 reactor that recently came online in Georgia, the vast majority of nuclear plants in the United States were constructed over 40 years ago.⁸

That is changing today. The advanced reactor market is at an inflection point. Investors and potential end-users are closely watching first-of-a-kind utility-scale projects eyeing the late 2020s and early 2030s for commercial operation. American electric utilities are projecting a need for 90 GW of new nuclear power by 2050, nearly doubling our nuclear energy capacity in the next 30 years.⁹ Simplifying the permitting for projects like TerraPower’s flagship project in Kemmerer, Wyoming, which is leveraging the infrastructure at a retiring coal plant, is a no brainer. A nuclear facility is different from a coal-fired power plant, but many of the environmental factors that must be considered are similar. Additionally, many advanced reactors are looking to develop alongside industrial facilities or existing nuclear sites, where previous environmental analysis and community engagement has been extensive. A rational permitting system would leverage that work to accelerate exciting projects, not force needless duplication.

⁶ <https://www.energy.gov/sites/default/files/2019/06/f63/GeoVision-full-report-opt.pdf>

⁷ <https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML22038A001>

⁸ <https://www.eia.gov/tools/faqs/faq.php?id=228&t=3>

⁹ <https://www.powermag.com/u-s-utility-survey-suggests-industry-mulling-additions-of-90-gw-of-new-nuclear/>

Third, federal action can no longer vacillate according to political whims, particularly when the Congress has acted. Given long development timelines needed to bring a project from financing to construction, project developers need to be able to rely on regulatory certainty from one Administration to the next. This need is perhaps most acute for projects that seek to unlock critical minerals.

While the Administration has announced award selections worth a combined total of nearly \$5 billion for critical minerals demonstration projects funded by the bipartisan infrastructure bill and other new programs, there remains one glaring omission in the critical minerals supply chain: none of these selected projects addresses our inability to extract new materials domestically.¹⁰ The International Energy Agency (IEA) predicts that demand for energy-related minerals like lithium, cobalt, graphite, and nickel could grow by 20–40 times by 2040.¹¹ The U.S. will not be able to recycle its way out of this demand for critical minerals.

It is difficult to overstate the U.S. dependence on foreign supply chains, including reliance on China. According to the 2023 U.S. Geological Survey's Mineral Commodities Summary, the U.S. was 100 percent net import reliant for 12 of the 50 individually listed critical minerals and was more than 50 percent net import reliant for an additional 31 critical mineral commodities.¹² Meanwhile, China was the leading producing nation for 30 of the 50 critical minerals.¹³ Regardless of where the minerals are mined, China exerts dominant control over the refining process for many of these critical minerals. Rising demand for minerals will place major stress on global supply chains and undermine the ability of the U.S. to deploy more clean energy.

One of the most prominent examples of America's inability to permit mines is Resolution Copper, which Congress explicitly authorized when the Southeast Arizona Land Exchange and Conservation Act was enacted into law with the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (P.L. 113-291). Once approved, the proposed mine is expected to become the largest copper mine in North America, capable of producing up to 25 percent of U.S. copper demand each year.¹⁴ The proposal received a final EIS in January 2021, only to have it unpublished by the Biden administration two months later.¹⁵ The Administration is explicitly subverting Congressional intent with this project. These unnecessary delays precede a decade of construction before operations can begin, bringing the project timeline to at least two full decades from its inception.

This back and forth regulatory review is far too common. The Resolution Copper Mine is just one of many examples. And the regulatory overreach deters investors, increases capital costs, and delays the energy security benefits of developing a robust domestic supply chain for clean energy and related infrastructure.

Absent a clear, predictable, and streamlined process, America will continue to rely on critical minerals sourced from overseas, including from countries that pose national security risks or those that lack basic environmental and human rights protections. The choice should be clear: producing American resources here at home creates jobs, promotes innovation, increases energy security, and leads to better global environmental outcomes.

Provide more streamlined litigation

Once a project is approved, any further adjudications should be addressed as expeditiously as possible to ensure that protracted litigation does not undermine project viability. Judicial review is the biggest wildcard in the current permitting system, and H.R. 1 appropriately recognized it as an area that could have the most meaningful impact toward efficient project deliverability. Establishing requirements where any legal disputes must be resolved in less than one year would meaningfully address this uncertainty.

In the spirit of the current system rewarding those who seek to delay rather than those who seek to build, litigation under NEPA has become the favored tool of those who seek to indefinitely delay projects through procedural lawsuits. Such prominent examples include the saga of the proposed Cape Wind project off the coast of Massachusetts, where protracted litigation, including more than 20 administrative and judicial challenges to both federal and state reviews, ultimately led utilities to

¹⁰ <https://www.clearpath.org/clearpath-infrastructure-tracker/>

¹¹ <https://www.iea.org/reports/the-role-of-critical-minerals-in-clean-energy-transitions/executive-summary>

¹² <https://pubs.er.usgs.gov/publication/mcs2023>

¹³ *ibid*

¹⁴ <https://resolutioncopper.com/project-overview/>

¹⁵ <https://www.fs.usda.gov/detail/r3/home/?cid=FSEPRD858166>

cancel power purchase agreements, effectively killing the project.¹⁶ While no single suit ever specifically terminated the project, the purposeful delay tactics requiring evermore environmental analysis ultimately led investors to pull the plug. This same playbook is now being used to protest the approval for the Vineyard Wind project, despite new state laws that mandate utilities to procure offshore wind energy.¹⁷

The Atlantic Coast Pipeline (ACP) is another prime example in which legal uncertainty contributed to an untenable business environment leading project developers to cancel the project and take a loss. ACP was intended to bring natural gas access to residential, commercial, defense, and industrial customers in Virginia and North Carolina, but legal challenges to federal and state permits contributed to more than three years of delays and increased project costs from \$8 billion from an original estimate of \$5 billion.

Additionally, the Mountain Valley Pipeline (MVP) from northwestern West Virginia to southern Virginia has also attracted extensive Congressional attention because of similar uncertainty. No doubt, the expected build out of gas, hydrogen, and CO₂ pipelines needed to meet our future system demands requires a more predictable process for the private sector to deliver on these projects.

As more clean energy projects enter the permitting process, clean energy projects will increasingly find themselves subject to these delay tactics. Such actions too often delay significant economic and environmental benefits, like new clean energy generation from that wind farm or the net reduction in global emissions from the use of lower emissions U.S. gas relative to dirtier Russian supplies in Europe. These increases in emissions or environmental harm are the very outcomes that NEPA was enacted to avoid and prevent.

Any changes to judicial review must balance a plaintiff's right to have his or her day in court with the goal of reaching finality on a more predictable timeline. One such proposal would be to immediately elevate any legal challenge under NEPA to the federal appellate court where the project is to be constructed or alternatively the DC Circuit. This would be similar to the process already used to challenge agency decisions, including those made by FERC.

Improve Coordination with State and Local Governments

Finally, it is important to recognize and address, to the maximum extent practicable, challenging permitting projects at the state and local level—without trampling on federalism.

An example of an unpredictable regulatory environment is the prolonged delay to review and approve permits for Class VI underground injection control wells needed to permanently sequester carbon dioxide. Class VI wells are a necessary part of the carbon capture equation of preventing more emissions and are the only authorized method permitted by the Environmental Protection Agency (EPA) to sequester carbon dioxide in permanent geologic storage.

While many states have long held primary enforcement authority for other well classes, only North Dakota and Wyoming have received primacy for this newest well class established in 2010. Congress rightly included provisions in the 2021 Consolidated Appropriations Act and the IIJA directing the EPA to support states applying for Class VI primacy and to actively improve the Class VI permitting review process.¹⁸

The advantages of state primacy for Class VI wells are readily apparent in North Dakota. Whereas the EPA has taken an average of three years to permit Class VI wells, it took North Dakota only five months. The EPA currently has more than 70 pending applications across eight states awaiting regulatory approval.¹⁹

This backlog is a prime example of where this Administration is working against its own priorities. The Department of Energy is investing billions of dollars to deploy new carbon capture technologies now, while the EPA muddles through reviews of storage sites at a palatial pace and the Department of the Interior stands in the way of related infrastructure projects across regions prime for commercial scale up.

The most egregious example may be in Louisiana. After years of delay, the Administration finally issued the draft rule necessary to approve Louisiana's

¹⁶ [http://static.djlmigital.com.s3.amazonaws.com/cct/capecodonline/graphics/pdf/](http://static.djlmigital.com.s3.amazonaws.com/cct/capecodonline/graphics/pdf/GridFMNotice.pdf)

¹⁷ <https://www.eenews.net/articles/4-lawsuits-threaten-vineyard-wind/>

¹⁸ <https://carboncapturecoalition.org/recently-enacted-infrastructure-investment-and-jobs-act-to-bolster-economywide-deployment-of-carbon-management-technologies-upon-full-implementation/>

¹⁹ <https://www.epa.gov/uic/class-vi-wells-permitted-epa>

request for Class VI primacy earlier this month. This initiates a 60-day comment period and a subsequent EPA response period that historically can take upwards of a year for a state to be granted final authority.²⁰ Once final, the decision is likely to have an immediate impact as 10 of the current outstanding Class VI permits are located in the state, which could unlock up to 6 million tons of carbon dioxide per year in Louisiana alone. If Republican and Democratic policy makers did not lean into the federal agencies in recent oversight hearings, this rule would likely still be stuck in the bureaucracy.

It is clear that the time to transfer Class VI authority should be improved for the other states looking to obtain primacy such as Pennsylvania, Arizona, Texas, and West Virginia, which are preparing applications for Class VI primacy. To date, primacy is the number one tool to get these projects permitted quickly, while preserving the safety of local communities. Additionally, this would allow federal agencies to focus their energies on permits in states not-yet equipped to take on permitting primacy or accelerate review of storage opportunities on federal lands or the Outer Continental Shelf, which have immense potential to contribute to our long-term energy future.

Similar barriers exist for proposed transmission lines that can better connect both new and existing generation assets to load as timelines to get new transmission projects developed now routinely stretch to over a decade.

One example is the SunZia line, designed to move power from New Mexico to California. The 550 mile line required cooperation from 10 federal agencies, 5 state agencies, and 9 local authorities while incorporating input from a host of additional state, local, and federal stakeholders. Projected to come online in 2025, the 3.5 GW project, which would provide power for millions of customers, will have taken over 17 years from proposal to completion.²¹ These timelines, complicated by the intersection of different requirements from federal, state, tribal, and local regulators, impede the ability of new projects to interconnect to the grid.

According to the Lawrence Berkeley National Lab, there are 2000 GW of electricity and storage waiting in the interconnection queue to be connected to the grid.²² While not all of these projects will be built, this figure is nearly double the current system capacity as it exists today. This backlog is especially relevant as hundreds of gigawatts of clean energy projects spend years stuck in the interconnection process, awaiting evaluation by transmission providers to determine their impact on the broader system. An average completion rate of 21% and queue wait time of 4 years makes meeting any target for a reliable and affordable clean energy system infeasible.²³ It is also important to note that analysis recently conducted by the regional transmission organization (RTO) PJM estimates that 40 GW of base-load generation, more than 21 percent of current installed capacity, is at risk of retirement by 2030 without reliable generation lined up to replace it and keep up with demand growth.²⁴

While there is no silver bullet to rapidly and reliably modernize the grid, a combination of process improvements, permitting reforms, and technological innovation will help avoid clean energy deployment from hitting a wall.

Conclusion

The current permitting system stymies clean energy resources and broadly delays the highest impact projects from delivering benefits. It is imperative that Congress address both aspects of the permitting process to maximize public and private sector investments and put steel in the ground. These pillars of pre-qualification to expedite review, more streamlined litigation, and improved coordination with state and local governments are priorities that merit consideration as the process to reach a permitting deal moves forward.

These reforms are ambitious by design as half measures have failed to move the needle for more than two decades. Anything less will only prolong the inability of the U.S. to build big things.

We look forward to working with this Committee to both further legislative action on regulatory reform and to reign in executive branch overreach. I look forward to today's discussion.

²⁰ <https://www.epa.gov/newsreleases/epa-opens-public-comment-proposal-granting-louisiana-primacy-carbon-sequestration-and>

²¹ <https://www.power-grid.com/td/sunzia-transmission-line-is-a-win-but-also-a-lesson-in-what-not-to-do/#gref>

²² https://emp.lbl.gov/sites/default/files/queued_up_2022_04-06-2023.pdf

²³ <https://emp.lbl.gov/queues>

²⁴ <https://www.pjm.com/-/media/library/reports-notices/special-reports/2023/energy-transition-in-pjm-resource-retirements-replacements-and-risks.ashx>

Dr. GOSAR. I thank the gentleman. The Chair now recognizes Ms. Pleune for 5 minutes.

Did I say that right?

Ms. PLEUNE. You did.

Dr. GOSAR. OK.

**STATEMENT OF JAMIE PLEUNE, ASSOCIATE PROFESSOR
(RESEARCH), S.J. QUINNEY COLLEGE OF LAW, UNIVERSITY
OF UTAH, SALT LAKE CITY, UTAH**

Ms. PLEUNE. Thank you, Chairman Gosar, Ranking Member Stansbury, and members of the Committee for the opportunity to be here today. My name is Jamie Pleune. I am an Associate Professor at the University of Utah Law School. We have done extensive empirical research on NEPA and its implementation times.

Little is known about the National Environmental Policy Act and its process. The data that is available focuses exclusively on environmental impact statements. To address this shortage of information, my colleagues, John Ruple and Erik Heiny, and I undertook the most comprehensive analysis of NEPA decision making that has been conducted. We analyzed 16 years of Forest Service data, which was 41,000 NEPA decisions.

The first question that we sought to answer was how long does the NEPA process really take? We found that the median time to complete an EIS was 2.8 years. For an EA, it was 1.2 years. And for a CE, it was only 4 months. These evidence-based time frames are dramatically shorter than the anecdotal time frames that are often cited.

We also reaffirmed the GAO estimate. The EISs are an extremely small percentage of all NEPA decisions. Specifically within the Forest Service, who conducts more EISs than any other agency, EISs constitute only 2 percent of all decisions. The other 98 percent face less rigorous review. To put this in perspective very roughly, when we looked at the evidence over 16 years, only 200 decisions took longer than 4 years, and 33,000 took less than 1 year. The median time for projects that have identified, known, well-understood, and insignificant impacts is 4 months.

We also looked for reasons for delay. We developed a regression analysis that was able to look at NEPA-specific factors, and we found that those could only predict 25 percent of the variation. This meant that the primary causes of delay were external to the NEPA regulatory process. We found that the primary causes of delay are a lack of agency capacity, specifically projects hit bottlenecks when there are insufficient staff members to review a permit, or when there are not enough staff members with the expertise that is necessary to review a permit.

Additionally, unstable budgets and outdated technology caused delays. There were also delays in waiting for information from the operator.

And finally, compliance with other laws and coordinating with other agencies or coordinating within a team that is approving a permit also caused delay. This finding was consistent with an observation made by the Congressional Research Service that NEPA often functions as an umbrella statute. That is, it serves as

a framework for compliance with other laws and regulatory requirements. Delays caused by compliance with those other legal standards are reflected in the NEPA process, but NEPA itself is not the cause of delay.

This interplay is visible in a study conducted by Amanda Miner regarding Forest Service litigation. Her research recognized that NEPA litigation usually involves multiple legal claims. Focusing on the cases in which the Forest Service lost, her research showed that 69 percent of the time the Forest Service would have lost, even if NEPA did not exist. This is important because reforms that focus solely on speeding up NEPA completion times may compromise agency's ability to comply with the mandates of other laws, which would ultimately create more delay in implementing projects.

After completing the study of Forest Service decision making, we looked at the mine permitting process. We found the same three primary causes of delay have consistently been identified in research investigation since 1999. So, what does this tell us about permit reform?

First, the biggest source of delay is a lack of staff and unstable budgets. The most important thing to improve permit processing time is to bolster agency capacity. They must have sufficient staff and staff with relevant expertise. With expanded capacity, agencies can engage in pre-application meetings with project sponsors and encourage early engagement with stakeholders.

This will address the second cause of delay: waiting for information from operators.

Finally, encouraging coordination between permitting authorities is a way to streamline the permitting process and make it more predictable. The procedures incorporated through FAST-41 have been effective in achieving predictability, transparency, and improved timelines. Significantly, this is important because these are the most complex projects available. Thank you.

[The prepared statement of Ms. Pleune follows:]

PREPARED STATEMENT OF PROFESSOR JAMIE PLEUNE, UNIVERSITY OF UTAH,
S.J. QUINNEY COLLEGE OF LAW

Thank you, Chairman Gosar and Ranking Member Stansbury for the opportunity to testify today. My name is Jamie Pleune. I am an Associate Professor of Law (Research) at the S.J. Quinney College of Law, University of Utah and a Wallace Stegner Center Fellow.

The Wallace Stegner Center provides objective and actionable research on contemporary environmental issues. The non-partisan Law and Policy Program at the Wallace Stegner Center has done extensive empirical research into different aspects of the National Environmental Policy Act and its implementation. My testimony today reflects the results of that research and my personal observations. I do not speak on behalf of the University of Utah, and the views I express do not necessarily represent the views of the state of Utah, or the University of Utah.

I. Research Does Not Substantiate the Claim that NEPA Causes Delays

The National Environmental Policy Act is often blamed for delays in the permitting process. However, research does not support that characterization. Multiple studies have found that the NEPA analysis is rarely the primary cause of

delay, even though delays may be reflected in the NEPA process.¹ Analysis on a project may stop and restart for external reasons such as funding, engineering requirements, changes in agency priorities, delays in obtaining non-federal approvals, or political opposition to the project.² These delays create the appearance of a long NEPA process, because the NEPA process marks a public beginning and ending, even though the NEPA analysis did not cause the delay.³

Additionally, the NEPA process may provide the structure for multiple different and independent permitting decisions. As the Congressional Research Service observed, “Most agencies use NEPA as an umbrella statute—that is, a framework to coordinate or demonstrate compliance with any studies, reviews, or consultations required by any other environmental laws.”⁴ This can create confusion because the need to comply with another law may be identified during the NEPA process, but NEPA is not the source of the obligation.⁵ In fact, there is some evidence that the structure provided by the NEPA analysis actually reduces decisionmaking times.⁶

The NEPA process can also reduce costs by identifying design problems before implementation of a project begins. A study prepared for the Transportation Research Board emphasized this potential benefit. “Spending more monies during planning and design will reduce the time and cost required for construction by avoiding unforeseen conditions, reducing to a minimum design errors and omissions, and developing schemes that will support the most efficient approach to construction.”⁷ For these reasons, projects exempted from NEPA may not be faster or cheaper. Instead of achieving speed by exempting projects from NEPA, permit reform should distinguish between productive and unproductive delays in the permitting process,⁸ and focus on eliminating the latter.

II. NEPA Decisionmaking Times Vary Significantly and Projects That Encounter Extensive Delays Are the Exception, Not the Norm

Working with my colleague, John Ruple, and another colleague, Erik Heiny, at Utah Valley University, we analyzed 41,000 NEPA decisions made by the Forest Service at all levels of review.⁹ This is one of the most comprehensive investigations into NEPA decisionmaking times that has been undertaken.¹⁰

¹Ryan Sud, Sanjay Patnaik & Robert Glicksman, The Brookings Institute, *How to Reform Federal Permitting to Accelerate Clean Energy Infrastructure: A Nonpartisan Way Forward* 14 (Feb. 2023).

²Government Accountability Office, GAO-14-379, *National Environmental Policy Act: Little Information Exists on NEPA Analyses* 15 (Apr. 2014); Linda Luther, Cong. Res. Serv., R4279, *The Role of the Environmental Review Process in Federally Funded Highway Projects: Background and Issues for Congress* 9 (Apr. 11, 2012) (“The environmental review process may start, stop, and restart for reasons unrelated to environmental issues. Local and state issues have shown to have the most significant influence on whether a project moves forward relatively quickly or takes longer than anticipated.”).

³Executive Office of the President, Council on Environmental Quality, *Environmental Impact Statement Timelines (2010–2018)* 2 (June 2020) (“For some EISs, the timeline does not represent continuous activity. Delays may be attributable to the agency, the applicant, Congress, the needs of cooperating agencies, States, Tribes, and local interests, or public controversy.”); John C. Ruple, Jamie Pleune & Erik Heiny, *Evidence-Based Recommendations for Improving National Environmental Policy Act Implementation*, 46 Colum. J. Env’t L. 273, 304 (2022) [hereinafter Ruple et al. *Evidence-Based Recommendations for Improving Implementation of NEPA*] (conducting a detailed analysis of NEPA decisionmaking times and observing that complex projects can be completed quickly and simple projects subject to a truncated NEPA analysis may encounter delays); Executive Office of the President, Council on Environmental Quality, *Environmental Impact Statement Timelines (2010–2018)* 8 (June 2020).

⁴Cong. Res. Serv., RL 33152, *The National Environmental Policy Act (NEPA): Background and Implementation* 1 (Jan. 10, 2011).

⁵*Id.*; see also Ruple et al. *Evidence-Based Recommendations for Improving Implementation of NEPA* *supra* note 3 at 317–322 (exploring this dynamic with the National Forest Management Act).

⁶John C. Ruple et al., *Does NEPA Help or Harm ESA Critical Habitat Designations? An Assessment of Over 600 Critical Habitat Rules*, 46 Ecology L.Q. 829, 842 (2019) (finding that critical habitat designations subject to NEPA review were completed an average of 93 days faster than those that were not subject to NEPA review).

⁷Linda Luther, Cong. Res. Serv. R.42479, *The Role of the Environmental Review Process in Federally Funded Highway Projects: Background and Issues for Congress* 36 (Apr. 2012) (Citing H.R. Thomas and R.D. Ellis, *Avoiding Delays During the Construction Phase of Highway Projects*, Transportation Research Board, National Research Council, NCHRP 20–24 (Oct. 2001).

⁸Jamie Pleune, *Playing the Long Game: Expediting Permitting Without Compromising Protections*, 52 Env. L. Rep. 10893, 10896–07 (2022) [hereinafter Pleune, *Playing the Long Game*].

⁹Ruple et al., *Evidence-Based Recommendations for Improving NEPA Implementation* *supra* note 3 at 294.

¹⁰See also Forrest Fleischman et al., *U.S. Forest Service Implementation of the National Environmental Policy Act: Fast, Variable, Rarely Litigated, and Declining*, 118 J. of Forestry

The first question we sought to answer was, “how long does the NEPA process actually take?” We found that the median time to complete an EIS was 2.8 years. For an EA, it was 1.2 years. And for a CE, the median was only 4 months.¹¹

More importantly, only 2 percent of all decisions were made through an EIS.¹² The other 98% of NEPA decisions faced less rigorous review. The median time for projects with well-understood and insignificant impacts was only 4 months.

This approach makes sense. Projects with insignificant and well-understood impacts should receive quick approval, and the research shows that they usually do. On the other hand, projects that will impose significant impacts on communities, create hazards to health, threaten clean water, compromise clean air, or destroy natural resources deserve more rigorous review. The permitting process ensures that each project adheres to basic environmental and safety standards. The NEPA process creates a mechanism to explore whether a potentially harmful project can be adjusted to avoid, reduce, or mitigate harmful consequences. This approach has protected communities and resources from poorly contemplated projects for over 50 years.

While there are ways, which I will discuss, to improve the efficiency of permitting and the NEPA process, eliminating environmental standards or reducing analytical rigor is a poor choice that does not address the true sources of unproductive delay.

III. True Causes of Delay Can Be Addressed Without Compromising Environmental or Safety Standards

Permit reform should be driven by accurate data that defines the scope of the problem. The available data indicates that only a small percentage of NEPA decisions encounter excessive delays of the type that are commonly relied upon as anecdotal evidence.

For example, in 2016, the Government Accountability Office studied processing times for mine permit applications.¹³ Between 2010 and 2014, the BLM and the Forest Service approved 68 mine plans of operations. The majority (55%) were processed in less than 18 months, and 63% were processed in under two years. The remaining 37% were spread across a wide timeframe, with only six applications (less than 10%) taking longer than four years.

A similar trend is visible in the Forest Service data. Only projects in the 75th percentile of EISs took longer than four years.¹⁴ Because there were only 870 EISs total, that means roughly 217 documents took longer than four years over 16 years. In contrast, at least 28,552 decisions were made in less than 1.2 years.¹⁵ In other words, efficiency is possible, and it happens. It is also important to keep the big picture in focus. The commonly cited statistic that permits take six years represents less than 1% of all NEPA decisions.

Moreover, analytical rigor does not appear to be the primary cause of delay.¹⁶ When we used a regression model to identify causes of delay, we learned that NEPA specific factors could not predict whether a project would encounter a delay.¹⁷ Instead, the most common causes of delay were functional and external to the NEPA analysis. Those were: (1) agency capacity, which includes both staff availability and appropriate expertise; (2) delays attributable to the operator including waiting for information, changed plans of operation, and shifting priorities; and (3) compliance with other laws, which includes coordination with other permitting authorities.¹⁸

403, 408 (2020) (conducting a descriptive analysis of a slightly different set of data from the Forest Service MYTR database); Exec. Office of the President, Council on Env't Quality, Environmental Impact Statement Timelines (2010–2018) 1 (June 12, 2020) (providing description of government-wide EIS decisionmaking times).

¹¹*Id.* at 293.

¹²*Id.* at 289. *See also* Government Accountability Office, GAO-14-379, National Environmental Policy Act: Little Information Exists on NEPA Analyses 8 (Apr. 2014) (estimating that government-wide, less than 1% of NEPA decisions are EISs, 5% are EAs, and 95% are CEs).

¹³GAO, Hardrock Mining: BLM and Forest Service Have Taken Some Actions to Expedite the Mine Plan Review Process but Could Do More 6–7 (2016).

¹⁴Ruple et al., *Evidence Based Recommendations for Improving NEPA* *supra* note 3 at 297.

¹⁵*Id.* at 289 and 297 (showing that there were 6,881 EAs, 50% of which were completed in less than 1.2 years and there were 33,143 CEs, at least 75% of which were completed in less than one year).

¹⁶*Id.* at 302–303.

¹⁷*Id.* at 300–306.

¹⁸*Id.* at 306–322.

Notably, both the GAO and the National Research Council made the same observations regarding delays in the mine permit application process.¹⁹ Three prominent causes of delay were: (1) insufficient resources, including staff, expertise, funding, or technology; (2) waiting for operator responses following vague applications or changes to a mine plan; and (3) compliance with other legal standards and/or ineffective agency coordination during the mine plan review process.²⁰

Even permits that can be processed quickly are affected by these factors. A 2014 investigation by the Office of Inspector General into BLM permit processing times for oil and gas wells emphasizes this point.²¹ The BLM receives approximately 5,000 new APDs each year, which are processed at 33 different field offices. According to the BLM, the average processing time in 2012 was 228 days, but this number only tells part of the story. Even though each field office is governed by the same legal standard, the permit processing times varied widely. Buffalo, WY and Miles City, MT took more than 300 days to process permits. In contrast, five field offices took less than 100 days. Anchorage, AK averaged 37 days.

This dramatic variation in permit processing times cannot be blamed on NEPA or environmental standards because each field office was applying the same legal standard to the same activity. Sources of delay were a lack of staff, poor data management, and weaknesses in oversight and accountability.²² Even though BLM had repeatedly identified staffing shortages as a problem, limited budgets combined with a high cost of living made it difficult to attract and retain employees. Field offices with staff shortages experienced prolonged review times. Permit coordination and management also mattered. Most field offices did not assign a manager to oversee the APD process, resulting in an open-ended process where applications languished and no one could predict when the application would be finished. Field offices that did assign field managers processed permits in less than half the average time.²³ In other words, improving permit coordination resulted in faster permit processing times.

The consistency of these findings across time, agencies, and practice constitute reliable evidence as to the real causes of delay in permit processing. These delays can be summarized as: (1) agency capacity; (2) delays attributable to the operator; and (3) permitting coordination. These findings demonstrate that the choice between speed and environmental standards is a false dilemma. Each of the true sources of delay can be addressed without compromising environmental standards that protect safe, healthy, and clean communities.

IV. Permit Reform That Addresses the True Causes of Delay

We can improve permit processing times by bolstering agency capacity, fostering early communication with permit applicants, and improving permit coordination. Notably, improved communication and better coordination depend on sufficient agency capacity. So the first step for permit reform should be to focus on agency capacity.

1. *Building Agency Capacity Requires Long-Term Funding and Strategic Workforce Planning.*

Wisely, Congress has already taken a step in the right direction. The Inflation Reduction Act contained roughly \$1 billion directed toward improving agencies' environmental review processes and NEPA implementation. These funds are a critical—and encouraging—first step; however, the journey is not over. Agencies must rebuild from chronic shortages. Additionally, the funding must be reliable and sustained to allow agencies to implement strategic workforce plans, retain experienced staff, and engage in proactive planning that can facilitate faster decisionmaking. Finally, agencies must have flexibility to spend the funds in the area of greatest need.²⁴

¹⁹ Gov't Accountability Off., GAO-16-165, *Hardrock Mining: BLM and Forest Service Have Taken Some Actions to Expedite the Mine Plan Review Process but Could Do More* (2016); National Research Council, *Hardrock Mining on Federal Lands* (1999).

²⁰ See Pleune, *Playing the Long Game* *supra* note 8 at 10900–10906 (discussing these studies).

²¹ Office of Inspector General, Department of the Interior, *Onshore Oil and Gas Permitting*, U.S. Dept. of Int., Report No. CR-EV-MOA-0003-2013 (June 2014).

²² *Id.* at 6.

²³ The Field Office in Silt, CO which uses supervisors, averaged 108 days in FY2012 versus the bureau wide average of 228 days. The field office in Carlsbad NM uses a field manager, as well as an in-house automated tracking system. Its processing times average 110 days. *Id.* at 7.

²⁴ See Office of Inspector General, Department of the Interior, *Onshore Oil and Gas Permitting*, U.S. Dept. of Int., Report No. CR-EV-MOA-0003-2013, 10 (June 2014) (noting that Congress had allocated funding to seven field offices as a pilot project for improving oil and gas

Many agencies that were already understaffed suffered extreme losses of staff under the last Administration. The Bureau of Land Management offers an instructive case study.²⁵ Since 2011, it has been on the GAO's list of programs at high risk and vulnerable to waste, fraud and abuse due in part to a lack of staff. This problem was further exacerbated in July 2020, when the last Administration abruptly decided relocate BLM's headquarters from Washington D.C. to Grand Junction, Colorado. The Headquarters Office, which develops guidance and regulations, should be staffed by 311 career positions. However, it was already severely understaffed with 132 vacant positions before the relocation announcement. In response to the relocation announcement, 81 more staff left, leaving the leadership at 31 percent capacity. The remaining leadership team were dispersed among multiple offices.

Numbers do not tell the whole story. The BLM also suffered a loss of experienced staff. Every BLM staff member interviewed reported that the loss of experienced staff negatively affected their offices' ability to conduct its duties. For example, the loss of institutional knowledge about laws and regulations meant that the BLM could not provide knowledgeable input on proposed rules and legislation. Other staff admitted that the rapid loss of experienced staff hindered knowledge transfer. In a follow-up report, a year later, all BLM staff interviewed by the GAO reported challenges in completing their duties due to headquarters vacancies. As a result of delays in creating or clarifying guidance or policies, some staff relied on outdated policy guidance to make decisions. Other staff reported delays implementing upgrades to information technology systems, which GAO had previously recommended be updated. Obviously these institutional challenges would affect permitting times. Applicants could not receive good guidance from experienced staff, and staff members processing permits had little instruction on how to proceed effectively. The BLM is not alone. Multiple agencies with permitting or infrastructure responsibilities, are short-staffed and underfunded.

Filling vacancies requires strategic workforce planning, but few agencies have engaged in that process. When the GAO investigated the BLM's workforce planning in 2020, it found that the BLM had no way of tracking vacancies and no recruitment plan for filling vacancies.²⁶ When asking for data on the total number of positions and vacancies agency wide, the GAO was told that BLM does not maintain a list of vacancies for state offices. As a result, it was not possible to determine the proportion of positions that are vacant at any given time or the specific positions that are vacant. This lack of information obviously creates a problem for improving capacity in a way that results in improved efficiency. Strategic workforce planning is critical to ensuring that agencies spend wisely and build a workforce capable of fulfilling agency missions. Additionally, agencies must be confident that the funding will not disappear. Unstable budgets do not build durable workforces.

2. *Pre-application meetings, early stakeholder engagement, permit sequencing, and transparent schedules are proven methods for improving efficiency without compromising environmental standards or public participation.*

With expanded capacity, agencies can address other sources of delay such as communication with permit applicants, and interagency coordination. The best practices and procedural requirements of FAST-41 target both problems and serve as a valuable test case for their efficacy.²⁷ Wisely, Congress has also appropriated funding to support the Permitting Council, which should help propagate and further implement these practices.

Pre-application meetings with project proponents speed permitting by avoiding delays later in the process.²⁸ Meeting with regulators and stakeholders early allows

processing times through expanded capacity; however those field offices no longer carried the heaviest workload due to shifting development patterns and the act did not allow BLM to transfer the special funding to offices with the greatest need).

²⁵This discussion draws heavily from the following article. Jamie Pleune & Ted Boling, *This Permit Reform Works. Why Aren't Mine Projects Using It?* 53 *Env't'l L. Rep.* (forthcoming June 2023) [hereinafter Pleune & Boling, *This Permit Reform Works*]. See also Gov't Accountability Off., GAO-20-379R, Bureau of Land Management: Agency Reorganization Efforts Did Not Substantially Address Key Practices for Effective Reforms (Mar. 6, 2020) and Gov't Accountability Off., GAO-22-104247, BLM, Better Workforce Planning and Data Would Help Mitigate the Effects of Recent Staff Vacancies (Nov. 2021).

²⁶Government Accountability Office, Bureau of Land Management: Agency Reorganization Efforts Did Not Substantially Address Key Practices for Effective Reforms GAO-20-379R, 10 (Mar. 6, 2020).

²⁷For a thorough discussion of these issues, see Pleune & Boling, *This Permit Reform Works* *supra* note 25.

²⁸*Id.* at Section IV.

project sponsors to incorporate environmental and social sensitivities at the design phase, when impact avoidance is still feasible and cost-effective. Additionally, project sponsors can benefit from agencies' experience with addressing controversial or complex impacts in other similar projects. This results in fewer modifications later in the process. It also reduces permit review times by minimizing the amount of additional information agencies must request during the review process. Especially in complex areas with conflicting or overlapping jurisdictions, the analytical and public comment procedures imposed by the NEPA process can actually speed project approval by providing a framework for analysis and bringing multiple permitting authorities to the table.

For example, the NEXUS Gas Transmission Project, was a 250-mile natural gas pipeline traversing Pennsylvania, West Virginia, Ohio, and Michigan.²⁹ During the pre-application process, which included extensive public participation, the project sponsors incorporated 239 route alternatives and variations in the pipeline design to address landowner requests, avoid sensitive resources, or respond to engineering restraints. This feedback resulted in a 91 percent change from the original proposed route design—a number of modifications that would have been prohibitively expensive at the end of the review process. Using this information at the beginning of the process improved efficiency and arguably resulted in a better end-result and a final application that was processed more expeditiously.³⁰

Early stakeholder engagement is also consistent with the results of recent research conducted by MIT investigating sources of delay for renewable energy projects.³¹ Two critical sources of delay were opposition from affected landowners due to real or perceived harms that the project would bring, and inconsistency between overlapping authorities, such as local, state, tribal, and federal jurisdictions. Based on their empirical research, they concluded that “incorporating all stakeholder perspectives from the outset of a siting process will probably save time and money.”³²

This is not to say that early stakeholder engagement will eliminate all opposition. The NEXUS Gas Transmission Project demonstrates a conundrum with finding permitting success stories. The ideal result of implementing a best practice, like pre-application meetings, is the avoidance of a bad result, like project delays from unexpected impacts or local opposition. If the best practice works, the bad result will not occur. Which means that that a success story must prove a negative. It makes sense intuitively that such substantial route alterations would address many concerns and reduce opposition, but there is no way to prove what would have happened if the pipeline design had proceeded as originally designed. Moreover, the absence of opposition is an unrealistic standard to demonstrate success. With large projects, like the NEXUS Transmission Gas Line, it would be virtually impossible to avoid all opposition.³³ Thus, recognizing success requires enough familiarity with the process to understand what could have happened in a given scenario.

FAST-41 procedures also focus heavily on avoiding delays caused by poor inter-agency coordination.³⁴ In early stakeholder meetings, agencies develop a Coordinated Project Plan that encourages the development of concurrent, rather than sequential, analyses. Early and coordinated stakeholder engagement enhances the efficiency of this process. The Permitting Dashboard creates accountability, reducing the likelihood that a decision will linger on the back of someone's desk. Finally, enhanced oversight from the Executive Director of the Permitting Council creates an opportunity for conflicts between jurisdictions to be addressed early, and in a coordinated manner. The Permitting Council's 2020 Annual Report to Congress offered both quantitative and qualitative evidence of the program's success. Between 2010 and 2018, the average time across all agencies for a project to complete an EIS was 4.5 years. In contrast, the average time to complete an EIS for projects that

²⁹Office of the Executive Director, Federal Permitting Improvement Steering Council, Recommended Best Practices for Project Review and Permitting for Infrastructure Projects for Fiscal Year 2018, at 17 (2017).

³⁰This is not to say that early engagement eliminated local opposition in every community. See Heidi Gorovitz Robertson, *Home Rule Symposium: Cities and Citizens Seethe: A Case Study of Local Efforts to Influence Natural Gas Pipeline Routing Decisions*, 122 W. Va. L. Rev. 881, 907–934 (Spring 2020) [hereinafter Gorovitz, *Cities and Towns Seethe*] (describing FERC's extensive public engagement and local opposition in three Ohio towns).

³¹Lawrence Susskind et al., *Sources of Opposition to Renewable Energy Projects in the United States*, 165 Energy Policy 112922 (2022).

³²*Id.* at 13.

³³Gorovitz, *Cities and Towns Seethe* *supra* note 30 at 907–934 (detailing some local opposition to the pipeline).

³⁴For a thorough discussion of these issues, see Pleune & Boling, *This Permit Reform Works* *supra* note 25.

went through the FAST-41 process by 2020 was 2.5 years. Perhaps more persuasively, the report included testimonials from project proponents praising the transparency and efficiency of the process.

A GAO investigation, also found evidence of the program's success that extended beyond federal agencies.³⁵ Although FAST-41 only directly affects federal agencies, the opportunities for coordination extend to state, local, and tribal permitting authorities. Early engagement creates opportunities for permitting authorities to enter into Memorandums of Understanding establishing roles and responsibilities. As an example, the GAO report discussed the Mid-Barataria Sediment Diversion project, which was a complex FAST-41 project focused on restoring ecosystems damaged by coastal erosion and the Deepwater Horizon Oil spill, which oiled over 684 miles of wetlands across the Gulf of Mexico, particularly in the Barataria Bay.³⁶ With the Army Corps of Engineers as lead agency, six federal agencies entered into a memorandum of understanding with several Louisiana state agencies, accelerating the environmental review and permitting process by nearly two years.³⁷ Due to the complexity of this project, many project participants believe that it would not have been possible without the coordination procedures afforded through the FAST-41 process. The GAO attributed this efficiency to enhanced interagency coordination.³⁸ In summary, efficient permitting is possible without compromising environmental standards.

V. Renewable Energy Projects Face Permitting Delays Unrelated to Environmental Standards Due to Serious Problems with the Interconnect Queue and Regional Transmission Organizations

A recent study by the Lawrence Berkeley National Laboratory found that there are over 2,000 GW of total generation and storage capacity waiting for approval to connect to the grid, 95 percent of which are solar, wind, or battery storage.³⁹ The combined wind and solar capacity actively seeking connection to the grid is approximately 1,250 GW, which is roughly equal to the current installed capacity of the entire U.S. power plant fleet and consistent with what is necessary to achieve the 2030 target.⁴⁰

The hurdles facing these projects involve issues with the interconnect queue, regional control of transmission, and a lack of high power transmission lines. The wait time for projects in the interconnect queue is steadily rising.⁴¹ Between 2000–2007, the time between an initial connection request and a fully built, operational plant was typically less than two years. Between 2018–2022, that timeframe doubled to an average of almost 4 years, with an increasing trend. By 2022, the median time between an interconnection request to commercial operations date reached almost 5 years.⁴² The increased volume of proposed renewable projects sitting in the queue promises to continue amplifying this problem. For example, at least two regional transmission organizations, the entities responsible for approving requests to connect to the grid, have announced pauses on accepting new projects until they can process their backlogs. The nation's largest electric grid operator, PJM Interconnection, coordinates electricity movement in 13 states and the District

³⁵ Gov't Accountability Office, GAO-20-19, *Infrastructure Projects: Actions Needed to Fully Develop Performance Schedules for Environmental Reviews 20–21* (Oct. 2019) [*hereinafter* GAO, *Actions Needed to Fully Develop Performance Schedules*].

³⁶ *Id.* at 22.

³⁷ *Id.*

³⁸ *Id.* at 22; *see also* Mark Schleifstein, *Louisiana Granted Final Funds for Unprecedented Coastal Restoration Project* NOLA.com (Mar. 9, 2023) (reporting that Louisiana was granted the final necessary funds to build the unprecedented Mid-Barataria Sediment Diversion project aimed at helping slow land loss devastating the coast).

³⁹ Berkeley Lab, *Queued Up: Characteristics of Power Plants Seeking Transmission Interconnection*, <https://emp.lbl.gov/queues> (last visited May 9, 2023); Energy Technologies Area, *Grid Connection Requests grow by 40% in 2022 As Clean Energy Surges, Despite Backlogs and Uncertainty* (Apr. 6, 2023) <https://energy.lbl.gov/news/grid-connection-requests-grow-40-2022> (last visited May 9, 2023).

⁴⁰ *Id.*; *see also* Emma Penrod, *Why the Energy Transition Broke the U.S. Interconnection System* Utility Dive (Aug. 22, 2022) (quoting Bhaskar Ray, vice president of interconnection and development engineering for energy developer Qcells USA as estimating that if all the capacity currently waiting in the interconnection queue today were built by 2030, the U.S. would meet the 80% clean energy share milestone).

⁴¹ Berkeley Lab, *Queued Up: Characteristics of Power Plants Seeking Transmission Interconnection*, <https://emp.lbl.gov/queues> (last visited May 9, 2023).

⁴² *Id.*

of Columbia.⁴³ It has announced that it will not process any new applications until the end of 2025.⁴⁴ Similarly, CAISO,⁴⁵ a California grid operator, declined to accept any new projects in 2022 while they processed their backlog. Both entities are looking for systemic solutions to improve the grid connection process. The interconnect queue, regional control of transmission, and a lack of high power transmission lines are serious problems delaying implementation of green technology. These problems are worthy of permit reform and require Congressional attention. Strengthening federal authority to facilitate interstate transmission power transmission may be one solution. Regardless of the solution to these complex problems, delays caused by the interconnect queue should not be conflated with NEPA and environmental standards.

VI. Good Decisions Are More Important Than Rushed Decisions

The discussion around permit reform often focuses exclusively on decisionmaking times. A legitimate sense of urgency to implement clean energy projects drives many to seek shortcuts. However, rushed decisions have consequences. For example, the GAO recently investigated the Department of Energy's management of \$1.1 billion in funding for carbon capture sequestration projects.⁴⁶ It found that between 2009 to 2022, the DOE provided \$684 million to eight coal projects. Every project went over budget and exceeded timelines. Only one project went into operation, and even that project eventually shut down because it was not economically viable. In summary, none of the projects succeeded.

Rushed decisionmaking contributed to the DOE's poor judgment and money management, according to the GAO. Eager to spend funding from the American Recovery and Reinvestment Act of 2009, the DOE bypassed its usual selection procedures and committed to coal projects at their initial selection. Additionally, DOE used expedited timeframes for project negotiations—shortening them from one year to three months. Bypassing procedures reduced DOE's ability to identify and mitigate risks, resulting in a \$684 million loss for the American people.

Like mismanaged money, environmental resources, communities, and human health are not replaceable. The BP Deepwater Horizon Oil Spill offers a cautionary tale against expediting permitting by eliminating analytical rigor and environmental analysis.⁴⁷ The Macondo well never underwent NEPA's hard look requirement due to a broad categorical exclusion.⁴⁸ Additionally, staff within the managing agencies were subject to 30-day deadlines and instructed to approve permits as quickly as possible, without creating unnecessary delays.⁴⁹ Furthermore the industry had grown more quickly than the agency, resulting in offices that were short-staffed and lacked training or expertise to understand the implications of the technology being used.⁵⁰

Due to NEPA streamlining procedures, short review deadlines, and insufficient agency capacity, risks that might have been exposed through the NEPA process went undetected. For example, BP's emergency response plan for a subsea blow-out was to drill a relief well.⁵¹ When this became the only option for containing the spill, BP revealed that drilling the relief well would take at least three months. Meanwhile, the spill kept gushing over 50,000 barrels of oil per day into the Gulf.⁵² This risk should have been caught by agency staff at the permitting stage, but it wasn't. Because the permit was not subject to public comment or circulated to other agencies, no one else saw it either. We cannot know if a more rigorous permitting process would have avoided the spill. But we can learn from the past.

Good decisions are more important than rushed decisions. Many reform proponents emphasize statutory exemptions for favored projects, expanding the use

⁴³ Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia. <https://pjm.com/about-pjm/who-we-are/territory-served> (last visited Apr. 24, 2023).

⁴⁴ Institute for Energy Research, PJM Plans for a Two-Year Pause on Reviewing Project Applications (Feb. 22, 2022). <https://www.instituteenergyresearch.org/the-grid/pjm-plans-for-a-two-year-pause-on-reviewing-project-applications/#:~:text=To%20implement%20it%2C%20PJM%20is%20proposing%20an%20interim,on%20those%20coming%20at%20the%20end%20of%202027.>

⁴⁵ California Independent System Operator <https://www.caiso.com/Pages/default.aspx>.

⁴⁶ Gov't Accountability Off., GAO-22-105111, Carbon Capture and Storage: Actions Needed to Improve DOE Management of Demonstration Projects (Dec. 2021).

⁴⁷ National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Report to the President, Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling (January 2011) [*hereinafter* Deepwater Horizon Commission Report].

⁴⁸ *Id.* at 82.

⁴⁹ *Id.*

⁵⁰ *Id.* at 73–74.

⁵¹ *Id.* at 132.

⁵² *Id.* at 167.

of categorical exclusions, imposing short deadlines and page limits, restricting public comment opportunities, and reducing the rigor of environmental analysis.⁵³ As the Deepwater Horizon example demonstrates, these reform proposals are likely to underestimate risks and overlook problems.

VII. Conclusion

Despite its ubiquity, the phrase “permit reform” is misleading. There is no single “permit law” that can be amended to eradicate delays. Complex projects, like transmission lines, mine permits, and renewable energy projects implicate a variety of legal standards and permitting authorities, each focused on protecting different resources such as clean air, clean water, endangered species, and cultural resources.

Used properly, the NEPA process can facilitate coordinated information gathering and decisionmaking and streamline the permitting process. Improved inter-agency coordination, shared data management, and strategic permit sequencing facilitate concurrent review between permitting authorities. Enhanced communication with the project sponsor, implementation of permitting best practices, and greater accountability for permitting authorities avoid inefficient delays. Early stakeholder engagement creates an opportunity to identify, avoid, and mitigate harms at the most cost-effective phase of a project’s life cycle. All of these improvements depend on robust agency capacity. These reforms are not easily encapsulated in a pithy soundbite, but they do address the true causes of delay in permitting without compromising environmental or safety standards.

QUESTIONS SUBMITTED FOR THE RECORD TO PROFESSOR JAMIE PLEUNE, UNIVERSITY OF UTAH, S.J. QUINNEY COLLEGE OF LAW

Questions Submitted by Representative Westerman

Question 1. Can you explain how Congress can modernize and clarify the CEQ regulations to facilitate more efficient, effective, and timely NEPA reviews by Federal agencies by simplifying regulatory requirements, codifying certain guidance and caselaw relevant to those proposed regulations, revising the regulations to reflect current technologies and agency practices, eliminating obsolete provisions, and improving the format and readability of the regulations?

Answer. There has been intense focus on revising CEQ’s NEPA regulations and codifying certain changes to NEPA in order to improve decisionmaking timelines. In addition to CEQ’s ongoing efforts to revise its NEPA implementing regulations,¹ each agency also has its own implementing regulations tailored to the practices and challenges of implementing NEPA within the context of work accomplished by each agency.² While there may be some regulatory provisions that merit revision, research suggests that the regulatory requirements of NEPA are only a small factor in the variation between decisionmaking times. External factors such as agency capacity, budgets, technology, project management, compliance with other laws,

⁵³ See e.g., The Building U.S. Infrastructure through Limited Delays and Efficient Reviews (BUILDER) Act (H.R. 2515) available at <https://transportation.house.gov/builder-act/default.aspx> (last visited Mar. 17, 2023).

¹ Council on Environmental Quality, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43,304 (July 16, 2020) (“2020 Regulations”); Council on Environmental Quality, National Environmental Policy Act Implementing Regulations Revisions, 87 Fed. Reg. 23,453 (Apr. 20, 2022) (“Phase 1 Final Rule”); Fall 2022 Unified Agenda of Regulatory and Deregulatory Actions, RIN 0331-AA07 (describing scope of Phase 2 revisions to NEPA implementing regulations). See also, John Ruple et al., *Evidence-Based Recommendations for Improving National Environmental Policy Act Implementation*, 46 Columbia J. Env’tl L. 274, 283-284 (2022) [hereinafter Ruple et al., *Evidence-Based Recommendations for Improving NEPA Implementation*] (explaining regulatory structure and procedural history of amendments to NEPA’s implementing regulations).

² 40 C.F.R. 1507.3 (2020) (instructing agencies to develop or revise procedures to implement NEPA); Council on Environmental Quality, Deadline for Agencies to Propose Updates to National Environmental Policy Act Procedures, 86 Fed. Reg. 34,154 (June 29, 2021) (extending deadline for agencies to revise NEPA regulations); U.S. Forest Service, National Environmental Policy Act (NEPA) Compliance 85 Fed. Reg. 73,620 (Nov. 19, 2020) (finalizing updates to Forest Service Regulations implementing NEPA); Ruple et al., *Evidence-Based Recommendations for Improving NEPA Implementation* supra note 1 at 286-287 (describing potential conflict where the Forest Service had already initiated a procedure for updating its implementing regulations for NEPA prior to the issuance of the 2020 Rule).

changes to the scope of the project, and litigation aversion appear to have a heavier influence on efficient and timely NEPA reviews.³

Rather than focusing on regulatory changes that reduce analytical rigor and environmental protections without offering a substantive benefit, a more productive approach to improving NEPA efficiency would focus on improving agency capacity, promoting strategically-sized analyses for long-term efficiency, using NEPA as a framework for structured inter-agency (and inter-governmental) collaboration, and utilizing the NEPA process to develop consensus.⁴ The procedures adopted through FAST-41 appear to improve predictability, transparency and timeliness for complex projects.⁵

Additional promising practices have been publicized in the annual Best Practices Reports issued by the Federal Permitting Improvement Steering Council.⁶ The early iterations of these reports (2017 & 2018) were particularly creative and identified specific practices that had been implemented by different agencies with positive results for efficiency. Many of the best practices identified in these reports could be replicated to improve efficiency across agencies. For example, the Army Corps of Engineers improved its web-based application for a general permit, including creating an online permit application, with a video tutorial on how to fill it out, and specific contact information for assistance. This reduced the frequency of incomplete or inaccurate applications, which reduced processing times. It also freed up staff members to focus on more complex permits.⁷ These reports identify manageable, affordable, and replicable practices that improve efficiency. Unfortunately, later iterations of the best practices report focus less on success stories. In particular, the format adopted in 2022, which requires a Quarterly Agency Performance Report, imposes an additional workload on the Permitting Council and agencies without providing the same overview of creative measures adopted by different agencies that test improved practices and assess their value.

Question 2. Yes or No—the study on NEPA implementation you co-authored, Evidence-Based Recommendations for Improving National Environmental Policy Act Implementation, only analyzed NEPA decisions completed by the U.S. Forest Service. If yes, please explain the limits of extrapolating data and conclusions from a study on one government agency and applying those conclusions to other government agencies.

Answer. Yes. The article, *Evidence-Based Recommendations for Improving National Environmental Policy Act Implementation*, used a database of NEPA decisions issued by the U.S. Forest Service. To our knowledge, the Multi-Year Trend Report database compiled by the Forest Service is the most comprehensive, detailed, and reliable set of data regarding NEPA decisions gathered by any agency.⁸ It would be valuable for other agencies to develop similar databases in order to compare practices.⁹ The MYTR database also has limitations. It was designed as a tracking system to facilitate compliance with public disclosure duties.¹⁰ The information that it contains is specific to NEPA decision documents, which are distinct from the time required to implement a project following its approval. Additionally, the database does not track when work on a NEPA decision document is paused due to changes in the scope of the project, political priorities, or budgetary limitations. Finally, the MYTR database offers information regarding decisionmaking times, but it does not provide a way to test whether the NEPA process produces better projects through the twin aims of meaningful public engagement and careful consideration

³ Gov't Accountability Off., GAO-14-370, National Environmental Policy Act: Little Information Exists on NEPA Analyses 1, 15 (2014) [*hereinafter* GAO, NEPA: Little Information Exists] (noting that for non-federal projects requiring a federal permit, delays in obtaining project funding, changes to a proposal that occur during the NEPA process, and non-federal approvals all may delay a NEPA analysis); Ruple et al., *Evidence-Based Recommendations for Improving NEPA Implementation* *supra* note 1 at 299, 327-333).

⁴ *Id.* at 335-340.

⁵ Jamie Pleune & Edward Boling, *This Permit Reform Already Works. Why Aren't More Mining Projects Using It?* 53 Env. L. Rep. 10463, 10468 (June 2023) [*hereinafter* Pleune & Boling, *This Permit Reform Already Works*].

⁶ <https://www.permits.performance.gov/fpisc-content/reports-and-publications#annualreporttocongress>

⁷ Federal Permitting Improvement Steering Council, Recommended Best Practices for Environmental Reviews and Authorizations for Infrastructure Projects for Fiscal Year 2018 (Dec. 2017).

⁸ Ruple et al., *Evidence-Based Recommendations for Improving NEPA Implementation* *supra* note 1 at 288, 333.

⁹ *Id.* at 333.

¹⁰ *Id.* at 289.

of environmental impacts. Valuable information about avoided impacts, improved time to implementation, and reduction of community opposition to a project are not visible in this database.

Despite these limitations, there are two reasons to believe that the information we obtained regarding Forest Service NEPA practice is informative for the practices of other agencies. First, the Forest Service conducts more EISs than any other agency.¹¹ Second, when we turned our attention to the mine permitting process, multiple reports identified the same underlying causes of delay in the mine permitting process that we observed in the Forest Service's NEPA practices.¹² For these reasons, we believe that the information regarding Forest Service practice is informative, even if it is not perfect.

Question 3. The study you co-authored on NEPA implementation in the U.S. Forest Service, Evidence-Based Recommendations for Improving National Environmental Policy Act Implementation, found that the administrative region had a "significant influence" on decision-making times. Can you explain the regional differences that affected the variation in completion times and why further research is necessary to explain the regional differences in decision-making times?

Answer. The regression model revealed that the Forest Service administrative region responsible for overseeing a NEPA analysis has a significant influence on decisionmaking times. This finding surprised us because each Forest Service region is implementing the same laws, subject to the same regulations, pursuant to the same administrative guidance, involving the same activities. If delays in decision-making times were caused solely by the NEPA process, we would expect similar mean completion times across regions. The regional variation suggests that factors external to the NEPA process were affecting decisionmaking times. We posited some potential influences including ecological differences, cultural differences, and different budgetary structures. However, these were simply ideas. We have no way to test these hypotheses, which is why further research is necessary. Understanding why some regions complete the NEPA process more quickly may reveal administrative and management efficiencies that could be replicated. Conversely, understanding why some regions tend toward slower decisions could identify barriers to efficiency that can be eliminated.

Question 4. Regarding the study you co-authored on NEPA implementation in the U.S. Forest Service, Evidence-Based Recommendations for Improving National Environmental Policy Act Implementation, can you explain the correlation between regional decision-making time and wildfire suppression costs?

Answer. Throughout our study period, fire borrowing affected the staff and resources available to complete NEPA projects and thereby increased NEPA compliance times.¹³ Additionally, the uncertainty caused by wildfire suppression activities was identified by Forest Service staff and stakeholders as a cause of delay that complicated NEPA compliance.¹⁴ Sources of delay included unstable budgets as well as staff reductions and shifting staff from project management to wildfire duties.¹⁵ Additionally, according to a 2006 report by the Office of Inspector General, some regions bore an "inequitable wildfire protection burden" because wildland fire protection agreements between the Forest Service and other agencies had not been renegotiated to reflect appropriate WUI protection responsibilities.¹⁶ Finally, due to ecological differences, some regions have higher wildfire hazards than others. There appeared to be some correlation between regions with longer decisionmaking times and those with greater wildfire burdens. However, other than observing the overlap, we had no way to test the relationship. It is worth noting Congress stabilized funding for wildfire suppression costs in 2018. However, the effect of this legislation was not visible during the period of study for our research.¹⁷ This could be a productive area of study.

¹¹Executive Office of the President, Council on Environmental Quality, Length of Environmental Impact Statements (2013-2018).

¹²Jamie Pleune, *Playing the Long Game: Expediting Permitting Without Compromising Protections*, 52 Env. L. Rep. 10893 (Nov. 2022).

¹³Ruple et al., *Evidence-Based Recommendations for Improving NEPA Implementation* *supra* note 1 at 328-29.

¹⁴*Id.* at 329-330.

¹⁵*Id.* at 330.

¹⁶Ruple et al., *Evidence-Based Recommendations for Improving NEPA Implementation* *supra* note 1 at 326.

¹⁷*Id.* at 327-328.

Question 5. Would additional resources for wildfire management help reduce NEPA decision-making times [for] areas with higher wildfire suppression costs?

Answer. According to a 2019 report from the Congressional Research Service, “Fire expenditures continue to climb, affecting the implementation of other programs . . . through personnel and funds transferred to fire control.”¹⁸ A series of roundtables conducted with stakeholders engaged with the Forest Service NEPA process also described how the high priority of wildfire suppression activities affect decisionmaking times. “Budget shortfalls and statutory mandates on funding for fire response, combined with a shortage of trained employees in areas other than fire and/or a frequent diversion of staff to emergency response or shifting priorities, hamper the ability of the Agency to make progress on other important forest and grassland resource management efforts.” They also noted that “staffing levels are not adequate to meet the current demand” and that “timelines are often lengthened due to the need for hiring or onboarding additional staff, including ‘holes’ in interdisciplinary team specialist representation”¹⁹ Based on these reports, it appears likely that stabilizing budgets and bolstering agency capacity in non-fire suppression roles would improve decisionmaking times and efficiency in the NEPA process.

Question 6. Can you provide more information on how America needs permitting reform for transmission lines?

Answer. A recent study by the Lawrence Berkeley National Laboratory found that there are over 2,000 GW of total generation and storage capacity waiting for approval to connect to the grid, 95 percent of which are solar, wind, or battery storage.²⁰ However, these projects face long wait times and uncertainty when attempting to connect to the grid. Between 2000–2007, the time between an initial connection request and a fully built, operational plant was typically less than 2 years. Between 2018–2022, that timeframe doubled to an average of almost 4 years, with an increasing trend. By 2022, the median between an interconnection request to commercial operations date reached almost 5 years. The increased volume of proposed renewable projects sitting in the queue promises to amplify this problem. For example, at least two regional transmission organizations, the entities responsible for approving requests to connect to the grid, have announced pauses on accepting new projects until they can process their backlogs. The nation’s largest electric grid operator, PJM Interconnection, coordinates electricity movement in 13 states and the District of Columbia.²¹ It has announced that it will not process any new applications until the end of 2025.²² Similarly, CAISO,²³ a California grid operator, declined to accept any new projects in 2022 while they processed their backlog. Both entities are looking for systemic solutions to improve the grid connection process. In addition to these challenges, transmission lines also face siting challenges, especially within communities that do not benefit from the power line. The interconnect queue, regional control of transmission, and siting high power transmission lines are serious problems that deserve a national strategy and are worthy of permit reform.

Question 7. How would having a lead federal agency for permitting benefit getting more energy projects up and running.

Answer. Experience within the FAST-41 program demonstrates that identifying a lead federal agency and tasking it with the responsibility to convene stakeholders early in the permitting process can improve the transparency, predictability, and timeliness of permitting.²⁴ Tasking a lead agency with the responsibility for coordinating multiple different permitting authorities, sequencing permitting decisions,

¹⁸ Kate Hoover & Anne A. Riddle, Cong. Res. Serv., R43872, National Forest System Management: Overview, Appropriations, and Issues for Congress (2019)

¹⁹ Nat’l Forest Found., EADM, Environmental Analysis and Decisionmaking, Regional Partner Roundtables: National Findings and Leverage Points 18 (2018) <https://www.nationalforests.org/assets/pdfs/National-EADM-Report.pdf>

²⁰ Berkeley Lab, Energy Technologies Area, *Grid Connection Requests grow by 40% in 2022 As Clean Energy Surges, Despite Backlogs and Uncertainty* (Apr. 6, 2023) <https://energy.lbl.gov/news/grid-connection-requests-grow-40-2022>

²¹ Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia. <https://pjm.com/about-pjm/who-we-are/territory-served> (last visited Apr. 24, 2023).

²² Institute for Energy Research, PJM Plans for a Two-Year Pause on Reviewing Project Applications (Feb. 22, 2022). <https://www.instituteforenergyresearch.org/the-grid/pjm-plans-for-a-two-year-pause-on-reviewing-project-applications/#:~:text=To%20implement%20it%2C%20PJM%20is%20proposing%20an%20interim,on%20those%20coming%20at%20the%20end%20of%202027>.

²³ California Independent System Operator <https://www.caiso.com/Pages/default.aspx>

²⁴ Pleune & Boling, *This Permit Reform Already Works* *supra* note 5 at 1046-1047.

identifying information that must be gathered, developing data management protocols, and coordinating stakeholder engagement can promote efficiency. For example, the Federal Railroad Administration (FRA) utilized the NEPA process to overcome the challenge of inter-agency variance in decisionmaking for multiple federal, state, and local entities affected by a proposal to improve intercity passenger rail service in the Northeast Corridor.²⁵ By engaging multiple agencies early, and identifying points of contact within each agency, the FRA ensured that partner agencies could provide timely information that the technical team utilized, avoiding conflict down the road. Communication protocols enabled the creation of an interactive dataset encompassing multiple local and state jurisdictions, transportation authorities and watersheds that could be used for subsequent environmental analyses. This created a framework for collaboration that would foster continued efficiencies beyond project implementation because future projects can utilize the established inter-jurisdictional database and communication protocols.

Question 8. Can you further explain permitting delays caused by litigation aversion of agency staff?

Answer. In 2018, the Forest Service launched an agency-wide effort to improve processes related to Environmental Analysis and Decision Making (EADM).²⁶ The acronym EADM includes the NEPA processes, as well as underlying environmental decisions such as forest planning, issuance of special use permits, implementation of forest management activities, and fulfillment of other statutory obligations, including compliance with the Clean Water Act, the Endangered Species Act, and the National Historic Preservation Act. As part of that effort, the Forest Service asked the National Forest Foundation to assist in hosting ten regional partner roundtables across the country with the objective of collecting diverse feedback to inform ways to improve decisionmaking processes. During the roundtables, concern over litigation aversion featured prominently in every region.²⁷ According to participants in the roundtables, Forest Service staff avoid making controversial decisions for fear of affecting opportunities for promotion.²⁸ A controversial decision may sit on the back of someone's desk until that person is promoted or sent on detail, leaving someone else to bear the political or professional backlash of signing a decision that gets litigated. Additionally, litigation aversion leads to unwieldy, bulky, time-consuming documents. Participants in the roundtables explained, "Risk aversion and a history of legal challenges to USFS decisions have led to the 'bullet-proofing' of environmental analysis documents and specialist reports" resulting in documents where "the complexity and size of analysis is often inconsistent with the complexity and size of the project."²⁹ These observations are consistent with external research on Forest Service NEPA practice, which found that the threat of litigation had more influence on the decision to prepare an EIS or an EA than the degree of environmental impacts.³⁰ Practitioners also recognize the problem. As one observed, "[i]t has been the author's frequent experience that BLM and Forest Service delay decision-making in order to prepare more and lengthier documents in an effort to bulletproof their decisions from appeal. As a result, the diversion of agency resources and attention to the preparation of up-front disclosures under NEPA means less attention and resources are devoted to on the ground efforts such as monitoring the effects of agency decisions."³¹ Helen Leanne Serassio, a lawyer with more than 14 years in the Department of Transportation, suggested that "the most effective action agencies can take to increase efficiencies in the NEPA review process is to get back to the basics with NEPA and halt efforts to make NEPA documents litigation-proof."³²

Litigation aversion, which is a cultural problem that affects an untold number of decisions, is different from delays caused by actual litigation. Government-wide,

²⁵ Ruple et al., *Evidence-Based Recommendations for Improving NEPA Implementation* *supra* note 1 at 337-338.

²⁶ <https://www.nationalforests.org/collaboration-resources/environmental-analysis-and-decision-making-roundtables>.

²⁷ Ruple et al., *Evidence-Based Recommendations for Improving NEPA Implementation* *supra* note 1 at 330.

²⁸ *Id.* at 331.

²⁹ *Id.* (quoting Michael J. Mortimer et al., *Environmental and Social Risks : Defensive National Environmental Policy Act in the US Forest Service*, 109 J. Forestry 27, 29-30 (2011).

³⁰ *Id.*

³¹ *Id.* at 332 (quoting Laura Lindley, *NEPA Streamlining: Some Observations on Its Use in the Context of BLM and Forest Service Oil and Gas Program*, in Rocky Mt. Min. L. Found., *Natural Resources and Environmental Administrative Land and Procedure II* (2004).

³² Helen Leanne Serassio, *Legislative and Executive Efforts to Modernize NEPA and Create Efficiencies in Environmental Review*, 45 Tex. Env'tl. L.J. 317, 333 (2015).

only about two-tenths of one percent of more than 50,000 NEPA decisions that are documented each year result in litigation.³³ An investigation by the GAO regarding Forest Service fuel reduction projects from fiscal years 2006–2008 revealed that only 29 out of 1,415 decisions were litigated and the litigation impacted only 1% of lands slated for fuel reduction projects.³⁴ In summary, the fear of litigation appears to create far more delay than litigation itself.

Question 9. How can litigation reform reduce delays caused by litigation aversion by agency staff?

Answer. According to participants in the EADM roundtable discussions, Forest Service staff fear that their opportunities for promotion will be reduced if they sign a NEPA decision that is litigated.³⁵ Assuming the accuracy of these reports, the best way to reduce delays caused by litigation aversion is to reward agency officials who make prompt, well-supported decisions, regardless of whether the decision is litigated. This shift in focus would enable agencies like the Forest Service to encourage field officers to act decisively and exercise discretion to focus the NEPA analysis on significant issues identified during the scoping process.³⁶ As Helen Leanne Serassio observed, “Agencies must recognize and use their discretion to determine the necessary length of their NEPA documents, the methodologies to use, and the depth of the analysis necessary to make an informed decision. . . . If the agency’s decision is not ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,’ it will withstand judicial review.”³⁷ It is also worth noting that the NEPA process itself can help an agency avoid litigation by addressing stakeholder concerns through impact avoidance, reduction or mitigation.³⁸ It can also help ensure that a contentious agency decision is defensible. Through NEPA’s public participation procedures, the agency has an early opportunity to identify issues that may be litigated and justify its decisions regarding those issues. “Courts do not typically overturn NEPA decisions when the administrative record demonstrates that the agency has followed NEPA’s procedural steps, when there are minor deficiencies in the NEPA document, or when an agency documents why it has chosen to exclude information.”³⁹ Without the public participation process afforded through NEPA, an agency may not understand the weaknesses in its decision until it is too late. Finally, eliminating a cause of action under NEPA will not protect a weak or unjustified agency decision from litigation. A study analyzing 20 years of Forest Service land management litigation recognized that most lawsuits involve multiple claims arising under different statutes.⁴⁰ In cases involving multiple statutes, the majority of the time, the Forest Service would have lost even if NEPA did not exist.⁴¹ The importance of this observation comes into sharper focus when one considers the proliferation of local, regional, and state regulations that can also provide a cause of action to challenge a controversial action.

Question 10. Yes or no—do you agree that the Biden administration push to electric vehicles, and other so-called “clean energy” technologies, will require an increase in mineral production, i.e. mining?

Answer. Yes. According to the Biden Administration’s Report, Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth, demand for critical minerals and materials “is projected to surge over the next two decades, particularly as the world moves to eliminate net carbon emissions by 2050.”⁴² The report provided the following examples, “global demand for lithium and graphite, two of the most important materials for electric vehicle batteries, is

³³ *Id.* at 333-334.

³⁴ Gov. Accountability Off., GAO-10-337, Forest Service: Information on Appeals, Objections, and Litigation Involving Fuel Reduction Activities, Fiscal Year 2006 through 2008 1 (2010).

³⁵ Ruple et al., *Evidence-Based Recommendations for Improving NEPA Implementation* *supra* note 1 at 330.

³⁶ *Id.* at 342.

³⁷ Helen Leanne Serassio, *Legislative and Executive Efforts to Modernize NEPA and Create Efficiencies in Environmental Review*, 45 Tex. Envtl. L.J. 317, 334 & 335-341 (2015).

³⁸ *Id.* at 340-341.

³⁹ *Id.* at 335; Ruple et al., *Evidence-Based Recommendations for Improving NEPA Implementation* *supra* note 1 at 342-343.

⁴⁰ Amanda M.A. Miner et al., *Twenty Years of Forest Service Land Management Litigation*, 112 J. Forestry 32, 36 (2014).

⁴¹ *Id.*; Ruple et al., *Evidence-Based Recommendations for Improving NEPA Implementation* *supra* note 1 at 319.

⁴² The White House, Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth: 100-Day Reviews Under Executive Order 14017, 9 (June 2021).

estimated to grow by more than 4000 percent by 2040 in a scenario where the world achieves its climate goals.”

Question 11. Yes or no—Do you agree that the United States is currently reliant on foreign countries for critical minerals needed to transition to electric vehicles?

Answer. Yes. According to the Biden Administration’s Report, Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth, “Global production for lithium, cobalt, and graphite are primarily dependent on a single nation . . . for each of these materials, a single country controls over 60 percent of the global production.”⁴³

Question 12. Yes or No—Are there steps we can take to mine and process more critical minerals in America?

Answer. Yes. On May 10, 2023, the Biden Administration identified several steps “to expand and accelerate responsible domestic production of critical minerals in a manner that upholds strong environmental, labor, safety, Tribal consultation, and community engagement standards.”⁴⁴ Promising reforms include updating the General Mining Law and providing legal clarification for laws affecting re-mining and remediation projects. These are two examples of arenas where legal ambiguities caused by complexities in the law create delay.⁴⁵

Question 13. Yes or no—the main producers of critical minerals—such as China, Congo, and Indonesia—don’t have nearly the same environmental standards on mining as the United States, correct?

Answer. I am not an expert on international environmental law. Based on my limited knowledge, it appears that China, Congo, and Indonesia have lower environmental standards. Other main producers, including Canada and Australia, appear to have comparable environmental regulatory regimes.

Question 14. Yes or no—the main producers of critical minerals—such as China, Congo, and Indonesia—do not have as many protections for human rights or labor as the United States, correct?

Answer. I am not an expert in international human rights or labor practices. Based on my limited knowledge, it appears that China, Congo, and Indonesia have fewer human rights protections. Other main producers, including Canada and Australia, appear to have comparable human rights and labor regimes.

Questions Submitted by Representative Grijalva

Question 1. Republicans are demanding 22% across-the-board cuts to annual appropriations. How would cuts like those affect the speed of permit processing, which they claim they are trying to improve?

Answer. Common causes of delay in the permitting process can be summarised into three categories: (1) a lack of agency capacity, which includes insufficient allocation of resources (e.g., number of staff, staff expertise, funding, infrastructure, training, and or computer technology); (2) waiting for information from an applicant, particularly following a permit application that was vague or incomplete, or following a change to a proposed plan; (3) compliance with other legal requirements and/or ineffective agency coordination or collaboration during the permitting process.⁴⁶ Notably, these three categories are not independent. The first category—agency capacity—affects the other two. Without sufficient staff or expertise, an agency cannot provide support or training to assist operators in submitting complete applications with the required information. It is also unlikely that they will effectively engage in proactive coordination. Thus, a lack of agency capacity exacerbates the other two causes of delay.

⁴³ *Id.* at 120.

⁴⁴ White House, Fact Sheet: Biden-Harris Administration Outlines Priorities for Building America’s Energy Infrastructure Faster, Safer, and Cleaner (May 10, 2023) <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/10/fact-sheet-biden-harris-administration-outlines-priorities-for-building-americas-energy-infrastructure-faster-safer-and-cleaner/>.

⁴⁵ Pleune, *Playing the Long Game* *supra* note 12 at 10901-10905.

⁴⁶ Pleune, *Playing the Long Game* *supra* note 12 at 10475.

Question 2. What impact does Executive Order 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All, have on energy independence?

Answer. Executive Order 14096 reduces the risk that we will repeat mistakes of the past by failing to account for the disproportionate impacts that often fall to minority, underrepresented, and socially or economically deprived communities.

Question 3. Would extending or even expanding the use of fossil fuels make us more competitive or less competitive when compared to countries that are racing toward a renewable energy economy?

Answer. This is outside my area of expertise.

Question 4. Would extending or even expanding the use of fossil fuels increase our national security or weaken it?

Answer. According to the Secretary of Defense, “No country can find lasting security without tackling the climate crisis.”⁴⁷ Expanding the use of fossil fuels will exacerbate the climate crisis and consequently weaken our national security.

Question 5. What is the connection between NEPA and energy independence?

Answer. One way to achieve energy independence is transitioning to a renewable energy economy, which means building massive infrastructure. It also will require cooperation between agencies with different jurisdictional duties, states, local communities, and tribes. Without a framework for coordinating analysis, considering stakeholder input, identifying potential hazards, and avoiding, reducing, or mitigating those impacts, this build out of infrastructure would be practically impossible. One barrier to the deployment of renewable energy projects is opposition from affected landowners due to real or perceived harms that the project would bring, and inconsistency between local, state, tribal, and federal laws.⁴⁸ A research team from MIT concluded “incorporating all stakeholder perspectives from the outset of a siting process will probably save time and money” by addressing concerns early and avoiding sustained political opposition. The NEPA process is a familiar tool that can be used to engage stakeholders early and streamline renewable energy deployment. The NEPA process also serves as a tool for decisionmakers to defend justified decisions. It offers a public process for deliberation. It helps decisionmakers identify issues of concern. It provides a forum to justify use of agency discretion. It provides a preview potential sources of conflict and a mechanism for avoiding, reducing, or mitigating impacts. And it helps agencies understand legal vulnerabilities of a decision before it's made.

Question 6. What would weakening NEPA mean for frontline communities, communities that have historically borne a disproportionate burden of environmental harms?

Answer. Weakening NEPA would harm these communities. NEPA's “look before you leap” mandate requires agencies to disclose environmental impacts, weigh alternatives, and consider public comment before committing public resources to a course of action.⁴⁹ Looking to the past is highly relevant to the future. Prior to NEPA's enactment, agencies were free to implement decisions without regard to the collateral damage on communities or natural resources. For example, the Federal Highway Act of 1956 initiated construction of the interstate highway system.⁵⁰ Focused on speedy implementation, the Department of Transportation routed highways through low cost, low opposition lands, which tended to be parks, historic

⁴⁷Department of Defense, Office of the Undersecretary of Defense (Acquisition and Sustainment), Department of Defense Climate Adaptation Plan 2022 Progress Report. Report Submitted to National Climate Task Force and Federal Chief Sustainability Officer (Oct. 2022).

⁴⁸Lawrence Susskind et al., *Sources of Opposition to Renewable Energy Projects in the United States*, 165 Energy Policy 112922 (2022).

⁴⁹*Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (“The statutory requirement that a federal agency contemplating a major action prepare such an environmental impact statement serves NEPA's action-forcing purpose in two important respects. It ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.” (internal citations and quotations omitted)); *Baltimore Gas & Elec. v. Nat. Res. Def. Council*, 462 U.S. 87, 97 (1983) (“NEPA has twin aims. First it places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action. Second it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decision-making process.” (internal citations and quotations omitted)).

⁵⁰Linda Luther, Cong. Res. Serv., *The Role of the Environmental Review Process in Federally Funded Highway Projects: Background and Issues* 6-7 (Apr. 2012).

sites, recreation areas, and working class or low-income neighborhoods. As a result, low-income communities were disproportionately harmed during the build out of the interstate highway system. One example is a segment of I-95 that cut through an innercity community outside of Miami, Florida. Overtown, known at the time as the “Harlem of the South,” was a thriving black community. The selected route for I-95 cut straight through the community, even though a less destructive route along a nearby abandoned railroad corridor was available.⁵¹ In a 2009 report, the Federal Highway Administration acknowledged that the selected route “had a disastrous impact on the economic and social structure of the community” with lingering effects that to this day fuel anger, resentment, and distrust toward the Department of Transportation.⁵² Many other communities suffered similar fates due to one-sided planning focused on finding the cheapest route, without regard to the collateral impacts. As one group of scholars described, “Take any major American city, and you’re likely to find a historically Black neighborhood demolished, gashed in two, or cut off from the rest of the city by a highway.”⁵³ The disclosure requirements imposed through NEPA were intended to avoid similar ill-advised and harmful uses of federal power and funding. As the nation considers how to build a new interstate energy infrastructure system, the lessons of the past should serve as a cautionary tale.

Question 7. Under the Trump administration, the Bureau of Land Management lost significant numbers of experienced staff when they tried to move the agency’s headquarters out of D.C. While the Biden administration has taken important steps to address the bureau’s workforce challenges. Based on your research, would you please explain the expected impact of the Trump BLM relocation on permitting times, and why it is important to provide sufficient and stable funding.

Answer. The Bureau of Land Management is one of several agencies that suffered extreme losses of staff under the prior administration.⁵⁴ Since 2011, it has been on the GAO’s list of programs at high risk and vulnerable to waste, fraud and abuse due in part to a lack of staff. This problem was further exacerbated in July 2020, when the Trump Administration abruptly decided relocate BLM’s headquarters from Washington D.C. to Grand Junction, Colorado. The Headquarters Office, which develops guidance and regulations, should be staffed by 311 career positions. However, it was already severely understaffed with 132 vacant positions before the relocation announcement. In response to the relocation announcement, 81 more staff left, leaving the leadership at 31 percent capacity. The remaining leadership team were dispersed among multiple offices.

Numbers do not tell the whole story. The BLM also suffered a loss of experienced staff. Every BLM staff member interviewed reported that the loss of experienced staff negatively affected their offices’ ability to conduct its duties. For example, the loss of institutional knowledge about laws and regulations meant that the BLM could not provide knowledgeable input on proposed rules and legislation. Other staff admitted that the rapid loss of experienced staff hindered knowledge transfer. In a follow-up report, a year later, all BLM staff interviewed by the GAO reported challenges in completing their duties due to headquarters vacancies. As a result of delays in creating or clarifying guidance or policies, some staff relied on outdated policy guidance to make decisions. Other staff reported delays implementing upgrades to information technology systems, which GAO had previously recommended be updated. Obviously these institutional challenges would affect permitting times. Applicants could not receive good guidance from experienced staff, and staff members processing permits had little instruction on how to proceed effectively. The BLM is not alone. Multiple agencies with permitting or infrastructure responsibilities, are short-staffed and underfunded.

When the GAO investigated the BLM’s workforce planning in 2020, it found that the BLM had no way of tracking vacancies and no recruitment plan for filling

⁵¹ Hillary Simmons, *The Heart of “Harlem of the South,” The Beacon* (Dec. 28, 2020) available at <https://mastthebeacon.wordpress.com/2020/12/28/the-heart-of-harlem-of-the-south/> (last visited May 17, 2023).

⁵² Linda Luther, Cong. Res. Serv., *The Role of the Environmental Review Process in Federally Funded Highway Projects: Background and Issues* 6-7 (Apr. 2012).

⁵³ Rachael Dottle, Laura Bliss, and Pablo Robles, *What It Looks Like to Reconnect Black Communities Torn Apart by Highways*, Bloomberg (July 28, 2021).

⁵⁴ Pleune & Boling, *This Permit Reform Works* *supra* note 5 at 10476; see also Gov’t Accountability Off., GAO-20-379R, *Bureau of Land Management: Agency Reorganization Efforts Did Not Substantially Address Key Practices for Effective Reforms* (Mar. 6, 2020) and Gov’t Accountability Off., GAO-22-104247, *BLM, Better Workforce Planning and Data Would Help Mitigate the Effects of Recent Staff Vacancies* (Nov. 2021).

vacancies.⁵⁵ When asking for data on the total number of positions and vacancies agency wide, the GAO was told that BLM does not maintain a list of vacancies for state offices. As a result, it was not possible to determine the proportion of positions that are vacant at any given time or the specific positions that are vacant. This lack of information obviously creates a problem for improving capacity in a way that results in improved efficiency.

In order to resolve workforce challenges, agencies require stable funding that will enable strategic workforce development. Additionally, agencies must be confident that the funding will not disappear. Unstable budgets do not build durable workforces. Shortchanging agencies of staff and funding will cause delays in the permitting process.

Question 8. You've talked about the importance of staff but have emphasized that certain staff attributes are important as well. What do we need to see in those staff, and how can we make that happen?

Answer. Strategic workforce planning is critical to ensuring that agencies spend wisely and build a workforce capable of fulfilling agency missions. The Army Corps of Engineers developed a comprehensive strategic workforce plan in 2017 that demonstrates how this type of planning can achieve long-term efficiencies at all levels of agency operations.⁵⁶ The Corps developed planning strategies to align human capital with changing workloads and missions using real-time workforce data for decision-making.⁵⁷ For example, they initiated a Workload to Workforce Assessment, which is an annual planning activity conducted by workforce managers agency-wide to assess the capacity, competency, and balance of the workforce to meet the projected workload in the next 1 to 3 years.⁵⁸ Based on the results, managers prepare action plans to address any potential workforce capacity, competency, or balance gaps. They also created Civilian Workforce Dashboards, which are an interactive online display that provide workforce managers at all levels of the organization with direct access to the most current human capital information for planning purposes.

The Corps also created a strategy to address all four stages of the human capital life cycle. The recruiting stage involves sourcing and acquiring top talent to accomplish current and future missions, shaping the workforce to meet mission needs, and marketing missions to attract the workforce of the future.⁵⁹ The Corps human resources managers created a talent acquisition team to support the recruitment program. They also utilized tools to attract talent including direct-hire authorities. Use of direct hire authorities reduced vacancy fill time and allowed managers to quickly hire top talent.⁶⁰ Additional tools included policy guidance for managers to offer monetary and non-monetary incentives as tools to attract and retain personnel. Incentives include student loan repayment; recruitment, relocation, retention, and enhanced retention incentives; credit for prior non-federal work experience and certain military experience for determining annual leave accrual rate; and superior qualifications appointment and special needs pay-setting authority.⁶¹

The second stage of the workforce life cycle is the developing stage, which focuses on ensuring a culture of continuous skill improvement throughout the organization and fostering technical and leader development.⁶² To address career development challenges, the Corps provides career specific training, development, and mentoring activities to its workforce. This includes job-related training, an Emerging Leaders Program, and a Senior Leader Academy.⁶³ In addition to training new staff, the mentoring and leadership training programs have the added benefit of preserving and passing along institutional knowledge within the agency.

The final stage is the sustaining, or retention stage, which focuses on preventing critical talent loss and improving organizational performance by valuing and engaging employees at all levels. Some strategies utilized at this stage include an

⁵⁵ Government Accountability Office, Bureau of Land Management: Agency Reorganization Efforts Did Not Substantially Address Key Practices for Effective Reforms GAO-20-379R, 10 (Mar. 6, 2020).

⁵⁶ Government Accountability Office, Army Corps of Engineers: Workforce Planning Follows Most Leading Practices but Could Be Enhanced with Additional Actions GAO-22-104053 (Dec. 2021).

⁵⁷ *Id.* at 9.

⁵⁸ *Id.* at 10.

⁵⁹ *Id.* at 11.

⁶⁰ *Id.* at 12.

⁶¹ *Id.* at 13.

⁶² *Id.*

⁶³ *Id.* at 14-15.

online exit survey tool for departing employees to capture the underlying causes of talent loss. Some offices also implemented a “stay survey” to measure employee engagement during their tenure as a proactive alternative to surveying staff that are leaving. The Corps also utilizes the annual Federal Employee Viewpoint Survey as a tool to make improvements. The Federal Employee Viewpoint Survey is an existing tool with valuable information about workforce problems. The Corp directs managers at all levels to analyze the annual survey results for their workforce and develop action plans to address areas of concerns. Since adopting this strategy, survey response rates and scores have steadily risen. For example, employees satisfied with the organization rose from 55 percent in 2013 to 71 percent in 2019.

Using these strategies, the Corps has been able to determine critical skills and competencies needed, and align its workforce to those needs. One strategy is through employee performance reviews. The missions of the Army and the Corps are incorporated into each employee’s performance plan and evaluation. Employee progress reviews link back to the mission and goals of the organization. Managers provide feedback and recommend training to assist the employee in reaching individual goals.⁶⁴

Another strategy is agency-wide Workload to Workforce Assessments, which assess the status of the workforce—such as vacancy fill rates—to forecast the ability to meet the future workload and the type and experience level of employees that will be needed.⁶⁵ Use of the Federal Employee Viewpoint Surveys provide further insight into areas for improvement in employee engagement and working groups focus on ways to use the information to make the Corps a better place to work. Finally, the Corps utilizes ongoing real-time data to evaluate the effectiveness of these strategies.⁶⁶

In summary, each agency will have different staffing needs. Strategic workforce planning is an existing tool that agencies can use to ensure sufficient staff, expertise, and capacity to achieve the agency’s mission.

Question 9. What is the biggest barrier to renewable energy transmission projects, and what is the evidence for that conclusion?

Answer. A recent study by the Lawrence Berkeley National Laboratory found that there are over 2,000 GW of total generation and storage capacity waiting for approval to connect to the grid, 95 percent of which are solar, wind, or battery storage.⁶⁷ However, these projects face long wait times and uncertainty when attempting to connect to the grid. Between 2000–2007, the time between an initial connection request and a fully built, operational plant was typically less than 2 years. Between 2018–2022, that time frame doubled to an average of almost 4 years, with an increasing trend. By 2022, the median between an interconnection request to commercial operations date reached almost 5 years. This is a major barrier to energy transmission. Additional hurdles include siting challenges, and cost-benefit allocation for transmission lines that pass through communities without offering a benefit.

Question 10. My friends on the other side of the aisle have claimed that litigation slows energy projects. What effect does NEPA have on litigation of major energy projects?

Answer. The NEPA process creates an opportunity to discover and mitigate concerns with a proposed project before finalizing an action, which can often avoid litigation that could delay implementation of an action.⁶⁸ The NEPA process can also reduce costs by identifying design problems before implementation of a project begins. A study prepared for the Transportation Research Board emphasized this potential benefit. “Spending more monies during planning and design will reduce the time and cost required for construction by avoiding unforeseen conditions,

⁶⁴ *Id.* at 31.

⁶⁵ *Id.* at 31.

⁶⁶ *Id.* at 33.

⁶⁷ Berkeley Lab, Energy Technologies Area, *Grid Connection Requests grow by 40% in 2022 As Clean Energy Surges, Despite Backlogs and Uncertainty* (Apr. 6, 2023) <https://energy.lbl.gov/news/grid-connection-requests-grow-40-2022>

⁶⁸ *Id.* at 340-341; Pleune, *Playing the Long Game*, 52 Env. L. Rep. at 10905-10904 (“without providing an opportunity to raise concerns during the [NEPA] scoping process, stakeholders may raise concerns late in the process or through litigation . . . [and] some of those concerns may require collecting additional baseline data that may have been easily collected at the beginning of the permitting process”).

reducing to a minimum design errors and omissions, and developing schemes that will support the most efficient approach to construction.”⁶⁹

For example, the NEXUS Gas Transmission Project, was a 250-mile natural gas pipeline traversing Pennsylvania, West Virginia, Ohio, and Michigan.⁷⁰ During the pre-application process, which included extensive public participation, the project sponsors incorporated 239 route alternatives and variations in the pipeline design to address landowner requests, avoid sensitive resources, or respond to engineering restraints. This feedback resulted in a 91 percent change from the original proposed route design—a number of modifications that would have been prohibitively expensive at the end of the review process. Using this information at the beginning of the process improved efficiency and arguably resulted in a better end-result and a final application that was processed more expeditiously.⁷¹ Similar efficiencies could be achieved with other major energy projects.

The NEPA process can also provide a mechanism to build consensus, which can reduce the risk of litigation. For example, in 2012, the Forest Service completed the 4FRI EIS. The project goal was to restore the ponderosa pine forest stretching across northern Arizona, while reducing communities’ exposure to wildfire threats, rehabilitating ecosystems, and sustaining the forest industry operating in local communities.⁷² The EIS analyzed the largest number of acres in Forest Service history, stretching across four different national forests, for restoration-based mechanical forest treatments. Despite its ambitious scale, the EIS was completed more quickly than the average time frame for EISs completed that year, and when it came time for implementation, the Forest Service was not delayed by litigation. Using the NEPA process as an opportunity for collaborative decisionmaking developed consensus among diverse stakeholders that had long-term benefits and ultimately sped up implementation of the project.

This brings up another important distinction. Although NEPA’s detractors often blame litigation for delay, the evidence shows that litigation is rare. Government-wide, only an estimated 0.22% of NEPA decisions are litigated.⁷³ An investigation by the Government Accountability Office regarding Forest Service fuel reduction projects from fiscal years 2006–2008 revealed that only 29 out of 1,415 decisions were litigated, and litigation impacted only 1% of lands slated for fuel reduction projects.⁷⁴ In other words, used properly, the NEPA process is more likely to avoid potential litigation than cause it. Proposed reforms like short deadlines and page limits threaten to undermine NEPA’s capacity to serve as a flexible tool for structured and transparent deliberation.

Dr. GOSAR. I thank the gentlelady.
I now recognize Mr. Kenny Stein for 5 minutes.

⁶⁹ Linda Luther, Cong. Res. Serv. R.42479, *The Role of the Environmental Review Process in Federally Funded Highway Projects: Background and Issues for Congress* 36 (Apr. 2012) (citing H.R. Thomas and R.D. Ellis, *Avoiding Delays During the Construction Phase of Highway Projects*, Transportation Research Board, National Research Council, NCHRP 20-24 (Oct. 2001).

⁷⁰ Office of the Executive Director, Federal Permitting Improvement Steering Council, *Recommended Best Practices for Project Review and Permitting for Infrastructure Projects for Fiscal Year 2018*, at 17 (2017).

⁷¹ This is not to say that early engagement eliminated local opposition in every community. See Heidi Gorovitz Robertson, *Home Rule Symposium: Cities and Citizens Seethe: A Case Study of Local Efforts to Influence Natural Gas Pipeline Routing Decisions*, 122 W. Va. L. Rev. 881, 907-934 (Spring 2020) [hereinafter *Gorovitz, Cities and Towns Seethe*] (describing FERC’s extensive public engagement and local opposition in three Ohio towns).

⁷² Ruple et al., *Evidence-Based Recommendations for Improving Implementation of NEPA* *supra* note 20 at 338.

⁷³ John C. Ruple & Kayla M. Race, *Measuring the NEPA Litigation Burden: A Review of 1,499 Federal Court Cases*, 50 *Env’tl. L.* 479, 497-99 (2020); David Adelman & Robert L. Glicksman, *Presidential and Judicial Politics in Environmental Litigation*, 50 *Ariz. St. L.J.* 3, 7 (2018) (conducting an empirical study of NEPA litigation during the presidencies of George W. Bush and Barack Obama and observing, “[w]e find little evidence that litigation under NEPA is out of control or that NEPA’s processes are overly burdensome”); John C. Ruple & Heather Tanana, *Debunking the Myths Behind the NEPA Review Process*, 35 *Nat. Res. & Env’t* 14, 15 (2020); Forrest Fleischman et al., *U.S. Forest Service Implementation of the National Environmental Policy Act: Fast, Variable, Rarely Litigated, and Declining*, 118 *J. Forestry* 403, 404 (2020).

⁷⁴ Gov’t Accountability Off., GAO 10-227, *Forest Service, Information on Appeals, Objections, and Litigation Involving Fuel Reduction Activities, Fiscal Years 2006 through 2008* 1 (2010).

**STATEMENT OF KENNY STEIN, DIRECTOR OF POLICY,
INSTITUTE FOR ENERGY RESEARCH, WASHINGTON, DC**

Mr. STEIN. Mr. Chairman, thank you for the opportunity to testify at this hearing.

For nearly 50 years a constant over-riding concern of United States energy policy was the shortage and scarcity of oil and natural gas. Dependence on foreign oil was seen as a national security crisis. Numerous half-baked policy ideas, regulations, and subsidies were spawned to address this perceived crisis, many of which survive to this day, continuing to distort markets and increase energy costs: fuel efficiency mandates, ethanol subsidies and mandates, solar and wind subsidies, export controls, subsidies for domestic production. All of this and more was done in the name of energy independence and security, and all to little effect.

But today, we have just about achieved that long-sought-after energy security. Since lows in the mid-2000s, the United States has more than doubled domestic oil production, and almost doubled natural gas production. In 2019, the United States became a net exporter of petroleum. The United States became a net exporter of natural gas in 2017, and the United States is also a net exporter of coal and refined products. The United States is the largest oil and natural gas producer in the world.

This position has completely changed this country's energy posture, making the United States the most energy secure that it has been since at least the first half of the 20th century. This success did not come from government. It took years of experimenting with and perfecting hydraulic fracturing and directional drilling. It took companies taking the risk of investing in new areas and new formations and new depths with no guarantees of success. It took government actually getting out of the way of exporting LNG and crude oil, providing new markets for U.S. production. And it needed a lack of Federal Government hostility.

For all its environmental radicalism, the Obama administration recognized the need for domestic energy production. They somewhat reduced production on Federal lands through policy interference, but mostly left production on private and state lands to its own devices. In short, the many decades of government interference intervention did not solve the energy security problem; the private sector did when it was allowed to escape from the help of the Federal Government.

But just as we have just about achieved this long-sought energy security, the Biden administration has launched a full spectrum assault on domestic energy production, trying to crush production on Federal lands while looking to regulate non-Federal production into oblivion, all while subsidizing promoting energy sources whose inputs and supply chains are controlled by China and Chinese state-owned companies. It is an agenda to replace independence with dependence, and dependence on one of the countries in the world most hostile to the United States, no less.

The Administration has grasped for any lever it can to pursue its promotion of Chinese energy and suppression of U.S. energy. This includes many of the laws and regulations passed over the decades attempting to address the old crisis of scarcity, which the

Administration is now seeking to repurpose in often illegal ways to support the crusade to eliminate the new abundance.

As just a few examples of the Administration's war on domestic energy, the Administration is actively seeking to halt oil and gas production on Federal lands by any means in direct contravention of congressional intent; the Council on Environmental Quality is writing new guidelines for the National Environmental Policy Act designed to turn an already burdensome NEPA process into a cudgel to crush domestic energy production; the Administration has participated in numerous sue-and-settle deals with environmental groups so that they can use the settlements to prevent oil and gas production without going through Congress or the normal regulatory process; in a brazen and illegal move, the Administration, for the first time in our history, has refused to finalize an offshore leasing plan entirely; the Administration is attempting to use old fuel efficiency mandates to mandate electric vehicles; and finally, the Administration has, without statutory mandate from Congress, sought to inject vague notions of environmental justice into every decision-making process. This concept is not scientific or measurable. It is entirely in the eye of the beholder. It is simply a tool for arbitrarily halting development that the Administration does not like.

These actions, and the hundreds of other additional and related actions are cumulative. Every action making it harder to produce energy domestically reduces the desire of companies to invest domestically. Oil and gas production requires ongoing investment just to keep production stable, much less increase it. Reduced investment means reduced production down the line, and that reduced production erodes our hard-won energy security. It ends with the spectacle of the President of the United States, leader of the world's largest oil-producing country, going hat-in-hand to beg Saudi Arabia for more production, or cowardly seeking to relax sanctions against one of the most brutal regimes in the Americas to get more oil supply from Venezuela.

U.S. oil production still has not reached the level seen at the end of 2019, just before the start of the pandemic. That is not because the oil isn't there or there isn't demand. It is because the companies are concerned about making the investments needed when there is a hostile Administration willing to use any means to destroy their industry. These investments then get made in other countries, with the United States left having to import to meet our future needs.

The Biden administration's regulatory assault on domestic energy is an assault on this nation's security and prosperity. It is a dependence agenda that makes energy more expensive and less available, while at the same time making our energy system dependent on foreign supplies from China. That this is being done by regulatory fiat using questionable authorities, or even in direct conflict with laws passed by Congress is, frankly, a crisis of our democratic system.

Thank you, and I look forward to taking your questions.

[The prepared statement of Mr. Stein follows:]

PREPARED STATEMENT OF KENNETH STEIN, POLICY DIRECTOR, INSTITUTE FOR
ENERGY RESEARCH

Mr. Chairman, thank you for the opportunity to testify at this hearing.

My name is Kenny Stein, I am the Policy Director for the Institute for Energy Research, a free-market organization that conducts research and analysis on the function, operation, and regulation of energy markets.

For nearly 50 years, a constant overriding concern of United States energy policy was shortage and scarcity of oil and natural gas. Dependence on foreign oil was seen as a national security crisis. Numerous half-baked policy ideas, regulations and subsidies were spawned to address this perceived crisis, many of which survive to this day continuing to distort markets and increase energy costs. Fuel efficiency mandates, ethanol subsidies and mandates, solar and wind subsidies, export controls, subsidies for domestic production; all of this and more was done in the name of energy independence and security. And all to little effect.

But today, we have just about achieved that long sought after energy security. Since lows in the mid 2000s, the US has more than doubled domestic oil production¹ and almost doubled natural gas production.² In 2019, the US became a net exporter of petroleum.³ The US became a net exporter of natural gas in 2017. The US is also a net exporter of coal and refined products. The US is the largest oil and natural gas producer in the world. This position has completely changed this country's energy posture, making the US the most energy secure it has been since at least the first half of the 20th century.

This success did not come from government. It took years experimenting with and perfecting hydraulic fracturing and directional drilling. It took companies taking the risk of investing in new areas, new formations, and new depths with no guarantee of success. It took government getting out of the way of exporting LNG and crude oil, providing new markets for US production. And it needed a lack of federal government hostility. For all its environmental radicalism, the Obama administration recognized the need for domestic energy production, somewhat reducing production on federal lands through policy interference, but mostly leaving production on private and state land to its own devices. In short, the many decades of government interference and intervention did not solve the energy security problem, the private sector did when it was able to escape from the "help" of the federal government.

But just as we have just about achieved this long-sought energy security, the Biden administration has launched a full spectrum assault on domestic energy production, trying to crush production on federal lands while looking to regulate non-federal production into oblivion, all while subsidizing and promoting energy sources whose inputs and supply chains are controlled by China and Chinese state-owned companies.⁴ It is an agenda to replace independence with dependence, and dependence on one of the countries in the world most hostile to the United States no less.

The administration has grasped for any lever it can in pursuit of its promotion of Chinese energy and suppression of US energy. This includes many of the laws and regulations passed over the decades attempting to address the old crisis of scarcity, which the administration is now seeking to repurpose, often in illegal ways, to support their crusade to eliminate abundance.

To list just a few examples of the Biden administration's war on domestic energy:

- The administration is actively seeking to halt oil and gas production on federal lands by any means, in direct contravention of Congressional intent.
- The Council of Environmental Quality (CEQ) is writing new guidelines for the National Environmental Policy Act (NEPA) designed to turn the already burdensome NEPA process into a cudgel to crush domestic energy production.
- The administration has participated in numerous sue-and-settle deals with environmental groups so they can use the settlements to prevent oil and gas production without going through Congress or the normal regulatory process.
- In a brazen and illegal move, the administration for the first time in our country's history has refused to finalize an offshore leasing plan.
- The administration is attempting to use old fuel efficiency mandates to mandate electric vehicles.

¹ <https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=MCRFPUS2&f=M>

² <https://www.eia.gov/energyexplained/natural-gas/where-our-natural-gas-comes-from.php#>

³ <https://www.eia.gov/energyexplained/oil-and-petroleum-products/imports-and-exports.php>

⁴ Institute for Energy Research, The Economic and Strategic Importance of Domestic Mineral Production, April 2023 <https://www.instituteforenergyresearch.org/wp-content/uploads/2023/04/The-Economic-and-Strategic-Importance-of-Domestic-Mineral-Production.pdf>

- And the administration has, without statutory mandate from Congress, sought to inject vague notions of “environmental justice” into every decision-making process. This concept is not scientific or measurable, it is entirely in eye of the beholder. It is simply a tool for arbitrarily halting development that the administration does not like.

These actions and the hundreds of other additional and related actions are cumulative. Every action making it harder to produce energy domestically reduces the desire of companies to invest domestically. Oil and gas production requires ongoing investment just to keep production stable, much less increase it. Reduced investment means reduced production down the line. And that reduced production erodes our hard-won energy security. It ends with the spectacle of President of the US, leader of the world’s largest oil producing country, going hat in hand to beg Saudi Arabia for more oil production, or cowardly seeking to relax sanctions against one of the most brutal regimes in the Americas to get more oil supply from Venezuela.

US oil production still has not reached the level seen at the end of 2019 just before the start of the pandemic.⁵ That is not because the oil isn’t there or that there isn’t demand, it’s because companies are concerned about making the investments needed when there is a hostile administration willing to use any means to destroy their industry. These investments then get made in other countries, with the US left having to import to meet our future needs. The Biden administration’s regulatory assault on domestic energy is an assault on this nation’s security and prosperity. It is a dependence agenda that makes energy more expensive and less available, while at the same time making our energy system dependent on foreign supplies from China. That this is being done by regulatory fiat, using questionable authorities or even in direct conflict with laws passed by Congress, is frankly a crisis of our democratic system.

Dr. GOSAR. Thank you, Mr. Stein. I thank all the witnesses for your testimony. I will now recognize Members for 5 minutes for their questions. I am going to start with the Chairman for the Full Committee, Mr. Westerman.

Mr. WESTERMAN. Thank you again, Chairman Gosar, and thank you to the witnesses for being here today.

Ms. Pleune, you made a pretty solid argument about the efficiency of NEPA. And if I understand from your testimony, your position would be that NEPA is OK like it is, and it doesn’t need any reforms. Is that correct?

Ms. PLEUNE. NEPA is capable of efficiency, and it is done efficiently under the existing regulations. However, inefficiency also happens. What we found, however, is that the sources of inefficiency are not the regulatory problems. If they were, then we wouldn’t see quick decisions.

In fact, what we are finding is that the primary sources of inefficiency are a lack of staff capacity, a lack of regulatory people with relevant expertise in order to make a decision. I will just give you a quick example.

Mr. WESTERMAN. I have some more questions.

Ms. PLEUNE. OK.

Mr. WESTERMAN. Did you see any changes in the data when administrations would change, where maybe permits were issued quicker under one administration than another administration?

Ms. PLEUNE. We looked for that trend, and we did not see that trend. But one, I think, really poignant example was a study that the GAO did of application for permit-to-drill processing times. And what they found is that, even though the different field offices had

⁵ <https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=WCRFPUS2&f=W>

significantly different times in processing them, ranging from 300 days in Miles City to 37 days in Anchorage—exact same standard, exact same law—and the difference was a lack of capacity and how well the permitting process was managed.

Mr. WESTERMAN. Has that process increased since the—I think it was in the IRA, or maybe the Infrastructure and Jobs Act—there was a huge amount of money put out for agencies for permitting. Have you seen any change in the numbers since there has been a flood of money into the agencies?

Ms. PLEUNE. We have. And in fact, one of the things that is showing quite significant improvements in permit processing times are the reforms, and also the attention and support that has been given to projects that are going through the FAST-41 process. And those improved processing times are quite remarkable, first because the projects that go through FAST-41 are chosen because they are complex, they involve multiple agencies, lots of different laws, and the permit processing times within there are much shorter.

For example, in 2020, the average time for projects that went through FAST-41 was about 2.5 years for EISs. Other projects are going even more quickly, notably—

Mr. WESTERMAN. Having done engineering work before I came to Congress, when I hear 2.8 years or 2.5 years, that causes people real problems that are actually trying to do projects, to have it delayed that long where you are waiting for permitting. Plus, it is not just NEPA. If you are building something, you end up with clean air permits, water discharge permits. So, these permits get stacked on top of each other.

But my real question here is, do you think that permitting reform is necessary for America to meet the Administration's clean energy goals?

Ms. PLEUNE. There are things that need to be reformed, and some examples are the interconnect queue, the process for approving transmission lines. The interconnect queue—right now projects are waiting an average of 5 years because it is so long to get through the regional transmission organizations.

Mr. WESTERMAN. Is there anything in H.R. 1, the Lower Energy Costs Act that we proposed on permitting reform, such as putting one Federal agency in charge, limiting the length of the permit applications, would any of that be beneficial, or do you think that is just some kind of political gamesmanship?

Ms. PLEUNE. Identifying a lead Federal agency is a productive practice that was implemented through the FAST-41 Act, and it does work.

You have multiple different permits that you have to obtain, and the NEPA structure can provide a way for agencies to coordinate that decision-making process, and that is what they use the FAST-41 for.

Imposing time limits on NEPA process creates a possibility that you won't be able to use the process in order to address all of those different permits, especially where there are also state, local, or tribal interests or permit requirements imposed.

Mr. WESTERMAN. You think there is any problem with litigation on NEPA, litigation that may not be justified, that it is used for

more political purposes than to actually achieve the objectives of NEPA?

Ms. PLEUNE. I think there are two elements of litigation that are important to recognize. The first is that the amount of litigation is extremely small. It is an estimated 0.22 percent of all NEPA decisions, and secondly, I don't think NEPA litigation itself slows down very many projects.

However, there is a distinction between delays that are caused by litigation and delays that are caused by litigation aversion. In our research, we found that agency staff members are concerned that their opportunities for promotion will be limited if they sign a document that gets litigated. As a result, the document sits on the back of the desk. It doesn't get signed until that person gets promoted or they go on detail. And that is a real significant delay that doesn't benefit anyone.

So, creating a system where we reward agency members for quick decisions, even if they are litigated, would be one way to avoid delays that are caused by the fear of litigation.

Mr. WESTERMAN. Thank you, Mr. Chair. I am out of time, even though this is a fun discussion. Thank you.

Dr. GOSAR. It was a fun discussion. Thank you, Chairman.

I now recognize Mrs. Lee from Nevada.

Mrs. LEE. Thank you, Mr. Chair. I want to thank all of the witnesses today.

This hearing today can feel like it is tailor-made to highlight the disagreements that those of us on this dais have had and continue to have regarding energy policy. But I always try to highlight areas where we can be in agreement. And I will begin by asking you all a simple yes-or-no question.

Would you agree that, as a general rule, Americans get the biggest bang for our buck when we prioritize energy development and exploration in non-sensitive areas where there is also a high likelihood of finding and harnessing significant energy resources?

And I will start with you. Just a yes-or-no answer. Do you agree with that statement?

Ms. FURCHTGOTT-ROTH. Energy companies have their own ways of deciding which are the best investments, and sensitive or less sensitive is not an objective manner of describing a particular area.

Mr. HARRELL. Yes, we need to produce more American energy.

Ms. PLEUNE. Yes, I think producing energy in a way that reduces harms, avoids harms is a good idea.

Mr. STEIN. Again, repeating the previous statement, the sensitive versus not sensitive is a very subjective term, so it is a little hard to agree or disagree with that—

Mrs. LEE. What about in areas with a higher likelihood of producing energy?

Mr. STEIN. Well, yes, but I think that is where investments go.

Mrs. LEE. All right. Well, I represent a state that has an incredibly wide range of energy sources. I come from Nevada. We have critical minerals like lithium and, obviously, our sunshine, a source of renewable. But what we don't have are great quantities of oil and natural gas. Nonetheless, the GAO reports that a shocking two-thirds of total acreage nominated for onshore oil and gas

leasing nationwide from 2009 to 2019 was in my home state of Nevada. That is 60.7 million out of 86.8 million acres.

BLM officials in Nevada have said that it took their staff over 5 years just to review and process 28 million acres nominated in my state in 2014, most of which did not result in any energy production. In fact, of the 61 million acres nominated in Nevada across this 10-year period—get this—out of 61 million, only 3.5 million acres were ever actually leased, including more than 2 million acres leased non-competitively due to a lack of industry interest.

Professor Pleune, I would like to ask you, is it fair to say that American taxpayers and our public lands both stand to benefit from bipartisan policy-making that would shift focus away from speculative and ultimately unproductive oil and gas leasing in places like Nevada toward projects with a more promising return on investment?

Ms. PLEUNE. That certainly sounds reasonable to me. The last time I looked at the statistics, a significant number of parcels do not get bid on.

And moreover, a large number of parcels do not go into production. A GAO investigation looked at the number of APD permits that were processed, whether or not they actually went into production. And roughly half of all APD permits that are processed never actually go into production, which is actually quite a bit of waste of time, given that we have limited staff capacity.

Furthermore, there is no system for regularly tracking lease suspensions. So, the amount of leases that are currently being held, even though they haven't gone into production, they are in a suspended state and there is no systemic way of identifying where they are, how long they have been suspended, the reasons for suspension, and whether those reasons are still justified.

Mrs. LEE. Yes. So, not only is this an incredible time suck on behalf of staff, it also costs us taxpayers a lot of money.

I have just a few seconds remaining. I just wanted to ask you, with NEPA, can you explain how prioritizing early stakeholder consultation during the permitting process would help the process along, and help industry build and avoid costly changes and delays?

Ms. PLEUNE. Absolutely. One of the most productive methods that we have seen toward improving the timelines of permit processing is early engagement with stakeholders. That includes all of the agencies that need to issue a permit on a project, state and local governments, as well as people who are likely to be affected by the project.

Agencies like FERC have even engaged in pre-application meetings. This allows the permit applicant to identify at the design phase sensitivities and regulatory standards that they need to when it is least expensive in a project's life cycle. A good example of this is the Nexus pipeline. They engaged in early stakeholder engagement and, through a large process of stakeholder engagement with the public, they ended up with almost a 91 percent change in the course of the pipeline, which would not have been something you could have done if it was later in the cycle of the

project. But because it was so early, they were able to do it and avoid both sensitivities, as well as opposition.

Mrs. LEE. Thank you. I am over my time.

Dr. GOSAR. I thank the gentlewoman from Nevada. Great conversation. I recognize the gentleman from Montana, Mr. Rosendale, for his 5 minutes.

Mr. ROSENDALE. Thank you very much, Mr. Chair.

Wow, this is fascinating. Ninety percent of the land in Nevada didn't have oil and gas on it. I can tell you, spending a little bit of time in the oil and gas industry myself, that there is nothing more disappointing for someone who goes out there and drills than to find a dry hole.

There is so much investment and research and development that takes place to try to develop an oil field. And I assure you that the people that are funding that are not expending funds to enrich the state of Nevada; they are doing so because they think that possibly that there is a resource underneath the surface that they can develop. Unfortunately, most of the oil and gas resources that they are tapping into are about 2 miles below the surface, so it is sort of hard to use a divining rod and try to identify where they are.

Moving on to other permitting problems, which is not anecdotal, I can tell you, coming from Montana, I testified at the first public hearings to simply permit a pipeline, the safest, most monitored pipeline that had been proposed in our nation's history, and it was called the Keystone XL. And it took 10 years from the time that those first hearings began until it was finally permitted through an executive order, in order to make sure that we could get those additional resources, roughly 850,000 barrels a day of crude oil into our country—150,000 barrels a day, which would have come from Montana and North Dakota, so that we could increase our domestic production.

And yet with the stroke of a pen, on his first day in office, President Biden killed that pipeline, a pipeline. We are not talking about drilling. We are talking about a pipeline to transport these products. Again, the safest, most monitored pipeline that had been proposed in the nation's history. That cost the state of Montana \$60 million a year in tax revenue losses. And it was going through some of the poorest counties in the state, places where that would have taken care of the expense of the roads, and the schools, and the medical facilities for those counties with populations of 1,500 to 2,000 people.

We haven't had a new mine permitted for 20 years. A lot of this is our fault, right here, because Congress has continued to write legislation that is so subjective, and then turn the rulemaking authority over to the agencies to do. So, that is our fault.

But I will also tell you that there is an awful lot of litigation that takes place. We have activist judges that tie these projects up, and there are attorneys and law firms that get enriched because of it. And then agencies that overstep their bounds, as evidenced by the most recent case that was decided by the U.S. Supreme Court, *West Virginia v. EPA*, where they did get outside of their lane, and they were told that, no, you can't make those decisions, that the U.S. Congress does.

All that being said, I would like to ask a couple of questions to Ms. Furchtgott-Roth.

Ms. Furchtgott-Roth, who would you say, as far as a specific demographic, is affected most by the Biden administration's aggressive, climate justice-focused agenda, and how, when it comes to energy?

Ms. FURCHTGOTT-ROTH. The lowest income are the most affected, because they pay the highest proportion of their income in electricity, motor fuel, and automotive costs. So, the bottom 20 percent pay, on average, around 10 percent of their income. The top 20 percent pay about 1 percent. So, when you increase electricity and automotive costs, it is the poor who are hurt most. This is not justice, not social justice, not environmental justice.

Mr. ROSENDALE. Thank you. And in your testimony you speak a lot on the Administration's push for electric vehicles. Can you please delve deeper into the potential consequences this push has had for the middle- and lower-income Americans if they are forced to transition to electric vehicles, especially in the more rural states and colder states like Montana?

Ms. FURCHTGOTT-ROTH. Right. Well, only 6 percent of new vehicle sales last year were electric. It is because Americans are smart, they know that electric vehicles are more expensive, they have smaller range, they lose 25 to 40 percent of their battery power in cold climates. It is hard to heat them in cold climates.

That is why, for example, Wyoming has about 500 electric vehicle registrations, even fewer in Montana, North Dakota, South Dakota. They are just not practical. When people have them, it is generally as a second, third, or fourth car. They have an SUV, or a minivan, or a pickup truck if they want to go on long trips. So, it is more expensive. It is a toy for the upper-income groups. And having 60 percent of vehicles be electric would impose a huge burden on low-income Americans.

Plus, we don't have the charging infrastructure for it yet, especially since the Environmental Protection Agency has come out with a new power plan this week that would make electricity more expensive, due to the need for carbon sequestration.

Mr. ROSENDALE. Thank you so much.

Mr. Chair, I see I have expired my time. I would yield back.

Dr. GOSAR. I thank the gentleman. The gentleman from California, Mr. Huffman, is recognized for 5 minutes.

Mr. HUFFMAN. Thank you, Mr. Chairman. And it feels like Groundhog Day here. We are once again discussing the apparently dire need to attack and gut NEPA so that we can speed up fossil fuel development and mining. This is a broken record that we hear played all the time by our friends across the aisle.

And it is like a bad ventriloquist act when their lips are moving, or when the fossil fuel industry's lips are moving, Members of Congress are talking, and you can see it pretty clearly. They don't like NEPA. They don't want to have to do alternative analysis. They don't want to have to limit environmental impacts. They don't want to have to actually provide notice and get public input from disadvantaged communities that are going to be hurt by their projects. So, we have to take this industry speak with a grain of salt.

But when it comes to this latest narrative that has been suggested a couple of times today, that clean energy and electric transmission improvements require gutting NEPA, this is especially false and reckless, and we need to start calling it out. I am leading a task force for the Progressive Caucus that is zeroing in on the real causes for delay.

So, Professor Pleune, I was especially interested in your testimony because you have been doing the same thing. What we are finding is that many of the biggest problems that have delayed the kind of infrastructure and investments that we want to see moving quickly, including transmission, have been resolved by legislation already in the last couple of years, and by new funding, and by executive orders on agency coordination. And there are other major improvements that actually are in the works under existing authorities, including at FERC. And that is why, as you said, Professor, projects actually are beginning to move faster. NEPA is becoming a less compelling boogeyman all the time.

And I would like to just follow up, Professor Pleune, because you talked about this very small percentage of permitting projects that are actually subject to a full NEPA analysis. And let me get this right. It is less than 1 percent, is that right, a full EIS?

Ms. PLEUNE. The GAO estimated, government-wide, it is less than 1 percent. When we looked at the Forest Service, they do about 2 percent.

Mr. HUFFMAN. You also alluded to the possibility that the NEPA process, if it is done right, can actually move complex projects faster by early engagement of communities that may be impacted by that. Could you expand on that a little bit?

Ms. PLEUNE. I can. I actually have two examples of evidence that shows that the NEPA process does speed up decision making.

The first is a natural example that was set up by a circuit split, where in some areas identifying designated critical habitat required a NEPA analysis and in the other circuits it did not. And for those critical habitat designations that went through the NEPA process, they were finished, on average, 3 months faster than the critical habitat designations that did not go through the NEPA process.

There is another very interesting study done by the Office of Investigation on APD permits. They found that the average time to process the APDs was about 228 days. Pinedale was doing it in 49 days. And the reason is that Pinedale had undergone a very thorough programmatic EIS. It thoroughly understood the well fields that it was developing, and so the implementation piece was much faster.

Mr. HUFFMAN. Would you agree that the biggest barrier to renewable energy and electric transmission capacity is not NEPA, but the interconnection, the dysfunctional and broken interconnection queue at FERC?

Ms. PLEUNE. Yes, and it is often conflated with the NEPA process because it is a part of the permitting process, but it has nothing to do with environmental standards or NEPA.

Mr. HUFFMAN. And FERC has proposed some major reforms to fix this problem with the interconnection queue using existing authority. My understanding is that, if the Senate would simply

confirm a fifth FERC commissioner, these reforms could move forward. Is that your understanding?

Ms. PLEUNE. That is beyond my expertise.

Mr. HUFFMAN. All right. I also understand——

Ms. PLEUNE. It sounds right.

Mr. HUFFMAN. I also understand a certain Senator that is targeting NEPA is the one holding up the confirmation of that fifth FERC commissioner. So, these things get very interesting.

But perhaps the biggest delay I have heard with some of these projects is market risk and financing, things that we addressed last year in the Inflation Reduction Act. Would you agree that these are game-changers, these new laws that we have put on the books in this space?

Ms. PLEUNE. Absolutely. The new laws are game-changers.

And I will also note that, with the projects that have gone through FAST-41, the things that they have found is, with the structures that are in place, there is more predictability, and that addresses that concern of not knowing when they will get a permit approved.

Mr. HUFFMAN. Thank you very much. I yield back.

Dr. GOSAR. I thank the gentleman from California. The gentleman from Texas is recognized for 5 minutes.

Mr. HUNT. Thank you, Mr. Chairman. And I want to thank the witnesses, as well. Thank you so much for your time. Thank you for being here. We really appreciate it.

In 2019, then-candidate for President Joe Biden said, and I quote, “We are going to ban fossil fuels. I guarantee it.” Well, when tyrants speak, believe them. And one could argue this will be the only campaign promise that Biden plans on following in the future. With the radical climate lobby that helped to put Joe Biden in the White House in the first place, no matter how much American families suffer from the increased energy prices directly resulting from Biden’s policies, the White House will continue to pursue this flawed and failed agenda.

Energy bills for the people that I serve in Tomball, Texas, which is actually the northern part of my district in a Houston suburb, have doubled under Joe Biden. The *Houston Chronicle*, a local publication, says that the natural gas bills in Houston are soaring, and yet Biden and the climate cartel have spent the last 2 years propagandizing an energy transition. And we are transitioning all right, right into poverty.

The truth is, if you plan on continuing to live in a free and prosperous society, then fossil fuels aren’t going anywhere for the foreseeable future. And here is where fantasy meets reality. You see, on one hand, this Administration killed the Keystone XL pipeline and placed a moratorium on all oil and gas leases on Federal land. But then on the other hand, the Biden administration wrote a letter to several oil companies demanding they increase oil production and refining capacity.

Now, why would an energy company do that, if they know that their industry is going to be killed in the not-so-distant future? That is not capitalism and that is not America. That is ridiculous.

On one hand, Biden wants to mandate that Americans drive EVs. But then, on the other hand, he prohibits the domestic mining of necessary materials to build these vehicles and their batteries.

On the one hand, Biden says he wants to reduce carbon emissions, and then turns around and he taxed the energy source that is responsible for lowering U.S. emissions. And that, ladies and gentleman, is natural gas.

On the one hand, Biden says that he wants to transition our entire energy future, and he even said that he wants to make sure that all government vehicles are powered by a renewable source by 2035. And I am an Apache helicopter pilot. Good luck with that. But then on the other hand, he has set up a permitting and regulatory system that, as you mentioned in your statement, Mr. Harrell, is procedurally impossible, and thank you for being honest on that.

I am from Houston, Texas. Houston, Texas is the energy capital of the world. I deem myself to be the energy Congressman of the world. And I want to tell my friends on the opposite side of the aisle something that is very important. Every single oil and gas executive that I have spoken to in my district in the energy corridor has never said anything disparaging about renewable energy. Never. Not one. In fact, we need more electrons. And we in Congress have to stop talking about an energy transition, because that is a lie. This is about energy addition.

In this country, we are sitting on the Marcellus Shale, which I was told is the Saudi Arabia of natural gas. Now, for 2 years, when I was in the military, I was stationed in Saudi Arabia. You want to talk about vast resources? The insinuation that our country is sitting on a resource remotely close to the oil in Saudi Arabia is unbelievable, and it is God-given. But at the same time, New York has outlawed fracking, and the Marcellus Shale is sitting right at their feet. Yet, the Northeast would rather import heating oil from foreign countries than tap the resource that is sitting right beneath them.

This lack of coherent leadership is dangerous for our country and for our children's future. We can only ride the coattails of the good policies of the Trump administration for so long. Joe Biden came for your gas stoves. He came for your cars. Apparently now it is your dishwasher.

And as I said in the very beginning, Joe Biden said, and I quote, "We are going to ban fossil fuels." Promises made, promises kept.

Thank you all so much for being here. And with that I yield back.

Dr. GOSAR. I thank the gentleman from Texas. The gentlewoman from New Mexico, the Ranking Member, is recognized.

Ms. STANSBURY. Thank you, Mr. Chairman. I appreciate the opportunity to have this discussion. It is important that we talk about energy and the energy transition, but it is also important that we remain clear about what we are talking about.

I think that this has been a very muddled conversation this afternoon. I have heard electricity conflated with heating fuel, conflated with oil and gas, conflated with the vehicle sector. So, there is a lot of confusion, I think, in this conversation about what

we are talking about in terms of energy security here in the United States. So, I want to just re-clarify.

Again, this is the second highest year of energy production in American history. There has not been a ban on energy production in the United States. In fact, the Administration has approved recently several new lease plans in New Mexico, which is my home state. Not only do we see the highest production of oil and gas ever in our state's history, we are seeing the highest profitability and first quarter profits of oil and gas companies ever in the history of our state. Those are the facts.

And as we have heard today, and I really want to thank Ms. Pleune for being here today, when we look at the science, not just anecdote, and I was really struck by your comments that you analyzed over 41,000 NEPA decisions, 41,000 decisions, the science shows that it is not the regulatory structure of NEPA that causes delays.

So, I want to reiterate the three factors that were shared here today, and then ask a couple of questions: the first is staffing and capacity; the second is operator delays, meaning the individuals who are seeking to have a decision approved may not provide the appropriate paperwork that is required or, in other cases, they may choose to not move forward with a project because they don't have financing, the market conditions are not right, and in fact, when we talk about many of these energy mixes, the reason why they are not moving forward with these projects is they are no longer profitable because technologies have changed or there are other energy mixes coming online; and the other is other laws.

So, I want to just take one moment, because the reason why NEPA passed in 1969 and was signed into law by President Nixon, a Republican administration, why the Council on Environmental Quality was established in NEPA was because there were rivers on fire, because we were strip mining our forests and precious natural resources, and we were destroying sources of water across the United States and significantly impacting what we now call front-line communities, and especially those communities that did not have a voice in these decision-making processes.

And particularly significant for my state, in New Mexico, are tribal voices and tribal consultation. And I do want to take umbrage with something that was said just a few moments ago, because there was a comment made about Resolution Copper being delayed because of NEPA. That is factually untrue. Myself and the Chairman of this Committee, excuse me, Ranking Member of this Committee, Grijalva, had been working along with Congresswoman Leger Fernández to ensure that there is appropriate tribal consultation to make sure that an international mining company does not strip mine a tribal sacred site that is protected by treaty and over 150 years of Federal law. And that is why that project has been delayed, not because of NEPA.

But let's talk about what can be done. Ms. Pleune, you said in your testimony that good decisions are more important than rush decisions. And I want to ask you, first, we are hearing a lot of comments here, and we continue to hear these arguments that we should just weaken NEPA or take it away, and somehow that will

solve the problem. What are the risks to our communities and the environment if we were to do that?

Ms. PLEUNE. The risk of weakening NEPA is that NEPA is a look-before-you-leap statute. It simply says look at what you are going to do, and disclose the impacts. It provides an opportunity to think before you do it, is there a way that I can avoid, reduce, or mitigate risks or harms to communities?

It also provides an opportunity for communities to speak and effect change on things that affect them. Weakening NEPA weakens all of these opportunities.

Furthermore, a lot of delays that projects encounter are due to different laws, there are overlapping laws. There are different jurisdictions, and communities can use those differences to stop a project if it is going to be harming them. That is the whole point of laws; they protect people.

And using NEPA as a structure to bring people to the table to understand the effects of a project, to synthesize the way it is going to be analyzed and come to an agreement about whether or not it goes forward is a productive, transparent process that is appropriate to the democracy we live in.

Ms. STANSBURY. Thank you, Ms. Pleune. I don't think I could state it any more clear, so we appreciate you being here and bringing good science and facts to this conversation.

Ms. PLEUNE. Thank you.

Dr. GOSAR. I thank the gentlelady. The gentlelady from Florida, Mrs. Luna, is recognized. Sorry. You should have been——

Mrs. LUNA. It is OK. Thank you, Chairman. Actually, since we are clarifying facts, I just wanted to add some e-mails to the record showing that CEQ did receive sufficient notice to testify at today's hearing, if that is OK with you.

Dr. GOSAR. So ordered.

[The information follows:]

Varnasidis, Sophia

From: Varnasidis, Sophia
Sent: Thursday, April 27, 2023 8:52 AM
To: 'sara.ljordan@ceq.eop.gov'
Cc: Lane, Michelle; Knecht, Thomas
Subject: Invitation to testify before the Sub on Oversight and Investigations 05.11.23
Attachments: 118th Testimony & Disclosure Requirements.pdf; Invite Mallory.pdf

Good morning Sara,
 Attached is an invitation for CEQ Chair Mallory from Subcommittee Chairman Gosar, to testify before the House Committee on Natural Resources, Subcommittee on Oversight and Investigations, at an oversight hearing on Thursday, May 11, 2023 at 2:15 p.m. in the 1334 hearing room of the Longworth House Office Building, at a hearing titled "*The Biden Administration's Executive Overreach and its Impact on American Energy Independence.*"

Testimony is due to the Committee by Tuesday afternoon, May 9, per the Testimony and Disclosure Requirements pdf, also attached. As a governmental witness, the Chair does not need to complete a disclosure form.

Please contact us with any questions.
 Sophia

Sophia A. Varnasidis
 Director of Legislative Operations
 Committee on Natural Resources
 Chairman Bruce Westerman

1324 Longworth HOB
 Washington, DC 20515
 (202) 225-2761

BRUCE WESTERMAN OF ARKANSAS
CHAIRMAN

VIVIAN MOEGLEIN
STAFF DIRECTOR

RAÚL M. GRIJALVA OF ARIZONA
RANKING DEMOCRAT

LORA SNYDER
DEMOCRAT STAFF DIRECTOR

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

April 27, 2023

The Hon. Brenda Mallory
Chair
Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503

Dear Chair Mallory:

The Subcommittee on Oversight and Investigations will hold an oversight hearing titled "*The Biden Administration's Executive Overreach and its Impact on American Energy Independence*" on Thursday, May 11, 2023 at 2:15 p.m. in room 1334 Longworth House Office Building. I cordially invite you to testify at this hearing.

Enclosed with this letter are the parameters regarding written and oral testimony. Should you have any questions or need additional information, please contact Sophia Varnasidis, Director of Legislative Operations, Committee on Natural Resources at (202) 225-2761.

Sincerely,



Paul Gosar, D.D.S.
Chairman
Subcommittee on Oversight and Investigations

Enclosure



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

May 3, 2023

The Honorable Paul Gosar, D.D.S
Chairman
Subcommittee on Oversight and Investigations
Committee on Natural Resources
Washington, D.C. 20515

Dear Chairman Gosar:

Thank you for your invitation to testify in front of your subcommittee on Thursday, May 11, 2023. Unfortunately, prior to your invitation, I had already scheduled official travel outside of Washington, DC, and as such I am unavailable to testify on that date. However, I welcome the opportunity to testify in front of your subcommittee on another date in the near future, and very much look forward to discussing the work we are doing at the Council on Environmental Quality to secure a healthy environment, clean air, and clean water for all.

I look forward to working with you and your staff to find a date and time that works for both of us.

Thank you again for the invitation.

Best regards,

Brenda Mallory
Chair

cc: The Honorable Bruce Westerman, Chairman, Committee on Natural Resources

The Honorable Raul Grijalva, Ranking Member, Committee on Natural Resources

The Honorable Melanie Stansbury, Ranking Member, Subcommittee on Oversight and Investigations

Mrs. LUNA. Thank you very much. I wanted to read you guys some facts. And I had actually heard what Ms. Diana Roth had stated earlier.

When I sit up here and I hear legislators, on both sides sometimes, talking about how we need to fully go green without taking into account the impacts that it has, especially on those that are not as fortunate in this country, I look at that as rather tone deaf.

Some of these stats that I was able to look up during this hearing, in 2021 the average salary of Black Americans is \$46,400 a year. In 2020, for Hispanics it was about \$55,000. And the poverty rate for Indigenous Americans is about a quarter. So, when I see that the average cost for an electric vehicle is \$66,000, and then I hear that we need to be pushing for more green initiatives,

I think that that is done by people who have maybe never even experienced the struggle.

I just got back recently from Indonesia on a congressional delegation where we met with the President, where we met with their parliament, and where we heard that American companies were going there to mine things like cobalt and lithium, things that we use here in the States to produce our own electric vehicles because we know that this Administration, through the Inflation Reduction Act and their war on fossil fuels, has been pushing this. But when we asked the Indonesians what they were doing for their own people, they said, "Well, we use fossil fuels."

When we were in South Korea, even though they are moving toward nuclear energy, they are still also using fossil fuels. Yes, they have embraced going green. However, they are not stupid enough to completely cut off their arm in the process and hurt their own people in order to do so.

And, of course, then you have China, who doesn't really care about the environment and is busy destroying it. So, when I hear about these climate disasters, I take those things into account.

My question is for you, Ms. Roth. How has the Biden administration enabled our adversaries through these green initiatives like China and Russia?

MS. FURCHTGOTT-ROTH. China makes most of the components of electric vehicles. They make the batteries, they make the components, they make about 70 or 80 percent of wind turbines and solar panels. So, the big question we have before us is this: Is displacing American energy-intensive manufacturing and sending it to China, does that help the environment at all? Does that help the global climate? Does it help climate change?

And I would argue that the answer is no, because what we are doing is giving up American jobs in energy-intensive manufacturing sectors, giving up auto jobs. And these individuals are hurt, and the Chinese are gaining. The Chinese subsidize labor. They have forced labor from Xinjiang. They subsidize energy. They have these coal-fired power plants that we are not allowed to have here. They subsidize capital with interest, very low interest loans to favored companies. And they are gaining, and we are losing, and it is not helping the environment.

That is the fundamental question before us: Is this harm we are doing to America helping reduce emissions? I would answer that the answer is no.

Mrs. LUNA. Do you believe that politicians that lecture the American people on climate justice should adhere to their own ideologies? For example, should they ride bicycles to Washington, DC? Do you think they should stop eating steak? Because we have heard that cows contribute to and their flatulence contributes to climate change and global warming. I mean, don't you think that those people should embrace their own ideologies?

MS. FURCHTGOTT-ROTH. Food security is very important and fossil fuels are needed for fertilizers. And we need to keep the price of food low.

Again, it is low-income individuals that are hurt the most because food is a high proportion of their income. And it is a little strange to see people lecturing about the evils of carbon emissions

on planes, and then flying their own jets to Davos to take part in conferences.

Mrs. LUNA. Oh, that is my favorite. You watch them going in on their G6 and you can see that they clearly have no clue on how their legislation and their crazy ideologies are impacting the rest of the world.

But thank you for your time.

Chairman, I yield back.

Dr. GOSAR. I thank the gentlelady. I will recognize myself.

So, Mr. Harrell, a comment was made that a tribal site was being condemned at Resolution Copper. Is that true, particularly to the historian from the San Carlos Tribe?

Mr. HARRELL. It is not true. And just to clarify my statement in my testimony, I didn't use NEPA as the barrier for Resolution Copper. I used it as the example of where we need to have faith in decisions by the administration.

Over the last 9 years, since Congress enacted the land exchange to move that project forward, a significant NEPA process was done to move it forward. There was a record of decision that was made almost 9 years later, and then 2 months into this Administration they reversed that. There were significant requirements for tribal consultation that were followed by Interior over the course of that EIS, and we are simply just disadvantaging ourselves in producing a robust copper supply in this country.

Dr. GOSAR. Well, I just wanted to make sure that the consultation, based on historical sites, was not part of the deal. So, just to set that straight.

My good friend from California made the comment about financing. Can you tell me a little bit about ESG and some of the threats in regards to getting financing for actually applications for energy?

Mr. HARRELL. Yes, absolutely, happy to talk about financing for clean energy as a whole.

We need regulatory predictability. In the end, the biggest thing that drives up private sector capital moving into projects, whether it is wind, solar, transmission, nuclear power, carbon capture, is regulatory uncertainty. In the end, there needs to be confidence there is going to be a return on investment, and folks simply need predictability.

So, I would argue that we have an environmental imperative to more efficiently move energy and clean energy projects forward.

Dr. GOSAR. So, streamlining the process, I mean, there is always improvement. I mean, as a businessman I have always looked at that. As a dentist I have always looked at that. Is there a way that we might have, like, a point person that actually calibrates this? Instead of doing it linear, you are doing it all at once. Could that be a benefit?

Mr. HARRELL. Absolutely. And NEPA is just one piece of the puzzle, right? There are a wide variety of the permits that need to be done across agencies that have jurisdiction. We need a lead person driving these type of things forward, and kind of being that ombudsman, effectively, and ensuring the agencies are working in tandem to approve things in an expeditious manner.

Dr. GOSAR. So, Ms. Roth, going back to this ESG phenomenon, we had this in Oversight just yesterday. So, if you don't pertain or hold to the particular nomenclature or let's say the Administration's belief, you can't get funding. Does that cause a problem?

Ms. FURCHTGOTT-ROTH. It causes a major problem for companies who are downgraded by the Securities and Exchange Commission because their projects might have climate risks and the Office of the Comptroller of the Currency for banks, because those projects might have climate risks. And it is very difficult to measure these things. That is called Scope 1, which is the immediate greenhouse gas consequences. Then there is Scope 2, which is do your suppliers have any greenhouse gas consequences for their suppliers? Then there are the suppliers to the suppliers.

It is difficult to measure, and it gives our foreign competitors an advantage because they do not have the equivalent of the OCC or the SEC breathing down their necks, so it makes their imports to us, their exports to us less expensive, and it gives them an advantage. It drives down American manufacturing, drives up American prices, hurts the poor. And that is not any kind of justice.

Dr. GOSAR. And I found it fascinating that investors were actually talking that they could actually make up money based upon ESG rulings, because they don't deliver the same kind of punch for the dollar in investment purposes. I find that very disingenuous because maybe we ought to go back to the way the Fisher people look at things, and that is we do better when our clients do better. We ought to be forthcoming about that. So, this is an intricate web that is here.

I am known for my last question: Each one of you, what was the question you most wanted to have asked and what is the answer?

I am going to start with you, Ms. Roth.

Ms. FURCHTGOTT-ROTH. I think you could have asked about the feasibility of net zero. And I just want to say that fossil fuels are going to be with us as far as the eye can see.

First of all, if we imagine that the United States is covered with solar panels and wind turbines, we need backup natural gas plants to operate the source of electricity when the wind doesn't blow and the sun doesn't shine.

Second, we need fossil fuels to actually make the wind turbines and make the solar panels. So, the idea that we can get rid of fossil fuels together is just a myth. It is just a fantasy.

Third, I want to make it clear that the air and water in the United States is getting cleaner. You look at the EPA website, six criteria pollutants. They are all going down. So, shifting manufacturing and energy production offshore where there are more lenient rules for production is not helping. Telling our companies they cannot drill for oil, going to Saudi Arabia and Venezuela, asking them to produce oil rather than our Canadian friends in the north, that does not help or reduce global emissions. It increases global emissions.

We are doing a great job here of being energy independent. We need to stay that way. We don't want to cede our independence to China.

Dr. GOSAR. Thank you.

Mr. Harrell?

Mr. HARRELL. Thank you, Mr. Chairman, for the opportunity on that, a question about the feasibility of meeting our long-term energy needs, both from an affordability and a climate perspective.

When push comes to shove, we need to be focused on reducing emissions, not on different fuel types as a whole. Natural gas can play a huge role, both globally in reducing emissions and meeting our energy needs here. We need more transmission, we need more wind and solar, we need more nuclear power. We need all of those technologies. We need to potentially double the capacity of our grid to meet some of these energy and climate objectives.

And one common thing is true: we are simply not building technologies fast enough to meet those goals. So, we need to find ways to cut down some of these timelines from 2½, 4½ years to 18 months, things like that. And that does involve proactive engagement with communities. It is trying to make sure that we are doing a lot of the work up front.

But the one clear fact here is, if we are going to meet those objectives, we simply cannot operate under the status quo. We cannot deploy technologies at the pace and scale needed under the status quo.

Dr. GOSAR. Thank you.

Ms. Pleune?

Ms. PLEUNE. Thank you for this opportunity. I think I would have liked to have been asked a little bit more about what are the procedures in FAST-41 that do promote more efficiency, and why is that?

And the main thing I would like to talk about is the way that it has been able to promote coordination between permitting authorities as a way to streamline the permitting process. The procedures have been effective in achieving predictability, transparency, and improved timelines, all without compromising environmental standards or transparency.

Additional promising practices include encouraging the development of MOUs between permitting authorities, especially state, local, and tribal authorities. To do that, the agencies need the funds, the time, the people, and the people with the expertise to get that done.

Second, encouraging details between agencies to facilitate inter-agency coordination. That way they will understand how each other work, and be able to coordinate better.

Third, developing protocols for data sharing, mapping, and permit sequencing. This way we don't have to re-analyze decisions every time they come up.

Fourth, propagating best practices through training and inter-agency collaboration, one thing the Permitting Council has already started. And just through that it is already showing improvements, not only in the complex permitting processes but in the more simple ones.

I think these are very promising practices. I think they offer the opportunity to speed the pace of implementation and permitting without compromising environmental standards. Thank you.

Dr. GOSAR. Thank you. You do know I am from Wyoming, from Pinedale, Wyoming, do you not?

Yes, just a reason I understand the Pinedale model.

Mr. Stein?

Mr. STEIN. Yes, I would have liked there to have been a little more discussion of the role of litigation in all these delays that we have discussed. A lot of the focus of the NEPA discussion was on the procedural within the administrative state. And while that is slower than it should be, that is not the true delay. It is the process through the courts, it is the uncertainty in the courts, too. Unfortunately, Congress has left far too much of NEPA implementation to court interpretation.

So, a lot of the uncertainty that slows down some of the administrative decisions and slows down financing decisions is that uncertainty of litigation, sometimes litigation that is funded by the Federal Government itself, and lack of clarity about what is required to actually perform a NEPA analysis correctly.

Dr. GOSAR. Thank you. I think we have had a wonderful discussion across the board, and I think there is more that needs to happen in regards to clarity, transparency, and accountability. And I think some of it belongs to us. I think Congress has to recoup its power of the purse and balance this baby off.

I want to thank all the witnesses for their valuable testimony and the Members for their questions.

The members of this Committee may have some additional questions for you. We will ask them to respond with those in writing. Under Committee Rule 3, members of the Committee must submit questions to the Subcommittee Clerk by 5 p.m. on May 16. The hearing record will be held open for 10 business days for those responses.

If there is no further business, without objection, the Committee stands adjourned.

[Whereupon, at 3:44 p.m., the Subcommittee was adjourned.]

