



**Comments of Marlo Lewis, Jr., Senior Fellow, Competitive Enterprise Institute
Docket: CEQ-2023-0003**

September 29, 2023

Thank you for the opportunity to comment on Phase 2 of the Council on Environmental Quality's (CEQ's) proposed revision of its National Environmental Policy Act (NEPA) implementing regulations.¹ My comments address the Proposed Rule's implications for climate change policy.

The comments may be summarized as follows. NEPA was not designed to be a climate policy framework, and Congress has not amended NEPA to make it so. CEQ should delete or revise all statements in the Proposed Rule that could be construed as requiring agencies to align their NEPA proceedings with the administration's climate policy commitments and goals, prioritize "climate effects" in project reviews, or reject proposed projects based on their greenhouse gas (GHG) emissions.

I. Key Points

- CEQ's Proposed GHG Guidance and Proposed Rule together form a strategy to shift investment away from fossil-fuel infrastructure by 'aligning' project reviews with the Biden administration's climate agenda. Congress has not authorized CEQ or any other agency to implement such a plan, which would entail a major shift in national policy. CEQ's plan is unlawful under the Supreme Court's major-questions doctrine.
- NEPA's misuse as a weapon in the war on fossil fuels is not a theoretical risk but a longstanding, ongoing threat to U.S. economic development and energy security. Finalizing CEQ's Proposed Guidance and Proposed Rule would increase and entrench that abuse of power.
- NEPA is concerned with major federal actions "significantly affecting the quality of the human environment." The GHG emissions of even the largest infrastructure projects have no detectable climate change impacts. Thus, such impacts are not "significant" effects for NEPA purposes, and should not be used as a factor in granting or denying permits for proposed infrastructure projects.

¹ CEQ, National Environmental Policy Act Implementing Regulations Phase 2, Proposed Rule, 88 FR 49924, July 31, 2023, <https://www.govinfo.gov/content/pkg/FR-2023-07-31/pdf/2023-15405.pdf>.

- CEQ tries to sidestep that conclusion in two ways. First, CEQ argues that “incremental” GHG emissions are “significant” because their “cumulative effects” are “collectively significant.” That is incorrect. In climate impact assessments, it is the “aggregate” or “cumulative” emissions over long periods of time that are significant, not the incremental emissions of any individual project, which do not change the assessed impacts of the “aggregate.” Imputing “collective effects” to individual projects is useful only for political purposes such as mobilizing opposition to projects with significant economic benefits and undetectably-small climate costs.
- Second, CEQ proposes to define “significance” as a combination of “context” (which is either global, regional, or local) and “intensity” (which includes “duration”). Since project-related GHG emissions have long residence times in the global atmosphere, they are *by definition* “significant.” Alas, this *a priori* semantic determination conceals rather than reveals the nature of things. GHGs’ long residence time in the global atmosphere is the very attribute that renders the climate effects of project-specific GHG emissions undetectable, unknowable, and insignificant.
- Climate change is not a crisis. Global warming is not accelerating. The average annual number of global climate-related deaths per decade has declined by 96 percent over the past century, with individual climate-related mortality risk declining by more than 99 percent. Climate damages per exposed GDP have declined by almost fivefold since the 1980s. CEQ’s crisis narrative implicitly relies on overly sensitive climate models run with implausibly inflated emission scenarios. No bona fide emergency exists such as might justify CEQ’s overreach as a desperate measure for desperate times.
- In certain instances, CEQ’s proposals are arbitrary and capricious. CEQ ignores an important aspect of the problem when it fails to discuss the reasoning behind positions it previously took but now proposes to rescind. Indeed, on the issues of whether it is appropriate to single out a particular category of environmental effects in procedural regulations and whether project-specific GHG emissions can have “significant” effects, CEQ does not even clearly acknowledge that it is changing policy. In addition, the Proposed Rule proposes to “codify” “all or part” of the Proposed Guidance, but CEQ provides no specifics enabling the public to make informed comments on this consequential action.

II. CEQ Attempts to Align NEPA with Unenacted “Climate Change Commitments and Goals”

II.A. GHG Guidance: Agencies’ Marching Orders

The Proposed Rule is CEQ’s second major climate policy action this year. CEQ’s January 9 Proposed Guidance on greenhouse gas emissions and climate change correctly states that “Neither NEPA, the CEQ Regulations, or this guidance require the decision maker to select the alternative with the lowest net GHG emissions or climate costs or the greatest net climate

benefits.”² But that appears to be a plea for plausible deniability, because CEQ immediately pivots, and in the next sentence instructs agencies to prioritize climate change mitigation. CEQ states: “However, in line with the urgency of the climate crisis, agencies should use the information provided through the NEPA process to help inform decisions that align with climate change commitments and goals.”³

With which “climate change commitments and goals” should agency decisions “align”? The answer is contained in similar statements on an earlier page: “CEQ encourages agencies to mitigate GHG emissions associated with their proposed actions to the greatest extent possible, consistent with national, science-based GHG reduction policies established to avoid the worst impacts of climate change.”⁴ The phrase “science-based ... policies ... to avoid ... worst impacts” is the familiar self-description of proposals to limit global warming to 1.5°C by reducing economy-wide GHG emissions to net-zero by 2050.⁵

Unsurprisingly, the footnote at the end of the statement just quoted takes us to the White House Fact Sheet of April 22, 2021, announcing President Biden’s Paris Agreement pledge to reduce U.S. emissions 50-52 percent below 2005 levels by 2030 “consistent with the President’s goal of achieving net-zero greenhouse gas emissions by no later than 2050.”⁶

On the same page, the Proposed Guidance lists as one of its benefits helping agencies “meet applicable Federal, State, Tribal, regional, and local climate action goals.”⁷ The footnote at the end of that sentence states: “For example, the United States has set an economy-wide target of reducing its net GHG emissions by 50 to 52 percent below 2005 levels in 2030. See United Nations Framework Convention on Climate Change (UNFCCC), U.S. Nationally Determined Contribution (Apr. 20, 2021), <https://unfccc.int/NDCREG>.”

Aligning NEPA with the President’s Paris pledge and NetZero target would entail a major shift in national policy. A NEPA thus aligned would preclude approval of all or nearly all projects with net-positive GHG emissions.

The Proposed Guidance implies as much in another passage. CEQ rejects the argument that individual project GHG emissions do not “significantly affect the quality of the human environment” even though the GHG emissions of the largest project “represent only a small

² CEQ, National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 FR 1196, 1204, January 9, 2023, <https://www.govinfo.gov/content/pkg/FR-2023-01-09/pdf/2023-00158.pdf>.

³ 88 FR 1196, 1204.

⁴ *Id.* at 1197.

⁵ Intergovernmental Panel on Climate Change, *Special Report on Global Warming of 1.5°C*, Chapter 2, Mitigation Pathways Compatible with 1.5C in the Context of Sustainable Development, 2018, https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SR15_Chapter_2_LR.pdf.

⁶ White House, “FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies,” April 22, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>.

⁷ 88 FR 1196, 1197.

fraction of global or domestic emissions.” According to CEQ, “such comparisons and fractions” merely restate “the nature of the climate challenge itself—the fact that diverse individual sources of emissions each make a relatively small addition to global atmospheric GHG concentrations that collectively have a large effect.”⁸ The policy implication is obvious. To mitigate “large effect,” permission to build should be denied to as many sources as possible—ideally, to all.

Neither the Proposed Guidance nor the Proposed Rule acknowledges the elephant in the room: NEPA was not designed to be a climate policy framework, and Congress has not subsequently amended NEPA to make it so. Nor has Congress amended NEPA to make the NetZero 2050 target a factor in NEPA proceedings. Far from authorizing agencies to “align” NEPA proceedings with “climate change commitments and goals,” the words “climate,” “change,” “global,” “warming,” “greenhouse,” and “carbon” do not occur in the statute.

Moreover, those words are absent not only from the original text of NEPA, but also from the text as recently amended via the Financial Responsibility Act.⁹ In short, Congress just had an opportunity to revise NEPA in light “climate change commitments and goals,” and did not do so.

No other law authorizes CEQ to invent a climate policy framework. The Paris Agreement is a treaty never submitted to the Senate for its constitutional advice and consent. No act of Congress, including the Inflation Reduction Act, makes the President’s Paris pledge the law of the land.

II.B. Proposed Rule: Agencies’ Marching Orders

Although the Proposed Rule does not use the word “align,” it gives agencies the same marching orders through *emphasis*, *implication*, and, potentially, *codification*.

Emphasis: Agencies are reminded that the administration has adopted a “government-wide approach to the climate crisis.”¹⁰ That means all agencies must do their part, and the President’s goals are continually reiterated: Cut U.S. emissions in half by 2030 and put America on the path to NetZero by 2050. Operationalizing a “government-wide” approach in the context of NEPA can mean only one thing—reject as many projects as possible that increase GHG emissions, either directly or by inducing economic growth.¹¹

Emphasis: The term “climate change” is mentioned 47 times (and “climate” in other usages an additional 17 times). “Greenhouse gas” and “GHG” are mentioned 21 times. Agencies are to use the NEPA process “to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment, such as alternatives that will reduce climate change-related effects or address adverse health and environmental effects that disproportionately affect communities with environmental justice

⁸ 88 FR 1196, 1201.

⁹ National Environmental Policy Act of 1969 (As Amended Through P.L. 118–5, Enacted June 3, 2023), <https://www.energy.gov/sites/default/files/2023-08/NEPA%20reg%20amend%2006-2023.pdf>.

¹⁰ 88 FR 49924, 49926.

¹¹ Reasonably foreseeable “indirect effects” may include “growth-inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate...” *Id.* at 49986 (to be codified at 40 C.F.R. § 1508.1(g)(2)).

concerns.”¹² The message to agencies here is not subtle—prioritize climate change mitigation per administration policy.

Emphasis: The Proposed Rule’s emphasis on climate is itself a departure from past practice that agencies will not fail to notice. Previous CEQ procedural regulations did not elevate some environmental impacts above others. The Proposed Rule unmistakably flags climate change mitigation and environmental justice (mentioned 73 times) as top priorities in NEPA proceedings. Such unprecedented emphasis is itself a signal to prioritize climate change mitigation per administration policy.

CEQ’s January 10, 2020 proposed rule on NEPA procedural regulations provides a clear contrast to the July 31, 2023 proposed rule. While noting that CEQ would review its June 26, 2019 draft GHG guidance¹³ for consistency with the proposed rule, the January 2020 proposed rule declined to discuss how its procedural regulations would apply to climate change. The 2020 proposed rule explained: “CEQ does not consider it appropriate to address a single category of impacts in [procedural] regulations.”¹⁴ That is fitting and proper because NEPA itself does not prioritize particular categories of environmental impacts, much less prioritize climate impacts.

CEQ here rejects a position it took as recently as January 2020, yet makes no effort to rebut its prior reasoning. Moreover, CEQ does not even acknowledge that it is changing its understanding of the statute. CEQ’s failure to address an important aspect of the problem, namely, its prior interpretation of NEPA, is arbitrary and capricious.¹⁵

Implication: Environmental impact statements (EIS) are to “include any reasonably foreseeable climate change-related effects.”¹⁶ Moreover, CEQ contends, individual projects have “reasonably foreseeable” and “significant” climate effects due to their “incremental” contribution to the “cumulative effects” of all GHG sources “in the aggregate.”¹⁷ Again, CEQ signals that decision makers should avoid approving projects that add “incremental” emissions to the “aggregate.”

Implication: Every EIS is to identify the “environmentally preferable alternative”—namely, the alternative that “will best promote the national environmental policy expressed in Section 101 of NEPA by maximizing environmental benefits, such as addressing climate change-related effects

¹² *Id.* at 49967 (to be codified at 40 C.F.R. § 1500.2(e)). See also 88 FR 49977 (to be codified at 40 C.F.R. § 1502.14(f)).

¹³ CEQ, Draft National Environmental Policy Act Guidance on Greenhouse Gases, 84 FR 30097, June 26, 2019, <https://www.govinfo.gov/content/pkg/FR-2019-06-26/pdf/2019-13576.pdf>.

¹⁴ CEQ, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, Proposed Rule, 85 FR 1684, 1710, January 10, 2020, <https://www.govinfo.gov/content/pkg/FR-2020-01-10/pdf/2019-28106.pdf>.

¹⁵ *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (“The weight of such a judgment in a particular case will depend upon ... its consistency with earlier and later pronouncements”). *Atchison, Topeka & Santa Fe Ry. Co. v. Wichita Bd. of Trade*, 412 U.S. 800, 808 (1973) (“Whatever the ground for the departure from prior norms . . . it must be clearly set forth so that the reviewing court may understand the basis of the agency’s action and so may judge the consistency of that action with the agency’s mandate.”).

¹⁶ 88 FR 49924, 49977 (to be codified at 40 C.F.R. § 1502.15(b)).

¹⁷ *Id.* at 49937, 49986 (to be codified at 40 C.F.R. § 1508.1(g)(4)).

...”¹⁸ Again, CEQ signals that projects contributing incrementally to climate change-related effects are inconsistent with “national policy.”

Implication: While acknowledging that NEPA is a “procedural statute” that does not “dictate a particular outcome by the decision maker,” CEQ stresses that “NEPA seeks to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of people, making it the continuing policy of the Federal Government to use *all practicable means and measures* to create and maintain conditions under which humans and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future.”¹⁹ That passage should be read in light of CEQ’s warning that America “faces a profound climate crisis and there is little time left to avoid a dangerous—potentially catastrophic—climate trajectory.”²⁰ The implication is obvious: Agencies should use all practical means and measures to deter construction of carbon-intensive infrastructure.

Codification: Someone might argue that the Proposed Guidance cannot change national policy because it is not legally binding. That is incorrect. Executive agencies seldom refuse to follow presidential orders (unless the President seeks to curb agencies’ power and budgets, which is not the case here).²¹ Thus, once finalized, the GHG guidance will likely remain in effect until it is either vacated by courts or revoked by a future administration.

Moreover, CEQ proposes to make the GHG guidance, or portions of it, legally binding on executive agencies. In the Proposed Rule, “CEQ proposes to incorporate some or all of the 2023 GHG guidance, which would require making additional changes in the final rule to codify the guidance in whole or part, as is or with changes, based on the comments CEQ receives on this proposed rule.”²²

Logically, an agency would propose to revise an earlier guidance document in light of a subsequent rulemaking. CEQ does the reverse, proposing to revise a subsequent rulemaking in light of an earlier guidance. The Proposed Rule does not provide any specific information about the proposed codification beyond the sentence just quoted. CEQ solicits comments but not on the specific issues or decision factors it might consider. Thus, the public is denied an adequate opportunity to weigh in on what may be the most substantive changes CEQ plans to make in its procedural regulations. That is arbitrary and capricious.

III. Aligning NEPA with Paris and NetZero Is Unlawful under *West Virginia v. EPA*

III.A. Major Questions Doctrine Background

¹⁸*Id.* at 49977 (to be codified at 40 C.F.R. § 1502.14(f)).

¹⁹ *Id.* at 49930 (emphasis added).

²⁰ 88 FR 1196, 1197.

²¹ The administration’s “whole-of-government approach” to various purported crises entails increased agency activism and spending. See Clyde Wayne Crews, “Inflation and Biden’s ‘Whole-of-Government’ Price Hike,” *Forbes*, June 1, 2022, <https://www.forbes.com/sites/waynecrews/2022/06/01/inflation-and-bidens-whole-of-government-price-hike/?sh=607c46904c6b>.

²² 88 FR 49924, 49945.

In *West Virginia v. EPA*,²³ the Supreme Court vacated the Obama administration’s Clean Power Plan (CPP), basing its decision on the major-questions doctrine. The major-questions doctrine is a jurisprudence of political accountability. It seeks to ensure that elected officials, who alone are accountable to the people at the ballot box, decide major questions of public policy.²⁴ Further, the doctrine responds to “a particular and recurring problem: agencies asserting highly consequential power beyond what Congress could reasonably be understood to have granted.”²⁵ The Court identified several telltale signs of bureaucratic overreach, such as when an agency:

- Asserts an unheralded power in a long-extant statute to make decisions of vast economic and political significance.
- Asserts a transformative expansion of its regulatory power.
- Resolves a policy question Congress is still debating.
- Makes a fundamental change in a statutory scheme.
- Cannot identify a clear statement of congressional authorization in the rule’s putative statutory basis, but instead infers authority from vague, ambiguous, or cryptic language even though Congress “does not ... hide elephants in mouseholes.”²⁶

III.B. CEQ Asserts an Unheralded Power in a Long Extant Statute to Make Decisions of Vast Economic and Political Significance.

Enacted on January 1, 1970—364 days before enactment of the 1970 Clean Air Act amendments²⁷—NEPA is the prime example of a “long-extant” federal environmental statute. As noted above, NEPA was not designed to serve as a framework for climate policy, and has not been subsequently amended to make it so. As also noted, NEPA contains none of the basic vocabulary associated with climate change. As should go without saying, the Paris Agreement and NetZero target were not even a glimmer in lawmakers’ eyes in 1970. The power to align national project permitting with the President’s “climate change commitments and goals” is about as unheralded a power as any ever imputed to an environmental statute.

The economic and political significance of the revisions CEQ proposes is obvious. A climate-centric NEPA has the potential to block or redirect tens to hundreds of billions of dollars in annual infrastructure spending. It also raises profound federalism concerns by potentially overriding state infrastructure spending and economic development priorities.

III.C. CEQ Asserts a Transformative Expansion of its Regulatory Authority

A CEQ in charge of administering a climate-centric NEPA process would be far more powerful in directing national economic development than it is today. Through its Proposed Rule and Proposed Guidance, CEQ would require agencies to align their decisions with the President’s

²³ 142 S. Ct. 2587 (2022).

²⁴ *Id.* at 2616-2626 (Gorsuch, J. concurring).

²⁵ *Id.* at 2609.

²⁶ *Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 468 (2001).

²⁷ EPA, “Milestones in EPA and Environmental History,”

https://19january2021snapshot.epa.gov/history/milestones-epa-and-environmental-history_.html.

“climate change commitments and goals.” In effect, CEQ would become a national climate czar for infrastructure.

The EPA was on the verge of becoming an untitled climate czar for electricity until the Supreme Court ruled in favor of petitioners in *West Virginia*. The Court vacated the CPP chiefly because the EPA asserted a power to shift investment throughout the electric power sector from carbon-intensive generation to renewable generation.²⁸ CEQ is on a parallel trajectory, asserting a power to shift investment throughout the U.S. economy from carbon-intensive infrastructure to zero-emission infrastructure.

The Court also vacated the CPP because the EPA presumed to make a Congress-level “policy judgment,” namely, that “it would be ‘best’ if coal made up a much smaller share of national electricity generation.”²⁹ A similar policy judgment underpins CEQ’s proposals—that it would be best if carbon-intensive assets made up a much smaller share of national infrastructure.

III.D. CEQ Attempts to Resolve Major Policy Questions Congress Is Still Debating

Climate change “has been the subject of an earnest and profound debate across the country” for decades.³⁰ The nation remains deeply divided. The Inflation Reduction Act (IRA) passed on a strict party-line vote, with a one-vote margin in the Senate. Proponents tried but failed to build support for a “Clean Electricity Performance Program” imposing financial penalties on fossil fuel powerplants with unabated GHG emissions.³¹ Aside from a new tax on fugitive methane emissions, the IRA relies on subsidies to promote “clean” (zero-emission) infrastructure, not mandates or prohibitions.

Numerous political actors at the federal, state, and municipal levels seek to prohibit, cancel, or defund carbon-intensive infrastructure.³² However, all such initiatives are controversial, and Congress has not enacted legislation defining NEPA’s role with respect to climate change.

²⁸ *W. Virginia v. EPA*, 142 S. Ct. at 2612.

²⁹ *Id.*

³⁰ *Id.* at 2614.

³¹ Josh Lederman, Sahil Kapur and Leigh Ann Caldwell, “Clean energy program likely to be dropped because of Manchin’s objections,” NBC News, October 16, 2021, <https://www.nbcnews.com/politics/politics-news/cleanenergy-program-likely-be-dropped-because-manchin-s-objections-n1281698>.

³² See, for example, Dino Grandoni, “Undoing Trump, EPA to empower states and tribes to oppose pipelines,” *The Washington Post*, June 2, 2022, <https://www.washingtonpost.com/climate-environment/2022/06/02/undoing-trump-epa-empower-states-tribes-oppose-pipelines/>; Coral Davenport, “Biden Administration Moves to Raise the Cost of Drilling on Federal Lands,” *New York Times*, July 24, 2023, <https://www.nytimes.com/2023/07/20/climate/biden-drilling-federal-lands.html>; Thomas Catenacci, “Biden admin quietly reverses Trump-era rule, bans transporting fossil fuels by train,” Fox News, September 5, 2023, <https://www.foxnews.com/politics/biden-admin-quietly-reverses-trump-era-rule-bans-transporting-fossil-fuels-train>; Ben Lefebvre, “Biden blocks oil drilling on 10M acres in Alaska, including oil leases Trump sold,” *Politico*, September 6, 2023, <https://www.politico.com/news/2023/09/06/biden-to-cancel-trumps-oil-drilling-leases-in-alaskan-nature-refuge-00114243>. For a comprehensive list, see Thomas J. Pyle, “175 Ways the Biden Administration and Democrats Have Made It Harder to Produce Oil & Gas,” Institute for Energy Research, September 19, 2023, <https://www.instituteforenergyresearch.org/fossil-fuels/gas-and-oil/175-ways-the-biden-administration-and-democrats-have-made-it-harder-to-produce-oil-gas/>.

Some federal statutes clearly conflict with CEQ’s vision of a NetZero-aligned NEPA. For example, the Natural Gas Act directs the Federal Energy Regulatory Commission (FERC) to follow NEPA when reviewing proposed natural gas infrastructure projects. Using NEPA to reject such projects based on climate concerns would conflict with the NGA’s “principal purpose,” which is to “encourage the orderly development of plentiful supplies of electricity and natural gas at reasonable prices.”³³

Several legislative proposals introduced in the 118th Congress seek to expedite infrastructure permitting for natural gas pipelines and other carbon-intensive projects,³⁴ limit NEPA’s application to oil and gas resources on non-federal lands,³⁵ or bypass NEPA review altogether by transferring responsibility for energy development on federal lands to the states.³⁶

Whether and to what extent “climate change commitments and goals” should be a factor in infrastructure permitting is a major policy question the people’s representatives are still debating. CEQ has no authority to resolve it.

III.E. CEQ Attempts to Make a Fundamental Change in a Statutory Scheme

That should be clear from the comments above. Aligning NEPA with President Biden’s Paris pledge and NetZero 2050 target would fundamentally revise the statutory scheme Congress enacted.

Moreover, the Proposed Guidance and Proposed Rule would change the very structure of NEPA. NEPA is a procedural statute under which projects are evaluated on a case-by-case basis. Agencies are to take a hard look at each project’s environmental effects but are not required to subordinate economic to environmental considerations. Nor does NEPA prioritize any single category of environmental effects as a basis for granting or denying project approvals. In contrast, CEQ’s proposals would predetermine permitting decisions for entire classes of proposed projects by subordinating economic to environmental considerations and prioritizing climate and environmental justice concerns among the latter.

III.F. CEQ Cannot Identify a Clear Statement of Congressional Authorization

That, too, is apparent from earlier remarks. No statute passed by Congress makes the President’s Paris pledges a factor in project reviews. None authorizes agencies to align their NEPA decisions with the NetZero 2050 target.

³³ *NAACP v. Fed. Power Comm’n*, 425 U.S. 662 (1976).

³⁴ Current examples include S. 783, the “Furthering Resource Exploration and Empowering (FREE) America Energy Act, sponsored by Sen. Rick Scott (R-FL); S. 998, the “Promoting Interagency Coordination for Review of Natural Gas Pipelines Act, sponsored by Sen. Rick Hoeven (R-ND); S. 1456, the “Spur Permitting of Underdeveloped Resources” (SPUR) Act, sponsored by Sen. John Barrasso (R-WY); H.R. 1335, the Transparency, Accountability, Permitting, and Production of (TAPP) American Resources Act, sponsored by Rep. Bruce Westerman (R-AZ).

³⁵ H.R. 1205, the “Bureau of Land Management Mineral Spacing Act,” sponsored by Rep. Stephanie Bice (R-OK).

³⁶ H.R. 98, the “Federal Lands Freedom Act,” sponsored by Rep. Andy Biggs (R-AZ); H.R. 495, the “Reducing Environmental Barriers to Unified Infrastructure and Land Development (REBUILD) Act,” sponsored by Ken Calvert (R-CA).

The Inflation Reduction Act (IRA) is no exception. The IRA authorizes \$32.5 million to support CEQ’s “data collection efforts” related to climate change, and \$30 million to carry out CEQ’s “functions and for the purposes of training personnel, developing programmatic environmental documents, and developing tools, guidance, and techniques to improve stakeholder and community engagement.”³⁷ Those provisions make no reference to NEPA, and none to President Biden’s Paris pledge or the NetZero 2050 target.

Indeed, the IRA references NEPA only once, in a provision authorizing \$100 million for environmental reviews by the Chief of the U.S. Forest Service.³⁸ That provision may accelerate permitting of new transmission lines for renewable energy projects. However, it would do so by increasing funds available for environmental reviews, not by revising any permitting agency’s statutory decision factors or criteria.

Title II of NEPA establishes the Council on Environmental Quality and defines its responsibilities. CEQ is to prepare an annual report on the state of the environment (Sec. 201), formulate and recommend national environmental policies (Sec. 202), hire expert employees and consultants (Sec. 203), develop and recommend environmental policies to the President (Sec. 204), and consult with representatives of various stakeholder groups (Sec. 205). Nothing in those provisions comes close to delegating a power to determine national climate policy or develop a permitting system aligned against fossil fuels.

IV. Project-Specific GHG Emissions Are Not “Significant” Effects under NEPA

CEQ contends that “Climate change is a fundamental environmental issue, and its effects on the human environment fall squarely within NEPA’s purview.”³⁹ However, NEPA is concerned with agency actions “significantly affecting the quality of the human environment.” 42 U.S.C. § 4332. It is well-known—and CEQ has acknowledged since 2010—that the GHG emissions of even the largest infrastructure project have no measurable, traceable, or verifiable impacts on the quality of the human environment, much less a significant impact, as will be shown in the next section.

IV.A. Illusory Thresholds of Meaningfulness and Significance

Both the Obama and Trump CEQs acknowledged that individual projects do not discernibly influence global climate change, beginning with CEQ’s 2010 Draft NEPA Guidance on Greenhouse Gas Emissions and Climate Change Effects. The document noted a stark difference between GHG emission sources and non-GHG emission sources: “From a quantitative perspective, there are no dominating sources and fewer sources that would even be close to dominating total GHG emissions.”⁴⁰ Which of the large universe of non-dominating sources should NEPA reviews include?

³⁷ PL 117-169, Secs. 60401, 60402.

³⁸ PL 117-169, Sec. 23001(a)(3), <https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf>.

³⁹ 88 FR 1196, 1197.

⁴⁰ CEQ, Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions February 18, 2010, p. 2, <https://obamawhitehouse.archives.gov/sites/default/files/microsites/ceq/20100218-nepa-consideration-effects-ghg-draft-guidance.pdf> (hereafter CEQ, 2010 Draft GHG Guidance).

The 2010 Draft GHG Guidance proposed that 25,000 tons or more of annual carbon dioxide-equivalent (CO₂e) emissions could provide “an indicator that a quantitative and qualitative assessment may be meaningful to decision makers and the public.”⁴¹ However, CEQ immediately clarified that it was not making a claim about climatic impact: “CEQ does not propose this as an indicator of a threshold of significant effects, but rather as an indicator of a minimum level of GHG emissions that may warrant some description in the appropriate NEPA analysis for agency actions involving direct emissions of GHGs.”⁴²

The 2010 Draft Guidance further stated: “CEQ does not propose this [25,000 ton] reference point as an indicator of a level of GHG emissions that may significantly affect the quality of the human environment.” Lest anyone mistakenly infer climatic significance, CEQ reiterated: “However, it is not currently useful for the NEPA analysis to attempt to link [proposed projects to] specific climatological changes, as such direct linkage is difficult to isolate and to understand.”⁴³

Stakeholders were confused. How can NEPA analysis of a project emitting 25,000 tons of greenhouse gases per year be “meaningful” if that quantity of emissions is not environmentally significant?⁴⁴

CEQ’s 2014 Draft GHG Guidance devoted several pages to the issue without resolving it. CEQ again proposed a 25,000 metric ton reference point while disclaiming an intent to make a “determination of significance.”⁴⁵ Rather, the significance of an agency action depends on multiple factors, such as “the degree to which the proposal affects public health or safety, the degree to which its effects on the quality of the human environment are likely to be highly controversial, and the degree to which its possible effects on the human environment are highly uncertain or involve unique unknown risks.”⁴⁶

However, that restates rather than resolves the perplexity. The degree to which GHG emissions from an individual project affect public health and safety is for all practical purposes zero. The climatic insignificance of individual projects is non-controversial and highly certain. GHG emissions from individual projects are not suspected of posing unique unknown risks.

After wrestling with comments ranging from ‘no project-level emissions are big enough to quantify’ to ‘no project-level emissions are too small to quantify,’ CEQ judged that a 25,000-ton disclosure threshold is “1) low enough to pull in the majority of large stationary sources of greenhouse gas emissions, but also 2) high enough to limit the number of sources covered that state and local air pollution permitting agencies could feasibly handle.”⁴⁷ In other words, administrative convenience rather than science would determine the cutoff.

⁴¹ CEQ, 2010 Draft GHG Guidance, p. 2.

⁴² CEQ, 2010 Draft GHG Guidance, p. 2.

⁴³ CEQ, 2010 Draft GHG Guidance, p. 3.

⁴⁴ CEQ, Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews, 79 FR 77802, 77825, December 24, 2014, <https://www.govinfo.gov/content/pkg/FR-2014-12-24/pdf/2014-30035.pdf>.

⁴⁵ *Id.* at 77810.

⁴⁶ *Id.*

⁴⁷ *Id.* at 77818.

Then, two years later, the final 2016 GHG guidance silently dropped the 25,000-ton threshold. The whole topic disappeared without a word of explanation or comment. Perhaps CEQ just gave up trying to explain how quantifying emissions that are not climatically “significant” could still be “meaningful.”⁴⁸

As a purely statutory matter, therefore, no project should be approved or rejected based on its GHG emissions.

IV.B. Imaginary Proxies

Although the climatic insignificance of project-related emissions has been CEQ’s consistent view since 2010, CEQ in 2014 continued to propose and in 2016 required agencies to quantify facility-level GHG emissions, and use that information to evaluate proposed actions, alternatives, and mitigation measures.

Based on what scientific rationale? CEQ argued that “projection of a proposed action’s direct and reasonably foreseeable indirect GHG emissions may be used as a proxy for assessing potential climate effects.”⁴⁹ That is misleading at best.

A proxy voter can cast a real, countable, ballot for an absentee voter. Data from tree rings, ice cores, fossil pollen, ocean sediments, and corals can be calibrated to instrumental data and then serve (albeit imperfectly) as proxies for climatic conditions in pre-industrial times. In contrast, no testable, measurable, or otherwise observable relationship exists between project-level GHG emissions and climate change effects. Imaginary proxies are not proxies.

CEI has made that point in previous comments to the CEQ. Maybe that is why the Proposed Guidance says nothing about proxies.

The Proposed Guidance declines to propose “any particular quantity of GHG emissions as ‘significantly’ affecting the quality of the human environment.”⁵⁰ That avoids the problem of having to defend the climatic “significance” of whatever reporting threshold is selected. But it immediately raises another problem. The absence of any reporting threshold would seem to imply that no quantity of CO₂ emissions is too small to be estimated, reported, and mitigated. Neither science nor benefit-cost analysis supports such a policy.

IV.C. Permitting Policy Is Not Climatically Significant

Perhaps CEQ believes that federal permitting policy on GHG emissions can significantly affect the quality of the human environment, even if individual permitting decisions cannot. That may be what CEQ means when it states: “Major Federal actions may result in substantial GHG

⁴⁸ CEQ, Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews, August 1, 2016, https://ceq.doe.gov/docs/ceq-regulations-and-guidance/nepa_final_ghg_guidance.pdf (hereafter CEQ, 2016 Final GHG Guidance).

⁴⁹ CEQ, 2010 Draft GHG Guidance, p. 3; 79 FR 77802, 77825; CEQ, 2016 Final GHG Guidance, pp. 4, 10.

⁵⁰ 88 FR 1196, 1200.

emissions or emissions reductions, so Federal leadership that is informed by sound analysis is crucial to addressing the climate crisis.”⁵¹ In fact, even adoption of a GHG-centric permitting regime would not discernibly affect global warming or any associated climate impacts.

For example, a 2022 Heritage Foundation analysis⁵² using Energy Information Administration (EIA) data and modeling finds that a complete ban on the construction of new natural gas pipelines would achieve a negligible 0.74 percent reduction in U.S. annual CO₂ emissions through 2050. Using the EPA’s Model for the Assessment of Greenhouse Induced Climate Change (MAGICC), the Heritage analysis further finds that the pipeline ban would avert only 0.069°C of global warming by 2100—a mitigation too small to detect.⁵³ Note, too, that the Heritage analysis assumes RCP6.0 as the baseline emission scenario and 4.5°C as the equilibrium climate sensitivity—assumptions that likely exaggerate the mitigation effects of GHG emission reductions.⁵⁴

IV.D. CEQ’s First Rebuttal: A Response

While disavowing an attempt to establish a particular quantity of emissions as climatically significant, CEQ insists that NEPA “requires more than a statement that emissions from a proposed Federal action or its alternatives represent only a small fraction of global or domestic emissions.” That tells us nothing “beyond the nature of the climate change challenge itself—the fact that diverse individual sources of emissions each make a relatively small addition to global atmospheric GHG concentrations that collectively have a large effect.”⁵⁵

Respectfully, CEQ ignores the obvious. The “nature of the climate challenge” is what renders scrutiny of project-level GHGs a waste of time and effort. The incremental emissions of any individual project do not change the estimated magnitude or timing of any climate effects purportedly attributed to current or projected global GHG concentrations.

Moreover, attempting to solve the “climate change challenge” one project at a time is like trying to drain a swimming pool one thimbleful at a time. It is a fool’s errand.

⁵¹ *Id.* at 1197.

⁵² Comments submitted by Patrick Michaels, Kevin Dayaratna, and Marlo Lewis, Federal Energy Regulatory Commission, Order on Draft Policy Statements, Docket No. PL21-3-000, March 24, 2022, https://cei.org/regulatory_comments/cei-comments-to-federal-energy-regulatory-commission-docket-no-pl21-3-000/.

⁵³ The standard deviation for estimating changes in annual average global surface temperatures is 0.11°C. J. Hansen, et. al. 1999. GISS Analysis of Surface Temperature Change. *Journal of Geophysical Research*, Vol. 104, No. D24, 30,997-31,022, <https://agupubs.onlinelibrary.wiley.com/doi/pdf/10.1029/1999JD900835>.

⁵⁴ Recent research suggests that RCP3.4 is the most plausible 21st century baseline emission scenario. Roger Pielke, Jr. et al. 2022. *Environ. Res. Lett.* 17 024027, <https://iopscience.iop.org/article/10.1088/1748-9326/ac4ebf/pdf>. Other recent research suggests that equilibrium climate sensitivity has a likely range of 1.75°C to 2.7°C. Lewis, N. 2023. Objectively combining climate sensitivity evidence. *Clim Dyn* 60, 3139–3165, <https://doi.org/10.1007/s00382-022-06468-x>.

⁵⁵ 88 FR 1196, 1201.

The only possible utility is political. Focusing NEPA reviews on project-related GHG emissions would train private and public decision makers to “think globally” when they “act locally,” help mobilize activists, and expand government control over microeconomic activity.

IV.E. CEQ’s Second Rebuttal: A Response

CEQ tries to evade that well-known insignificance of project-specific GHG emissions through semantics and circular reasoning. Specifically, CEQ defines “significance” as a combination of “context,” which may be either global, regional, or local, and “intensity,” one measure of which is “duration.”⁵⁶ Since project-related GHG emissions affect the global atmosphere and have long residence times, they are by definition “significant.”

Alas, this semantic argument assumes that which is to be proved. It conceals rather than reveals the nature of things. Global context and long residence time are the very properties of the fossil-fuel greenhouse effect that render the climate effects of incremental GHG emissions undetectable, unknowable, and insignificant. Long residence time ensures that GHG emissions are well-mixed in the global atmosphere, making their contribution to climate effects “difficult [i.e. impossible] to isolate and to understand.”⁵⁷ The global atmospheric context ensures that the GHG emissions of an individual source make too small of a contribution to “aggregate” emissions to significantly affect the quality of the human environment. Moreover, even the effects of the cumulative aggregate GHG emissions are often confused with natural variability⁵⁸ or socioeconomic factors (including political incompetence) that alter local climates or increase extreme weather vulnerability.⁵⁹

Finally, CEQ does not expressly rebut the reasons for its assessment in previous administrations that project-specific GHG emissions do not have significant effects, nor does it clearly acknowledge that it is changing a position it held during 2010-2020. It ignores an “important aspect of the problem,” which is arbitrary and capricious.⁶⁰

V. No Bona Fide Climate Emergency

CEQ’s proposed revisions are not only unauthorized by the law; they are also unsupported by the facts. CEQ’s core rationale for prioritizing climate factors in NEPA proceedings is the opinion

⁵⁶ 88 FR 49924, 49935, 49969 (to be codified at 40 C.F.R. § 1501.3(d)(1)(2)).

⁵⁷ CEQ, 2010 Draft GHG Guidance, p. 3.

⁵⁸ Roger Pielke, Jr. “What the IPCC Actually Says about Extreme Weather: I Promise, You’ll Be Utterly Shocked,” The Honest Broker, July 19, 2023, <https://rogerpielkejr.substack.com/p/what-the-ipcc-actually-says-about>; “Trends in Flooding in Africa: It’s Not What You Think,” The Honest Broker, September 13, 2023, <https://rogerpielkejr.substack.com/p/trends-in-flooding-in-africa>.

⁵⁹ For example, Maui’s catastrophic fire was largely due to “[f]ailure to manage flammable grasses and instead letting them grow ‘naturally’; “[s]pending money on expensive ‘green’ energy and not on powerline maintenance,” and “[d]eprioritizing water release in favor of ‘green’ concerns.” Alex Epstein, “Maui’s wildfire tragedy caused by ‘green’ policies, not warming,” <https://energytalkingpoints.com/mauis-wildfire-tragedy-caused-by-%E2%80%9Cgreen%E2%80%9D-policies-not-warming/>.

⁶⁰ *Motor Vehicle Mfrs. Ass’n v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29 (1983).

that America “faces a profound climate crisis and there is little time left to avoid a dangerous—potentially catastrophic—climate trajectory.”⁶¹

That assessment is incorrect. If climate change were a global ecological and economic crisis, we would expect to find evidence of declining health, welfare, and environmental quality over the past 50 years. Instead, we find dramatic improvements in global life expectancy, per capita income, food security, crop yields, and various health-related metrics.⁶² Disease mortality rates increased after January 2020 but that was due to the COVID-19 pandemic,⁶³ not climate change.

V.A. Increasing Climate Safety

Of particular relevance, the average annual number of climate-related deaths per decade has declined by 96 percent during the past hundred years—from about 485,000 deaths annually in the 1920s to 18,362 per year in 2010-2019.⁶⁴ This spectacular decrease in aggregate climate-related mortality occurred despite a fourfold increase in global population. That means the individual risk of dying from extreme weather events declined by 99.4 percent over the past 100 years.⁶⁵ Far from being an impediment to such progress, fossil fuels were its chief energy source.⁶⁶

V.B. Decreasing Climate Vulnerability

We often hear that the weather is becoming increasingly destructive. For example, the National Oceanic and Atmospheric Administration (NOAA) recently reported that, “In 2020 alone, a record 22 separate climate-related disasters with at least \$1 billion in damages struck across the United States, surpassing the previous annual highs of 16 such events set in 2011 and 2017.”⁶⁷ Citing NOAA’s report, the Securities and Exchange Commission’s (SEC’s) climate risk disclosure proposal asserts that “the impact of climate-related risks on both individual businesses and the financial system as a whole are well documented.”⁶⁸ Similarly, the Financial Stability

⁶¹ 88 FR 1196, 1197; 88 FR 49924, 49928.

⁶² Our World in Data, <https://ourworldindata.org/>. Cato Institute, Human Progress: Trends, <https://humanprogress.org/trends/>.

⁶³ Our World in Data, Cumulative Deaths from All Causes Compared to Projection Based on Previous Years, Per Million People, Sep. 11, 2022, <https://ourworldindata.org/grapher/cumulative-excess-deaths-per-million-covid?time=2022-09-11&country=MEX~PER~FRA~BRA~USA~GBR~BGR~ISR~AUS>.

⁶⁴ Bjorn Lomborg, “We’re Safer from Climate Disasters than Ever Before,” *Wall Street Journal*, November 3, 2021, <https://www.wsj.com/articles/climate-activists-disasters-fire-storms-deaths-change-cop26-glasgow-global-warming-11635973538>; “Fewer and Fewer People Die from Climate-Related Disasters,” Facebook, <https://www.facebook.com/bjornlomborg/posts/475702943914714/>.

⁶⁵ Bjorn Lomborg, “The risk of dying from climate-related disasters has declined precipitously.” Twitter, January 1, 2023, <https://twitter.com/BjornLomborg/status/1612790152539131904>.

⁶⁶ Alex Epstein, *Fossil Future: Why Human Flourishing Requires More Oil, Coal, and Natural Gas—Not Less* (New York: Penguin Random House, 2022).

⁶⁷ NOAA, National Centers for Environmental Information (NCEI) U.S. Billion-Dollar Weather and Climate Disasters (2022), <https://www.ncei.noaa.gov/access/billions/>.

⁶⁸ SEC, The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 FR 21334, 21336, April 11, 2022, <https://www.govinfo.gov/content/pkg/FR-2022-04-11/pdf/2022-06342.pdf>. 87 FR 21336.

Oversight Council cites the trend in billion-dollar weather disasters as evidence that climate change is a “threat to financial stability.”⁶⁹

In reality, not only is the increasing number of billion-dollar disasters not evidence of a climate crisis, it is not even evidence of climate change.⁷⁰

NOAA’s billion-dollar disaster charts adjust climate-related damages for inflation but not for population growth and exposed wealth. NOAA—and, thus, the SEC and FSOC—ignore what Danish economist Bjorn Lomborg calls the “expanding bull’s eye.” More people and more stuff in harm’s way lead to bigger climate-related damages even if there is no long-term change in the weather.

Since 1900, Lomborg notes, Florida’s coastal population has “increased a phenomenal 67 times.” In fact, just two Florida counties, Dade and Broward, have a larger population today than lived along the entire coast from Texas to Virginia in 1940. Consequently, “For a hurricane in 1940 to hit the same number of people as a modern hurricane ripping through Dade and Broward today, it would have had to tear through *the entire Gulf of Mexico and Atlantic coastline.*”⁷¹

Normalizing the damages—estimating the economic losses from an historic extreme weather event if the same event were to occur under present societal conditions—creates a very different picture from that touted by federal agencies. Consider hurricane damages, which constitute the largest portion of U.S. weather-related damages. There has been no trend in normalized U.S. hurricane damages since 1900. Consistent with that data, there has been no trend in the frequency and severity of U.S. landfalling hurricanes since 1900.⁷²

From a sustainability perspective, what matters most is not total damages but relative economic impact—extreme weather damages as a share of GDP. Globally, weather-related losses per exposed GDP declined nearly five-fold from 1980–1989 to 2007–2016.⁷³ In both rich and poor countries, economic growth outpaced the increase in climate-related damages.

V.C. Climate Change Is not a Crisis Demanding “Urgent Action”

One often hears that climate change is happening so fast it will overwhelm humanity’s adaptive capabilities. In CEQ’s words, “there is little time left to avoid a dangerous—potentially

⁶⁹ FSOC, *Report on Climate-Related Financial Risk 2021*, p. 12, <https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf>.

⁷⁰ Lest anyone mistake my meaning, greenhouse gases are radiative (climate warming) gases, and anthropogenic warming is real.

⁷¹ Bjorn Lomborg, Bjorn Lomborg, *False Alarm: How Climate Change Panic Costs Us Trillions, Hurts the Poor, and Fails to Fix the Planet* (New York: Basic Books, 2020), pp. 70-71 (original emphasis).

⁷² Philip J. Klotzbach, Steven G. Bowen, Roger Pielke Jr., and Michael Bell. 2018. Continental U.S. Hurricane Landfall Frequency and Associated Damage: Observations and Future Risks. *Bulletin of the American Meteorological Society* Vol. 99, Issue 7, https://journals.ametsoc.org/view/journals/bams/99/7/bams-d-17-0184.1.xml?tab_body=pdf.

⁷³ Giuseppe Formetta and Luc Feyen. 2019. Empirical Evidence of Declining Global Vulnerability to Climate-Related Hazards, *Global Environmental Change*, 57: 1-9, https://www.researchgate.net/publication/333507964_Empirical_evidence_of_declining_global_vulnerability_to_climate-related_hazards.

catastrophic—climate trajectory.”⁷⁴ That assessment clashes with the positive trends discussed above. Three other key facts weigh against the alleged urgency for “climate action.”

1. *Global Warming Is Not Accelerating*

The rate of warming in the lower-troposphere, as measured by satellites and weather balloons, has not accelerated over the past 44 years. In the University of Alabama in Huntsville satellite record, the warming rate is 0.14°C per decade.⁷⁵

2. *So-Called Business-as-Usual Baselines Are Implausible Worst-Case Scenarios*

The emission baselines long used to project global warming and sea-level rise are wildly inflated. Those scenarios assume the world “returns to coal” absent aggressive political interventions to suppress the exploration, production, and utilization of fossil fuels.⁷⁶ That assumption underlies the high-end “radiative forcing” scenarios,⁷⁷ notably RCP8.5 and SSP5-8.5, featured in official and academic climate change impact estimates. Such scenarios are no longer credible.⁷⁸

It is hard to exaggerate the extent to which RCP8.5 and SSP5-8.5 distort climate science, needlessly scare the public, and mislead policymakers. According to Google Scholar, since 2019, researchers published 17,400 papers featuring RCP8.5 and 3,800 papers featuring SSP5-8.5.⁷⁹ One or both of those scenarios was the source of the scary-sounding climate impact projections in the Intergovernmental Panel on Climate Change’s (IPCC’s) 2013 Fifth Assessment Report (AR5), the IPCC’s 2018 Special Report on Global Warming of 1.5°C, the IPCC’s 2021 Sixth Assessment Report (AR6), and the U.S. Global Change Research Program’s 2018 Fourth U.S. National Climate Assessment.

At its zenith, the academic “consensus” endorsing those scenarios may have reached the fabled 97 percent.⁸⁰ It is now crumbling.

⁷⁴ 88 FR 1196, 1197.

⁷⁵ Roy Spencer, UAH Global Temperature Update for August, 2023: +0.69 deg. C, RoySpencer.Com, September 4, 2023, <https://www.drroyspencer.com/2023/09/uah-global-temperature-update-for-august-2023-0-69-deg-c/>.

⁷⁶ Justin Ritchie and Hadi Dowlatabi. 2017. Why Do Climate Change Scenarios Return to Coal? *Energy* 140: 1276-1291, <https://www.sciencedirect.com/science/article/abs/pii/S0360544217314597>.

⁷⁷ RCP stands for “Representative Concentration Pathway”; SSP stands for Shared Socioeconomic Pathway. In both RCP8.5 and SSP5-8.5, the rise in GHG concentrations between 2000 and 2100 increases the preindustrial greenhouse effect by 8.5 watts per square meter (W/m²).

⁷⁸ Roger Pielke, Jr. and Justin Ritchie, “How Climate Scenarios Lost Touch with Reality,” *Issues in Science & Technology*, Vol. XXXVII, No. 4, Summary 2021, <https://issues.org/climate-change-scenarios-lost-touch-reality-pielke-ritchie/>.

⁷⁹ Some of those papers could, of course, be critical of high-end emission scenarios. However, the first 50 entries on SSP5-8.5 are exclusively studies that use the scenario to project climate change impacts. Hardly an exhaustive survey but quite suggestive.

⁸⁰ David R. Legates et al. 2015. Climate Consensus and ‘Misinformation’: A Rejoinder to Agnotology, Scientific Consensus, and the Teaching and Learning of Climate Change. *Sci & Educ* 24: 299-318, <https://web.cfa.harvard.edu/~wsoon/myownPapers-d/LegatesSoonBriggsMonckton15-ScienceandEducation-FINAL.pdf>.

SSP5-8.5 is a “socioeconomic pathway” calibrated to match the forcing trajectory of RCP8.5. RCP8.5, in turn, derives from an earlier storyline (A2r) commissioned for the IPCC’s 2007 Fourth Assessment Report.⁸¹ Such scenarios assumed that learning-by-extraction would make coal the increasingly affordable backstop energy for the global economy.⁸² In fact, nominal coal producer prices in July 2023 were 221 percent higher than in July 2001.⁸³ RCP8.5 was based on the expectation that global coal consumption would increase almost tenfold during 2000-2100.⁸⁴ That is not happening and there is no evidence that it will.

In the International Energy Agency’s (IEA’s) baseline scenarios (“current policies” and “pledged policies”), global CO₂ emissions in 2050 are less than half those projected by SSP5-8.5.⁸⁵ Strikingly, in Resources for the Future’s (RFF’s) baseline scenario, global CO₂ emissions in 2100 are less than one-fifth of those projected by SSP5-8.5.⁸⁶ Such dramatic reductions in baseline emission estimates decrease the urgency for “climate action.”

3. Most Climate Models Are “Tuned” Too Hot

CEQ’s Proposed Rule requires agencies to use “projections when evaluating reasonably foreseeable effects, including climate change-related effects,” and “expects that modeling techniques will continue to improve in the future, resulting in more precise climate projections.”⁸⁷ This brings us to the third reason to doubt the urgency for “climate action”: the persistent mismatch between modeled and observed warming in the troposphere, the atmospheric layer where most of the greenhouse effect occurs. The IPCC used the CMIP5 generation of climate models in AR5 and the CMIP6 generation of models in AR6. According to Google Scholar, since 2019, researchers published 68,000 papers featuring CMIP5 models and 22,600 papers featuring CMIP6 models.

The CMIP5 models hindcast about 2.5 times the observed warming in the tropical troposphere since 1979.⁸⁸ About one-third of the AR6 models have higher equilibrium climate sensitivities than any model in the AR5 ensemble.⁸⁹ Equilibrium climate sensitivity (ECS) is the term used to

⁸¹ Kewan Riahi et al. 2011. RCP8.5—A Scenario of Comparatively High Greenhouse Gas Emissions. *Climate Change* 109: 33-57, <https://link.springer.com/article/10.1007/s10584-011-0149-y>.

⁸² Justin Ritchie and Hadi Dowlatabadi, The 1,000 GtC Coal Question: Are Cases of High Future Coal Combustion Plausible? Resources for the Future, RFF DP 16-45, 2016, <https://media.rff.org/documents/RFF-DP-16-45.pdf>.

⁸³ St. Louis FED, Producer Price Index by Industry: Coal, <https://fred.stlouisfed.org/series/PCU21212121> (accessed 9/11/2023).

⁸⁴ Riahi et al. Op. cit.

⁸⁵ Zeke Hausfather and Glenn P. Peters, “Emissions – the ‘business as usual’ story is misleading,” *Nature*, January 29, 2020, <https://www.nature.com/articles/d41586-020-00177-3>.

⁸⁶ Kevin Rennert et al. *The Social Cost of Carbon: Advances in Long-Term Probabilistic Projections of Population, GDP, Emissions, and Discount Rates*, Resources for the Future, October 2021, <https://www.rff.org/publications/working-papers/the-social-cost-of-carbon-advances-in-long-term-probabilistic-projections-of-population-gdp-emissions-and-discount-rates/>.

⁸⁷ 88 FR 49924, 49951. See also 88 FR 49979 (to be codified at 40 C.F.R. § 1502.23(c)).

⁸⁸ John R. Christy and Richard T. McNider. 2017. Satellite Bulk Tropospheric Temperatures as a Metric for Climate Sensitivity. *Asia-Pac. J. Atmos. Sci.*, 53(4), 511-518, <https://www.sealevel.info/christymcnider2017.pdf>.

⁸⁹ Zeke Hausfather, “Cold Water on Hot Models,” The Breakthrough Institute, February 11, 2020, <https://thebreakthrough.org/issues/energy/cold-water-hot-models>.

describe how much warming will occur after the climate system fully adjusts to a doubling of atmospheric CO₂ concentrations.

CEQ believes climate models are improving. If anything, the CMIP6 models are less accurate than the CMIP5 models. One CMIP5 model (INM-CM4) accurately hindcasts global temperatures in the tropical troposphere. No CMIP6 model does. All overestimate warming in that atmospheric region.⁹⁰ Why is that significant? That region is arguably the best suited for applying the scientific method to test the validity of climate models.

Climate model projections are hypotheses—estimates of how atmospheric temperatures change in response to rising GHG concentration. The scientific method tests hypotheses by comparing them to observations. All climate models predict a strong warming signal in that the tropical atmosphere at 300-200 hPa. The region is well monitored by satellites and weather balloons. It is too high in altitude to be affected by local land-use changes.

Most importantly, although climate models typically are “tuned” to match aspects of 20th century climate history,⁹¹ none is “tuned” to match temperature trends in the tropical troposphere. Consequently, model projections of global warming in that region are genuinely independent of the data used to test them.⁹² As noted, the model projections exceed observations by a factor of 2.5.

VI. Conclusion

CEQ should delete all passages in the Proposed Rule (identified in II.B) encouraging NEPA’s transformation from a procedural statute that does not predetermine outcomes into a policy-substantive default rule suppressing investment in carbon-intensive infrastructure. Congress has not authorized CEQ to make such a fundamental change in national policy.

CEQ should withdraw the entire Proposed GHG Guidance, which is designed to “align” NEPA with President Biden’s Paris Agreement pledge and NetZero 2050 target. Far from being a climate policy framework, the words “climate,” “carbon,” “greenhouse,” “global,” and “warming” do not occur in NEPA. A NetZero-aligned NEPA regime would have severe detrimental impacts on U.S. economic development and energy security. If imposed by CEQ, such a permitting regime would usurp Congress’s power to decide major questions of public policy and defy the Supreme Court’s ruling in *West Virginia v. EPA*.

CEQ should question the climate crisis narrative, which conflicts with ongoing long-term improvements in global life expectancy, per capita income, crop yields, and health; dramatic

⁹⁰ McKittrick and J. Christy. 2020. Pervasive Warming Bias in CMIP6 Tropospheric Layers. *Earth and Space Science*, 7, Issue 9, <https://agupubs.onlinelibrary.wiley.com/doi/10.1029/2020EA001281>.

⁹¹ Frederic Hourdin et al. 2016. The art and science of climate model tuning. *Bulletin of the American Meteorological Society* 98(3), https://www.researchgate.net/publication/305745267_The_Art_and_Science_of_Climate_Model_Tuning.

⁹² Ross McKittrick and John Christy. 2018. A Test of the Tropical 200- to 300-hPa Warming Rate in Climate Models. *Earth and Space Science*, 5: 529–536, <https://agupubs.onlinelibrary.wiley.com/doi/epdf/10.1029/2018EA000401>.

declines in climate-related mortality; and substantial declines in the relative economic impact of damaging weather.

CEQ should question the “science” underpinning the crisis narrative—a doubly-biased methodology in which overheated models are run with inflated emission scenarios. Absent those biases, climate change assessments would project less warming, smaller climate impacts, and lower tipping point risks.

Finally, the war on fossil fuels is real.⁹³ NEPA’s misuse as a weapon in that war is not a theoretical risk but a longstanding and ongoing problem. President Obama exploited the NEPA process to mobilize activists against the Keystone XL Pipeline. After seven years of environmental review, Obama pulled the plug on the KXL despite the State Department’s repeated finding that approval of the pipeline was the low-carbon alternative.⁹⁴

It was also known at the time that even under the implausible assumption that all the oil delivered by the KXL would be additional oil that would otherwise remain in the ground, the pipeline would have to run at full capacity for 1,000 years to raise global temperatures by one-tenth of a degree Celsius.⁹⁵ NEPA scrutiny of the Keystone XL Pipeline’s GHG emissions accomplished nothing except to falsely vilify an economically-beneficial infrastructure project as a planet wrecker. So much for reasoned decision making.

Recently, Department of Interior (DOI) Secretary Deborah Haaland canceled congressionally-mandated,⁹⁶ DOI-approved leases in the Alaska National Wildlife Refuge (ANWR). Among her stated reasons: “Climate change is the crisis of our lifetime” and the 2019 EIS did not “completely quantify the greenhouse gas emissions that would result from producing oil, refining it and burning it as fuel.”⁹⁷

As explained above, the “climate crisis” rationale is not a statutory factor nor is it based on the best available science. As for the alleged incompleteness of the 2019 EIS, “More than 70 employees (BLM, contract, other federal agencies and the State of Alaska) and at least 13,000 labor hours were dedicated to developing the EIS.”⁹⁸ Besides, as DOI pointed out, global oil

⁹³ Pyle, op. cit.; Joseph Toomey, *Energy Inflation Was by Design*, Real Clear Energy Foundation, September 2022, https://assets.realclear.com/files/2022/10/2058_energyinflationwasbydesign.pdf.

⁹⁴ U.S. Department of State, Final Supplemental Environmental Impact Statement for the Keystone XL Pipeline, Executive Summary, Table ES-6, January 2014, <https://2012-keystonepipeline-xl.state.gov/documents/organization/221135.pdf>.

⁹⁵ Paul C. Knappenberger, “Keystone XL and Climate Change: Much Ado about 0.00001°C/Yr.” Master Resource, May 8, 2013, <https://www.masterresource.org/keystone-xl-pipeline/keystone-xl-and-climate-change-much-ado-about-0-00001cyr-may-7th-testimony-before-congress/>.

⁹⁶ P.L. 115-97—Dec. 22, 2022, Sec. 20001, <https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf>.

⁹⁷ Liz Ruskin, “Haaland cancels leases in Alaska’s Arctic Refuge: ‘Climate change is the crisis of our lifetime,’” Alaska Public Radio, September 6, 2023, <https://alaskapublic.org/2023/09/06/haaland-cancels-leases-in-arctic-refuge-climate-change-is-the-crisis-of-our-lifetime/>.

⁹⁸ Department of Interior, “Interior Announces Availability of Coastal Plain Oil and Gas Leasing Program Final Environmental Impact Statement,” September 12, 2019, <https://www.doi.gov/pressreleases/interior-announces-availability-coastal-plain-oil-and-gas-leasing-program-final>. See also Patricia Patnode, “Biden administration blocks

market dynamics are too unpredictable to allow “credible modelling” of ANWR lease impacts on “foreign energy markets and emissions rates.”⁹⁹ In addition, whatever changes may occur would not be significant enough to modify any reasonable climate change forecasts or impact assessments.

CEQ should defend and strengthen the political neutrality and scientific integrity of the NEPA process. Finalizing the Proposed Guidance and Proposed Rule would promote the reverse.

Sincerely,

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⁹⁹ Department of Interior Bureau of Land Management, Coastal Plain Oil and Gas Leasing Program Record of Decision, pp. 36-37, August 2020, https://eplanning.blm.gov/public_projects/102555/200241580/20024135/250030339/Coastal%20Plain%20Record%20of%20Decision.pdf.